
TRANSPORTATION PROCUREMENT

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TITLE 28 TRANSPORTATION

CHAPTER 20 - STATE HIGHWAYS AND ROUTES

ARTICLE 13 – ALTERNATIVE CONTRACTING PROCEDURES

28-7361. DEFINITIONS

In this article, unless the context otherwise requires:

1. "Architect services" means those professional architect services that are within the scope of architectural practice as provided in title 32, chapter 1.
2. "Construction-manager-at-risk" means a project delivery method in which:
 - (a) There is a contract for construction services that is separate from the contract for design services, except that instead of a single contract for construction services, the department may elect separate contracts for preconstruction services during the design phase, for construction during the construction phase and for any other construction services.
 - (b) Design services are performed under a separate design services contract, except that as to bridges and other transportation facilities the department may perform with its own employees or force account preliminary design and either:
 - (i) In the case of bridges only, all design services up to final design.
 - (ii) In the case of other transportation facilities, up to twenty per cent of the design work.
 - (c) The contract for construction services may be entered into at the same time as the design services are commenced or at a later time.
 - (d) Design and construction of the project may be either:
 - (i) Sequential with the entire design complete before construction commences.
 - (ii) Concurrent with the design produced in two or more phases and construction of some phases commencing before the entire design is complete.
 - (e) Finance services, maintenance services, operations services, preconstruction services and other related services may be included.
3. "Construction services" means either of the following for construction-manager-at-risk and job-order-contracting project delivery methods:
 - (a) Construction, excluding services, through the construction-manager-at-risk or job-order-contracting project delivery methods.
 - (b) A combination of construction and, as elected by the department, one or more related services, such as finance services, maintenance services, operations services, design services and preconstruction services, as those services are authorized in the definition of construction-manager-at-risk or job-order-contracting.
4. "Contract" means all types of department agreements, regardless of what they are called, for

procurements pursuant to this article.

5. "Contractor" means any person who has a contract with the department.
6. "Design-build" means the process of entering into and managing a contract between the department and another party in which the other party agrees to both design and build a highway, a structure, a facility or other items specified in the contract.
7. "Design-builder" means any individual, partnership, joint venture, corporation or other legal entity that is appropriately licensed in this state and that furnishes the necessary design services, in addition to construction of the work, whether by itself or through subcontracts, including subcontracts for architectural and engineering services.
8. "Design services" means architect services, engineer services or landscape architect services.
9. "Emergency" means an immediate threat to public health, welfare or safety caused by flood, earthquake, hurricane, tornado, explosion, fire or other catastrophe such that compliance with normal bidding procedures for repair or reconstruction of transportation facilities would be impracticable or contrary to the public interest.
10. "Engineer services" means those professional engineer services that are within the scope of engineering practice as provided in title 32, chapter 1.
11. "Finance services" means financing for a construction services project.
12. "Job-order-contracting" means a project delivery method in which:
 - (a) The contract is for indefinite quantities of construction and, at the election of the department, may or may not include a guaranteed minimum amount of work.
 - (b) The construction to be performed is specified in job orders issued during the contract.
 - (c) Finance services, maintenance services, operations services, preconstruction services, design services and other related services may be included.
13. "Landscape architect services" means those professional landscape architect services that are within the scope of landscape architectural practice as provided in title 32, chapter 1.
14. "Maintenance services" means routine maintenance, repair and replacement of existing facilities, structures, buildings or real property.
15. "Operations services" means routine operation of existing facilities, structures, buildings or real property.
16. "Person" means any corporation, business, individual, union, committee, club, other organization or group of individuals.
17. "Preconstruction services" means services and other activities during the design phase.
18. "Specific single project" means a project that is constructed at a single location, at a common location or for a common purpose.
19. "Subcontractor" means a person who contracts to perform work or render service to a contractor or to another subcontractor as a part of a contract with the department.

28-7362. EMERGENCY CONSTRUCTION

- A. Notwithstanding any other law, if the director determines that an emergency exists, the director may award a contract for the reconstruction of transportation facilities necessary to preserve the health, welfare or safety of persons or property.
- B. The director shall award a contract pursuant to this section with such competition as is practicable under the circumstances.
- C. An award under this section shall be limited to the reconstruction necessary to satisfy the emergency need.
- D. The director shall include the following in the contract file and in the director's office:
 1. A written report describing the basis for the determination that an emergency existed.

2. The process by which the contractor was selected.

E. As soon as practicable, the director shall make a written report to the governor and to the board describing any awards made pursuant to this section. The report shall include:

1. The written report of the basis for the director's determination that an emergency existed.
2. A description of the reconstruction work needed, the process of selection of the contractor and the progress of the work under the emergency award.

F. At the conclusion of the work, the director shall make a final report to the board and the governor describing the project and the performance of the work.

28-7363. DESIGN-BUILD METHOD OF PROJECT DELIVERY

A. Notwithstanding any other law, the department may use the design-build method of project delivery on a project if the department makes a determination in writing that it is appropriate and in the best interests of the department to use the design-build method of project delivery for that project, except that:

1. The department shall not enter into a contract to operate any structure, facility or other item pursuant to this article.
2. Each design-build project shall be a specific single project.
3. The department shall not commence any design-build project after December 31, 2025. For the purposes of this paragraph, a project is commenced on the date the department solicits the contract for the project. If the department solicits a design-build contract on or before December 31, 2025, the contract may be executed and services and construction under the contract may be rendered in whole or in part after December 31, 2025.

B. The estimated cost of the project shall not include the cost to procure any right-of-way or other cost of condemnation. The cost to procure any right-of-way or other cost of condemnation remains at all times the responsibility of the department. The department shall obtain all necessary rights-of-way.

C. The department is responsible for preparation and acquisition of all environmental documents, including the scope of any remediation and required clearances.

D. If construction of a design-build project involves railroad facilities, the railroad shall approve the use of the design-build delivery method before the department awards the design-build contract.

E. To ensure fair, uniform, clear and effective procedures that will deliver a quality project on time and within budget, the director, in conjunction with the appropriate and affected professionals and contractors, may adopt procedures for procuring a project using the design-build method of project delivery.

F. The provisions of sections 28-6923 and 28-6924 relating to bid, performance and payment bonds and to change orders, progress payments, contract retentions, definitions and authority to award contracts apply to department design-build projects for transportation facilities pursuant to this article.

28-7364. DESIGN-BUILD CRITERIA

The department shall use the following criteria as the minimum basis for determining when to use the design-build method of project delivery:

1. The extent to which it can adequately define the project requirements.
2. The time constraints for delivery of the project.
3. The capability and experience of potential teams with the design-build method of project delivery.
4. The suitability of the project for use of the design-build method of project delivery in the areas of

time, schedule, costs and quality.

5. The capability of the department to manage the project, including the employment of experienced personnel or outside consultants.

6. The capability of the department to oversee the project with persons who are familiar with the design-build method of project delivery.

7. Other criteria the department deems relevant.

28-7365. DESIGN-BUILD; TWO-PHASE SOLICITATION

A. If the department determines that the design-build method of project delivery is appropriate, the department shall establish a two-phase procedure for awarding the design-build contract. The department shall limit each solicitation for a design-build contract to a specific single project.

B. During phase one, and before solicitation, the director shall appoint a selection team of at least three persons. At least one-half of the selection team shall be architects or engineers who are registered pursuant to section 32-121. The selection team members may be either department employees or outside consultants. The selection team shall also include at least one person who is a senior management employee of a licensed contractor who is not involved in the project. Any architect or engineer who is serving on the selection team and who is not a department employee shall not be otherwise involved in the project. The department shall prepare documents for a request for qualifications.

C. The request for qualifications shall include all of the following:

1. The minimum qualifications of the design-builder.

2. A scope of work statement and schedule.

3. Documents defining the project requirements.

4. The form of contract to be awarded.

5. The selection criteria for compiling a short list and the number of firms to be included on the short list. At least three but not more than five firms shall be included on the short list.

6. A description of the phase two requirements and subsequent management needed to bring the project to completion.

7. The maximum time allowable for design and construction.

8. The department's estimated cost of design and construction.

D. The selection team shall evaluate the design-build qualifications of responding firms and shall compile a short list of firms in accordance with technical and qualifications-based criteria. The number of firms on the short list shall be the number of firms specified in the request for qualifications, except that, if a smaller number of firms responds to the solicitation or if one or more of the firms on the short list drop out so that only two firms remain on the short list, the selection team may proceed with the selection process with the remaining firms if at least two firms remain or the department may readvertise as the department deems necessary.

E. During phase two, the department shall issue a request for proposals to the design-builders on the short list. The request shall include:

1. The scope of work, including programmatic, performance and technical requirements, conceptual design, specifications and functional and operational elements for the delivery of the completed project, which shall all be prepared by an architect or engineer, as appropriate, who is registered pursuant to section 32-121.

2. A description of the qualifications required of the design-builder and the selection criteria, including the weight or relative order, or both, of each criterion.

3. Copies of the contract documents that the successful proposer will be expected to sign.

4. The maximum time allowable for design and construction.

5. The department's estimated cost of design and construction.
 6. The requirement that a proposal be segmented into two parts, a technical proposal and a price proposal. Each proposal shall be in a separately sealed, clearly identified package and shall include the date and time of the submittal deadline. The technical proposal shall include a schedule, schematic design plans and specifications, technical reports, calculations, permit requirements, applicable development fees and other data requested in the request for proposals. The price proposal shall contain all design, construction, engineering, inspection and construction costs of the proposed project.
 7. The date, time and location of the public opening of the sealed price proposals.
 8. Other information relevant to the project.
- F. If stated in the request for proposals, in order to inform each firm whether the firm's concept is responsive to the request for proposals, the department may enter into a separate confidential discussion with each firm on the short list to discuss alternative technical concepts that the firm may propose.
- G. The department shall proceed as follows:
1. The selection team shall review the technical proposals and score the technical proposals using the selection criteria in the request for proposals. The technical review team shall then submit a technical proposal score for each design-builder to the department. The technical review team shall reject any proposal it deems to be nonresponsive.
 2. The department shall announce the technical proposal score for each design-builder, shall publicly open the sealed price proposals and shall divide each design-builder's price by the score that the selection team has given to it to obtain an adjusted score. The design-builder selected shall be that responsive and responsible design-builder whose adjusted score is the lowest.
 3. If a time factor is included with the selection criteria in the request for proposals package, the department may also adjust the bids using a value of the time factor established by the department. The value of the time factor shall be a value per day. The adjustment shall be based on the total time value. The total time value is the design-builder's proposed number of days to complete the project multiplied by the factor. The time adjusted price is the total time value plus the bid amount. This adjustment shall be used for selection purposes only and shall not affect the department's liquidated damages schedule or incentive and disincentive program. An adjusted score shall then be obtained by dividing each design-builder's time adjusted price by the score given by the technical review team. The department shall select the responsive and responsible design-builder whose adjusted score is the lowest.
 4. Unless all proposals are rejected, the board shall award the contract to the responsive and responsible design-builder with the lowest adjusted score. The board reserves the right to reject all proposals.
 5. The department shall award a stipulated fee equal to two-tenths of one per cent of the department's estimated cost of design and construction to each short list responsible proposer who provides a responsive, but unsuccessful proposal. If the department does not award a contract, all responsive proposers shall receive the stipulated fee. If the department cancels the contract before reviewing the technical proposals, the department shall award each design-builder on the selected short list a stipulated fee equal to two-tenths of one per cent of the department's estimated cost of design and construction. The department shall pay the stipulated fee to each proposer within ninety days after the award of the contract or the decision not to award a contract. In consideration for paying the stipulated fee, the department may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the

unsuccessful proposers. Notwithstanding the other provisions of this paragraph, an unsuccessful short list proposer may elect to waive the stipulated fee. If an unsuccessful short list proposer elects to waive the stipulated fee, the department may not use ideas and information contained in the proposer's proposal, except that this restriction does not prevent the department from using any idea or information if the idea or information is also included in a proposal of a short list proposer that accepts the stipulated fee.

28-7366. CONSTRUCTION-MANAGER-AT-RISK CONSTRUCTION SERVICES AND JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES

A. The department may procure the following services pursuant to this section:

1. Construction-manager-at-risk construction services.
2. Job-order-contracting construction services.

B. The department shall provide notice of each procurement of construction services prescribed in this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of construction services pursuant to the procedures prescribed in this section.

C. In the procurement of construction services pursuant to this section:

1. The department shall issue a request for qualifications for each contract and publish notice of the request for qualifications in the same manner as provided in section 28-6923. The request for qualifications shall:

(a) Include the number of persons or firms to be included on the final list. At least three but not more than five persons or firms shall be on the final list.

(b) State the criteria to be used by the selection team to select the person or firm to perform the construction services. The request for qualifications shall also state in a manner determined by the department the relative weight of the selection criteria.

(c) If the department will hold interviews as part of the selection process, state that interviews shall be held and the number of persons or firms to be interviewed, which shall be at least the number of persons or firms to be included in the final list but not more than the number of persons or firms to be included in the final list plus two.

2. For each request for qualifications, the department shall initiate a selection team pursuant to section 28-7365, subsection B. A person who is a member of a selection team shall not be a contractor under the contract or provide construction, construction services, materials or services under the contract. The selection team shall:

(a) Evaluate the statements of qualifications and performance data that are submitted in response to the department's request for qualifications.

(b) If determined by the department and included by the department in the request for qualifications, conduct interviews with the number of persons or firms to be interviewed as stated in the request for qualifications regarding the contract and the relative methods of approach for furnishing the required construction services.

(c) After any interviews or if interviews are not held, in order of preference, based on the criteria and the weighting of criteria established and published by the department and included in the request for qualifications, select a final list for the contract of persons or firms the selection team deems to be the most qualified to provide the construction services and, in the case of a contract that will be negotiated under subsection E of this section, rank the persons or firms on the final list in order of preference. The selection team shall base the selection of the final list and the order of preference on demonstrated competence and qualifications only. The number of persons or firms on the final list shall be the number of persons or firms specified in the request for qualifications, except that:

(i) If a smaller number of responsive and responsible persons or firms respond to the solicitation, the department may have the selection team proceed with the selection process, including interviews and the final list, with the remaining persons or firms if at least two persons or firms remain or the department may readvertise pursuant to this subsection as the department deems necessary or appropriate.

(ii) If only one responsive and responsible person or firm responds to a solicitation for a contract to be negotiated pursuant to subsection E of this section, the department may proceed with only one person or firm in the selection process and may award the contract to a single person or firm if the department determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on the final list withdraws or is removed from the selection process and the selection team determines that it is in the best interest of the department, the selection team may replace that person or firm with the person or firm that submitted qualifications and that is selected by the selection team as the next most qualified.

(d) Base the selection of the final list and order of preference on the final list on demonstrated competence and qualifications only.

3. The department and the selection team shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or subsection D of this section, including the selection of the persons or firms to be interviewed, the selection of the persons or firms to be on the final list, in determining the order of preference of persons or firms on the final list or for any other purpose in the selection process.

4. For construction-manager-at-risk construction services, the contract under a request for qualifications solicitation is limited to a specific single project.

D. The department shall award a contract for construction services to one of the persons or firms on the final list prepared pursuant to subsection C of this section as provided in subsection E or F of this section, except that, if fewer than the number of persons or firms on the final list respond to the request for proposals pursuant to subsection F of this section but at least two persons or firms on the final list submit responsive proposals, or if one or more of the persons or firms on the final list drop out of the selection process pursuant to subsection E or F of this section:

1. If there are three or more remaining persons or firms, the department shall proceed with the selection process.

2. If there are only two remaining persons or firms, as the department deems necessary and appropriate, the department may proceed with the selection process with the two persons or firms or may terminate the selection process and may readvertise pursuant to subsection C of this section.

3. If there is only one remaining person or firm, the department may award the contract to a single person or firm pursuant to subsection E of this section if the department determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

E. For the single contract included in the request for qualifications, the department shall enter into negotiations for the contract with the highest qualified person or firm on the final list for the construction services. The negotiations shall include consideration of compensation and other contract terms that the department determines to be fair and reasonable to the department. In making this decision, the department shall take into account the estimated value, the scope, the complexity and the nature of the construction services to be rendered. If the department is not able

to negotiate a satisfactory contract with the highest qualified person or firm on the final list at compensation and on other contract terms the department determines to be fair and reasonable, the department shall formally terminate negotiations with that person or firm. The department may undertake negotiations with the next most qualified person or firm on the final list in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. If a contract for construction services is entered into pursuant to this subsection:

1. If the contract is for construction-manager-at-risk construction services and includes preconstruction services by the contractor, the department shall enter into a written contract with the contractor for preconstruction services under which the department shall pay the contractor a fee for preconstruction services in an amount agreed by the department and the contractor, and the department shall not request or obtain a fixed price or a guaranteed maximum price for the construction from the contractor or enter into a construction contract with the contractor until after the department has entered into the written contract for preconstruction services and a preconstruction services fee.

2. Construction shall not commence until the department and contractor agree in writing on either a fixed price that the department will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced. The construction to be commenced may be the entire project or may be one or more phased parts of the project.

F. As an alternative to subsection E of this section, the department may award job-order-contracting construction services as follows:

1. The department shall use the selection team that is appointed for the request for qualifications pursuant to subsection C of this section.

2. The department shall issue a request for proposals to the persons or firms on the final list that is developed pursuant to subsection C of this section.

3. For job-order-contracting construction services, the request for proposals shall include:

(a) The department's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the contract will be awarded to the offeror whose proposal receives the highest number of points under a scoring method.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor.

(d) A requirement that each offeror separately submit a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals.

(e) A statement that in applying the scoring method the selection team will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(f) If the department conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the department determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the department before those discussions are held.

5. If determined by the department and included by the department in the request for proposals, the selection team shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. The department shall accord fair treatment to

offerors with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before award for the purpose of obtaining the best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall separately submit the offeror's final technical proposal and the offeror's price proposal.

7. Before opening any price proposal, the selection team shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection team shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The department shall award the contract to the responsive and responsible offeror whose proposal receives the highest score under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.

10. The contract file shall contain the basis on which the award is made.

G. Until an award and execution of a contract by the department, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the department in response to the request for qualifications or contained in the proposals is confidential in order to avoid disclosure of the contents that may be prejudicial to competing offerors during the selection process. The department shall open the proposals to public inspection after the contract is awarded and the department has executed the contract. To the extent that the offeror designates and the department concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

H. The department may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all proposals as specified in the solicitation if it is in the best interest of the department. The department shall make the reasons for cancellation or rejection part of the contract file.

I. Notwithstanding any other law:

1. The contractor for job-order-contracting construction services is not required to be registered to perform design services pursuant to title 32, chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.

2. The contractor for construction-manager-at-risk construction services or job-order-contracting construction services shall be licensed to perform construction pursuant to title 32, chapter 10.

3. For each project under a construction-manager-at-risk construction services contract, the licensed contractor performing the contract shall perform, with the contractor's own organization, construction work that amounts to not less than forty per cent of the total contract price for construction. For the purposes of this paragraph, the total contract price for construction does not include the cost of preconstruction services, design services or any other related services or the cost to procure any right-of-way or other cost of condemnation.

4. Each procurement and each request for qualifications pursuant to this section is limited to a single contract for construction-manager-at-risk construction services or job-order-contracting construction services. This restriction does not affect or impair the department's ability to procure

multiple contracts for job-order-contracting construction services in a single procurement using a single request for qualifications pursuant to section 28-7367.

5. The department shall not procure any construction services using the construction-manager-at-risk construction services or job-order-contracting construction services method of project delivery after December 31, 2025. For the purposes of this paragraph, the department procures construction services when the department solicits the contract for construction services. If the department solicits a contract for construction services on or before December 31, 2025, the contract may be executed and construction services under the contract may be rendered in whole or in part after December 31, 2025.

J. For job-order-contracting construction services only:

1. The maximum dollar amount of an individual job order shall be one million dollars or such higher or lower amount prescribed by the department. Requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

2. If the contractor subcontracts or intends to subcontract any of the work under a job order and if the job-order-construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

(a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:

(i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited to bid.

(ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

(b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

K. Notwithstanding anything to the contrary in this title, the department shall not enter into a contract as contractor to provide construction-manager-at-risk construction services or job-order-contracting construction services.

L. Each contract for construction-manager-at-risk construction services or job-order-contracting construction services shall contain a description of each separate location at which the construction will be performed and a requirement that the contractor include in each of the contractor subcontracts the same location description. The contractor shall include in each subcontract a description of each separate location at which the construction will be performed.

M. Except as otherwise provided in this section, sections 28-6923 and 28-6924, relating to bid, performance and payment bonds, change orders, progress payments, contract retention, definitions and authority to award contracts, apply to department construction-manager-at-risk and job-order-contracting contracts for transportation facilities pursuant to this article.

28-7367. MULTIPLE CONTRACTS FOR THE SAME JOB-ORDER-CONTRACTING
CONSTRUCTION SERVICES TO BE AWARDED TO SEPARATE PERSONS OR FIRMS IN A

SINGLE PROCUREMENT; CONTRACT REQUIREMENTS

A. The department may procure in a single procurement multiple contracts for the same job-order-contracting construction services to be awarded to separate persons or firms pursuant to this section.

B. The department shall provide notice of each procurement of multiple contracts for the same job-order-contracting construction services to be awarded to separate persons or firms prescribed in this section and shall award contracts on the basis of demonstrated competence and qualifications for the type of job-order-contracting construction services pursuant to the procedures prescribed in this section.

C. In the procurement of multiple contracts for the same job-order-contracting construction services to be awarded to separate persons or firms pursuant to this section:

1. The department shall issue a request for qualifications for each procurement and publish notice of the request for qualifications in the same manner as provided in section 28-6923. The request for qualifications shall:

(a) State that multiple contracts for the same job-order-contracting construction services may or will be awarded, the number of contracts that may or will be awarded, the services to be performed under each of the multiple contracts and that each of the multiple contracts will be awarded to a separate person or firm.

(b) Include the number of persons or firms to be included on the final list. The number on the final list shall be the number of contracts that may or will be awarded plus a number that is determined by the department and that is not more than five.

(c) State the criteria to be used by the selection team to select the persons or firms to perform the job-order-contracting construction services. The request for qualifications shall also state in a manner determined by the department the relative weight of the selection criteria.

(d) If the department will hold interviews as part of the selection process, state that interviews shall be held with a number of persons or firms equal to the number of contracts that may or will be awarded plus a number that is determined by the department and that is not more than five.

2. For each request for qualifications, the department shall initiate a selection team pursuant to section 28-7365, subsection B. A person who is a member of a selection team shall not be a contractor under the contract or provide construction, construction services, materials or services under the contract. The selection team shall:

(a) Evaluate the statements of qualifications and performance data that are submitted in response to the department's request for qualifications.

(b) If determined by the department and included by the department in the request for qualifications, conduct interviews with the number of persons or firms to be interviewed as stated in the request for qualifications regarding the contract and the relative methods of approach for furnishing the required construction services.

(c) After any interviews or if interviews are not held, in order of preference, based on the criteria and the weighting of criteria established and published by the department and included in the request for qualifications, select the final list of persons or firms the selection team deems to be the most qualified to provide the construction services and, in the case of a contract that will be negotiated under subsection E of this section, rank the persons or firms on the final list in order of preference. The selection team shall base the selection of the final list and the order of preference only on demonstrated competence and qualifications. The number of persons or firms on the final list shall be the number of persons or firms specified in the request for qualifications, except that:

(i) If a smaller number of responsive and responsible persons or firms respond to the solicitation, the department may have the selection team proceed with the selection process, including

interviews and the final list, with the remaining persons or firms if at least two persons or firms remain or the department may readvertise pursuant to this subsection as the department deems necessary or appropriate.

(ii) If only one responsive and responsible person or firm responds to a solicitation for a contract to be negotiated pursuant to subsection E of this section, the department may proceed with only one person or firm in the selection process and may award the contract to a single person or firm if the department determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had reasonable opportunity to respond or there is not adequate time for a resolicitation.

(iii) If a person or firm on the final list withdraws or is removed from the selection process and the selection team determines that it is in the best interest of the department, the selection team may replace that person or firm with the person or firm that submitted qualifications and that is selected by the selection team as the next most qualified.

(d) Base the selection of the final list and order of preference on the final list only on demonstrated competence and qualifications.

3. The department and the selection team shall not request or consider fees, price, man-hours or any other cost information at any point in the selection process under this subsection or subsection D of this section, including the selection of the persons or firms to be interviewed, the selection of the persons or firms to be on the final list, in determining the order of preference of persons or firms on the final list or for any other purpose in the selection process.

D. The department shall award the multiple contracts for job-order-contracting construction services to the separate persons or firms on the final list prepared pursuant to subsection C of this section as provided in subsection E or F of this section, except that, if fewer than the number of persons or firms on the final list respond to the request for proposals pursuant to subsection F of this section but at least two persons or firms on the final list submit responsive proposals, or if one or more of the persons or firms on the final list drop out of the selection process pursuant to subsection E or F of this section:

1. If there are three or more remaining persons or firms, the department shall proceed with the selection process.

2. If there are only two remaining persons or firms, as the department deems necessary and appropriate, the department may proceed with the selection process with the two persons or firms or may terminate the selection process and may readvertise pursuant to subsection C of this section.

3. If there is only one remaining person or firm, the department may award one of the multiple contracts to the single person or firm pursuant to subsection E of this section if the department determines in writing that the fee negotiated pursuant to subsection E of this section is fair and reasonable and that either other prospective persons or firms had a reasonable opportunity to respond or there is not adequate time for a resolicitation.

E. For multiple contracts for the same job-order-contracting construction services included in the request for qualifications, the department shall enter into negotiations with the number of the highest qualified persons or firms on the final list equal to the number of contracts that may or will be awarded. The negotiations shall include consideration of compensation and other contract terms that the department determines to be fair and reasonable to the department. In making this decision, the department shall take into account the estimated value, the scope, the complexity and the nature of the construction services to be rendered. If the department is not able to negotiate a satisfactory contract with a person or firm with whom the department has commenced negotiations at compensation and on other contract terms the department determines to be fair

and reasonable, the department shall formally terminate negotiations with that person or firm. The department may undertake negotiations with the next most qualified person or firm on the final list with whom the department is not then negotiating and with whom the department has not previously negotiated in sequence until an agreement is reached or a determination is made to reject all persons or firms on the final list. As to each contract for job-order-contracting construction services entered into pursuant to this subsection, construction shall not commence until the department and the contractor agree in writing on either a fixed price that the department will pay for the construction to be commenced or a guaranteed maximum price for the construction to be commenced.

F. As an alternative to subsection E of this section, the department may award multiple contracts for the same job-order-contracting construction services as follows:

1. The department shall use the selection team that is appointed for the request for qualifications pursuant to subsection C of this section.

2. The department shall issue a request for proposals to the persons or firms on the final list that is developed pursuant to subsection C of this section.

3. The request for proposals shall include:

(a) The department's project schedule and project final design and construction budget or life cycle budget for a procurement that includes maintenance services or operations services.

(b) A statement that the contract will be awarded to the offerors whose proposals receive the highest number of points under a scoring method.

(c) A description of the scoring method, including a list of the factors in the scoring method and the number of points allocated to each factor.

(d) A requirement that each offeror separately submit a technical proposal and a price proposal and that the offeror's entire proposal be responsive to the requirements in the request for proposals.

(e) A statement that in applying the scoring method the selection team will separately evaluate the technical proposal and the price proposal and will evaluate and score the technical proposal before opening the price proposal.

(f) If the department conducts discussions pursuant to paragraph 5 of this subsection, a statement that discussions will be held and a requirement that each offeror submit a preliminary technical proposal before the discussions are held.

4. If the department determines to conduct discussions pursuant to paragraph 5 of this subsection, each offeror shall submit a preliminary technical proposal to the department before those discussions are held.

5. If determined by the department and included by the department in the request for proposals, the selection team shall conduct discussions with all offerors that submit preliminary technical proposals. Discussions shall be for the purpose of clarification to ensure full understanding of, and responsiveness to, the solicitation requirements. The department shall accord fair treatment to offerors with respect to any opportunity for discussion and for clarification by the owner. Revision of preliminary technical proposals shall be permitted after submission of preliminary technical proposals and before the award for the purpose of obtaining the best and final proposals. In conducting any discussions, information derived from proposals submitted by competing offerors shall not be disclosed to other competing offerors.

6. After completion of any discussions pursuant to paragraph 5 of this subsection or if no discussions are held, each offeror shall separately submit the offeror's final technical proposal and the offeror's price proposal.

7. Before opening any price proposal, the selection team shall open the final technical proposals, evaluate the final technical proposals and score the final technical proposals using the scoring

method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

8. After completion of the evaluation and scoring of all final technical proposals, the selection team shall open the price proposals, evaluate the price proposals, score the price proposals and complete the scoring of the entire proposals using the scoring method in the request for proposals. No other factors or criteria may be used in the evaluation and scoring.

9. The department shall award the multiple contracts for job-order-contracting construction services to the responsive and responsible offerors whose proposals receive the highest scores under the method of scoring in the request for proposals. No other factors or criteria may be used in the evaluation.

10. The contract file shall contain the basis on which the award is made.

G. Until an award and execution of all of the multiple contracts by the department, only the name of each person or firm on the final list developed pursuant to subsection C of this section may be made available to the public. All other information received by the department in response to the request for qualifications or contained in the proposals is confidential in order to avoid disclosure of the contents that may be prejudicial to competing offerors during the selection process. The department shall open the proposals to public inspection after the contract is awarded and the department has executed all of the multiple contracts. To the extent that the offeror designates and the department concurs, trade secrets and other proprietary data contained in a proposal remain confidential.

H. The department may cancel a request for qualifications or a request for proposals or reject in whole or in part any or all proposals as specified in the solicitation if it is in the best interest of the department. The department shall make the reasons for cancellation or rejection part of the contract file.

I. Notwithstanding any other law:

1. The contractor for job-order-contracting construction services is not required to be registered to perform design services pursuant to title 32, chapter 1 if the person or firm actually performing the design services on behalf of the contractor is appropriately registered.

2. The contractor for job-order-contracting construction services shall be licensed to perform construction pursuant to title 32, chapter 10.

3. The department shall not procure any construction services using the job-order-contracting construction services method of project delivery under this section after December 31, 2025. For the purposes of this paragraph, the department procures construction services if the department solicits the contract for construction services. If the department solicits a contract for construction services on or before December 31, 2025, the contract may be executed and construction services under the contract may be rendered in whole or in part after December 31, 2025.

J. For job-order-contracting construction services only:

1. The maximum dollar amount of an individual job order shall be one million dollars or the higher or lower amount prescribed by the department. requirements shall not be artificially divided or fragmented in order to constitute a job order that satisfies this requirement.

2. If the contractor subcontracts or intends to subcontract any of the work under a job order and if the job-order-contracting construction services contract includes descriptions of standard individual tasks, standard unit prices for standard individual tasks and pricing of job orders based on the number of units of standard individual tasks in the job order:

(a) The contractor has a duty to deliver promptly to each subcontractor invited to bid a coefficient to the contractor to do all or part of the work under one or more job orders:

(i) A copy of the descriptions of all standard individual tasks on which the subcontractor is invited

to bid.

(ii) A copy of the standard unit prices for the individual tasks on which the subcontractor is invited to bid.

(b) If not previously delivered to the subcontractor, the contractor has a duty to deliver promptly the following to each subcontractor invited to or that has agreed to do any of the work included in any job order:

(i) A copy of the description of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(ii) The number of units of each standard individual task that is included in the job order and that the subcontractor is invited to perform.

(iii) The standard unit price for each standard individual task that is included in the job order and that the subcontractor is invited to perform.

K. Each contract for job-order-contracting construction services shall contain a description of each separate location at which the construction will be performed and a requirement that the contractor include in each of the contractor subcontracts the same location description. The contractor shall include in each subcontract a description of each separate location at which the construction will be performed.

L. Except as otherwise provided in this section, sections 28-6923 and 28-6924, relating to bid, performance and payment bonds, change orders, progress payments, contract retention, definitions and authority to award contracts, apply to department job-order-contracting contracts for transportation facilities pursuant to this section.

28-7368. MULTITERM CONTRACTS FOR JOB-ORDER-CONTRACTING CONSTRUCTION SERVICES

A. A contract for construction services using the job-order-contracting method may be entered into for a period of up to five years, as deemed to be in the best interest of the department, if the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and monies are available for the first fiscal year at the time of contracting. Payment and performance obligations for succeeding fiscal years are subject to the availability and appropriation of monies.

B. Before the use of a multiterm contract, the department shall determine in writing that:

1. Estimated requirements cover the period of the contract and are reasonable and continuing.
2. The contract serves the best interests of the department by encouraging effective competition or otherwise promoting economies in the department's procurement.

C. If monies are not appropriated or otherwise made available to support the continuation of performance in a subsequent fiscal year, the contract shall be canceled and the contractor may only be reimbursed for the reasonable value of any nonrecurring costs that are incurred but not amortized in the price of the construction services delivered under the contract or that are otherwise not recoverable. The cost of cancellation may be paid from any appropriations available for these purposes. Contractors are not entitled to compensation for a decision to not renew or extend a contract.

CHAPTER 22 – PUBLIC-PRIVATE PARTNERSHIPS IN TRANSPORTATION

ARTICLE 1 – GENERAL PROVISIONS

28-7701. DEFINITIONS

In this chapter, unless the context otherwise requires:

1. "Concession" means any lease, ground lease, franchise, easement, permit or other binding agreement transferring rights for the use or control, in whole or in part, of an eligible facility by the department or other unit of government to a private partner in accordance with this chapter.
2. "Eligible facility" means any facility developed or operated after the effective date of this chapter in accordance with this chapter, including any enhanced, upgraded or new facility used or useful for the safe transport of people or goods via one or more modes of transport, whether involving highways, railways, monorails, transit, bus systems, guided rapid transit, fixed guideways, ferries, boats, vessels, intermodal or multimodal systems or any other mode of transport, as well as facilities, structures, parking, rail yards or storage facilities, vehicles, rolling stock or other related equipment, items or property.
3. "Private partner" means a person, entity or organization that is not the federal government, this state, a political subdivision of this state or a unit of government.
4. "Unit of government" means any agency, office or department of this state, city, county, district, commission, authority, entity, port or other public corporation organized and existing under statutory law or under a voter approved charter or initiative, and any intergovernmental entity.

28-7702. RULES AND GUIDELINES

The department shall adopt such rules or guidelines as it determines necessary to carry out this chapter.

28-7703. PROJECT DELIVERY METHODS

The department shall provide for the development or operation of eligible facilities using a variety of project delivery methods and forms of agreement. The methods may include a wide range of possibilities, including:

1. Predevelopment agreements leading to other implementing agreements.
2. A design-build agreement.
3. A design-build-maintain agreement.
4. A design-build-finance-operate agreement.
5. A design-build-operate-maintain agreement.
6. A design-build-finance-operate-maintain agreement.
7. A concession providing for the private partner to design, build, operate, maintain, manage or lease an eligible facility.
8. Any other project delivery method or agreement or combination of methods or agreements that the department determines will serve the public interest.

28-7704. PROCUREMENTS

A. The department:

1. May procure services under this chapter using any of the following:
 - (a) Requests for project proposals in which the department describes a class of transportation facilities or a geographic area in which private entities are invited to submit proposals to develop transportation facilities.
 - (b) Solicitations using requests for qualifications, short-listing of qualified proposers, requests for proposals, negotiations, best and final offers or other procurement procedures.
 - (c) Procurements seeking from the private sector development and finance plans most suitable for the project.

(d) Best value selection procurements based on price or financial proposals, or both, or other factors.

(e) Other procedures that the department determines may further the implementation of this chapter.

2. Shall procure services under this chapter using unsolicited proposals if the department determines that there is sufficient merit to pursue any unsolicited proposal and a reasonable opportunity for other entities to submit competing proposals for consideration and a possible contract award as appropriate.

B. For any procurement in which the department issues a request for qualifications, request for proposals or similar solicitation document, the request shall generally set forth the factors that will be evaluated and the manner in which responses will be evaluated.

C. In evaluating proposals, the department may accord such relative weight to factors such as cost, financial commitment, innovative financing, technical, scientific, technological or socioeconomic merit and other factors as the department deems appropriate to obtain the best value for this state.

D. The department may pay a stipend to a proposer based on the department's estimate, in its sole discretion, of the value of the work product received, but only if the department has determined that the proposal submitted was responsive to the department's request for proposals and met all requirements established by the department for the project. In exchange for the stipend, the department may require the recipient to grant to the department the right to use any work product contained in the recipient's proposal, including technologies, techniques, methods, processes and information contained in the recipient's project design.

E. The department may charge and retain an administrative fee for the evaluation of an unsolicited project proposal.

F. The department may procure services, award agreements and administer revenues as authorized in this section notwithstanding any requirements of any other state or local statute, regulation or law relating to public bidding or other procurement procedures or other provisions otherwise applicable to public works, services or utilities.

G. The department may retain financial, legal and other consultants and experts inside or outside the public sector to assist in the evaluation, negotiation and development of eligible facilities under this chapter with a minimum of five years' experience working in that capacity with public-private partnerships.

H. The department may spend monies that are reasonably necessary for the development of procurements, evaluation of concepts or proposals, negotiation of agreements and implementation of agreements for development or operation of eligible facilities under this chapter.

28-7705. PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

A. In any public-private partnership or other agreement for any eligible facility under this chapter, the department may include provisions that:

1. Authorize the private partner to collect user fees, tolls, fares or similar charges, including provisions that:

(a) Specify technology to be used in the facility.

(b) Establish circumstances under which the department may receive a share of revenues from such charges.

(c) Govern enforcement of tolls, including provisions for use of cameras or other mechanisms to ensure that users have paid tolls that are due and provisions that allow the private partner access to relevant databases for enforcement purposes. Misuse of the data contained in the databases, including negligence in securing the data properly, shall result in a civil penalty of ten thousand dollars for each violation. Civil penalties collected pursuant to this subdivision shall be deposited in

the state general fund.

2. Allow for payments to be made by this state to the private partner, including availability payments or performance based payments.
3. Allow the department to accept payments of monies and share revenues with the private partner.
4. Address how the partners will share management of the risks of the project.
5. Specify how the partners will share the costs of development of the project.
6. Allocate financial responsibility for cost overruns.
7. Establish the damages to be assessed for nonperformance.
8. Establish performance criteria or incentives, or both.
9. Address the acquisition of rights-of-way and other property interests that may be required, including provisions that address the exercise of eminent domain as provided in section 28-7709. This state shall not relinquish its power of eminent domain authority to the private partner.
10. Establish record keeping, accounting and auditing standards to be used for the project.
11. For a project that reverts to public ownership, address responsibility for reconstruction or renovations that are required in order for a facility to meet all applicable government standards on reversion of the facility to this state.
12. Provide for patrolling and law enforcement on public facilities.
13. Identify any department specifications that must be satisfied, including provisions allowing the private partner to request and receive authorization to deviate from the specifications on making a showing satisfactory to the department.
14. Require a private partner to provide performance and payment bonds, parent company guarantees, letters of credit or other acceptable form of security or a combination of any of these, the penal sum or amount of which may be less than one hundred per cent of the value of the contract involved based on the department's determination, made on a facility-by-facility basis, of what is required to adequately protect this state.
15. Authorize the private partner in any concession agreement to collect user fees, tolls, fares or similar charges to cover its costs and provide for a reasonable rate of return on the private partner's investment, including provisions such as the following:
 - (a) The charges may be collected directly by the private partner or by a third party engaged for that purpose.
 - (b) A formula for the adjustment of user fees, tolls, fares or similar charges during the term of the agreement.
 - (c) For an agreement that does not include a formula described in subdivision (b) of this paragraph, provisions regulating the private partner's return on investment.
 - (d) A variety of traffic management strategies, including:
 - (i) General purpose toll lanes.
 - (ii) High occupancy vehicle lanes where single or low occupancy vehicles may use higher occupancy vehicle lanes by paying a toll.
 - (iii) Lanes or facilities in which the tolls may vary during the course of the day or week or according to levels of congestion anticipated or experienced.
 - (iv) Combinations of, or variations on, items (i), (ii) and (iii), or other strategies the department determines are appropriate on a facility-by-facility basis.
16. Specify remedies available and dispute resolution procedures, including the right of the private partner to institute legal proceedings to obtain an enforceable judgment or award against the department in the event of a default by the department and procedures for use of dispute review boards, mediation, facilitated negotiation, arbitration and other alternative dispute resolution procedures.

B. Notwithstanding any other law, the department may enter into agreements, whether a concession agreement or other form of agreement, with any private partner that includes provisions described in subsection A of this section. Agreements may be for a term not to exceed fifty years but may be extended for additional terms.

C. The department may approve any request from another unit of government to develop an eligible facility in a manner similar to that used by the department under this chapter.

D. Notwithstanding any other law, agreements under this chapter that are properly developed, operated or held by a private partner under a concession agreement pursuant to this chapter are exempt from all state and local ad valorem and property taxes that otherwise might be applicable.

E. A person who pays a toll to operate a motor vehicle on a roadway project that is constructed or operated pursuant to this article is entitled to and may apply for a refund or credit from the state for motor vehicle fuel license taxes, use fuel taxes or motor carrier fees paid while operating the motor vehicle on the roadway project. The director shall establish by rule the procedures for granting refunds and credits.

F. The agreement shall contain a provision by which the private partner expressly agrees that it is to be barred from seeking injunctive or other equitable relief to delay, prevent or otherwise hinder the department from developing or constructing any facility that was planned as of the time the public-private partnership agreement was executed and that would or might impact the revenue that the private partner would or might derive from the facility developed under the agreement, except that the agreement may provide for reasonable compensation to the private partner for the adverse effect on toll revenues or other user fee revenues resulting from development and construction of an unplanned revenue impacting facility.

G. The agreement shall contain a provision that prohibits photo traffic enforcement of chapter 3, article 6 of this title on toll lanes.

H. Any foreign private entity that enters into an agreement with the department pursuant to this section must provide satisfactory evidence to the board that the foreign entity is in compliance with the requirements of title 10, chapter 38.

I. The agreement shall contain a provision that all public-private partnerships are subject to chapter 20, article 3 of this title.

28-7706. FUNDING AND FINANCING

A. Any lawful source of funding may be used for the development or operation of an eligible facility under this chapter, including:

1. The proceeds of grant anticipation revenue bonds authorized by 23 United States Code section 122 or any other applicable federal or state law.
2. Grants, loans, loan guarantees, lines of credit, revolving lines of credit or other arrangements available under the transportation infrastructure finance and innovation act of 1998 (P.L. 105-178; 112 Stat. 241; 23 United States Code sections 601 through 610) or any other federal or state law.
3. Federal, state or local revenues.
4. User fees, tolls, fares, charges, lease proceeds, rents, availability payments, gross or net receipts from sales, proceeds from the sale of development rights, franchise fees, permit fees or any other lawful form of consideration.
5. Private activity bonds as described by 26 United States Code section 141 and other forms of private capital.
6. Other forms of public and private capital that are available.

B. As security for the payment of financing described in this section, the revenues from the project may be pledged, but no pledge of revenues constitutes in any manner or to any extent a general

obligation of this state. Any financing may be structured on a senior, parity or subordinate basis to any other financing.

C. The department may issue toll revenue bonds or notes to provide monies for any project under this chapter.

D. The department may accept from the United States or any of its agencies monies that are available to this state or to any other unit of government for carrying out the purposes of this chapter, whether the monies are made available by grant, loan or other financing arrangement. The department may enter into agreements and other arrangements with the United States or any of its agencies as may be necessary, proper and convenient for carrying out this chapter.

E. The department may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other valuable thing made to this state, the department or a local government for carrying out this chapter.

F. Any eligible facility may be funded in whole or in part by contribution of any monies or property made by any private entity or public sector partner that is a party to any agreement entered into under this chapter.

G. Notwithstanding any other law, federal, state and local monies may be combined with any private sector monies for any project purposes.

H. Revenue bonds issued pursuant to this section are not general obligations of this state and are not secured by or payable from any monies or assets of this state other than the monies and revenues specifically pledged to the repayment of the revenue bonds.

28-7707. CONFIDENTIALITY AND PUBLIC DISCLOSURE

A. A proposer shall identify those portions of a proposal or other submission that the proposer considers to be trade secrets or confidential commercial, financial or proprietary information. In order for confidential and proprietary information and trade secrets to be exempt from disclosure, the private entity must do all of the following:

1. Invoke exclusion on submission of the information or other materials for which protection is sought.
2. Identify the data or other materials for which protection is sought with conspicuous labeling.
3. State the reasons why protection is necessary.
4. Fully comply with any applicable state law with respect to information that the proposer contends should be exempt from disclosure.

B. Each request for proposals issued pursuant to this chapter shall require each proposer to include with its proposal an executive summary covering the major elements of its proposal that do not address the proposer's price, financing plan or other confidential or proprietary information or trade secrets that the proposer intends to be exempt from disclosure. The executive summary shall be subject to release and disclosure to the public at any time. Notwithstanding any other law, in order to maximize competition under this chapter, no part of a proposal other than the executive summary shall be subject to release or disclosure by the department before an award of the public-private partnership contract and the conclusion of any protest or other challenge to the award, absent an administrative or judicial order requiring release or disclosure. After the award of the contract and the conclusion of any protest or other challenge to the award, title 39 applies to any release of any part of the proposal.

28-7708. GOVERNMENT AGREEMENTS

Either separately or in combination with any other public sector partner, this state may enter into working agreements, coordination agreements or similar implementation agreements.

28-7709. EMINENT DOMAIN

This state may exercise the power of eminent domain to acquire property, rights-of-way or other rights in property for projects that are necessary to develop, operate or hold an eligible facility under this chapter, regardless of whether the property will be owned in fee simple by this state or whether the property will be leased to the private partner to use, lease or operate for its business purposes in connection with the public-private partnership project.

28-7710. FEDERAL LAWS AND SEVERABILITY

A. If no federal monies are used on an eligible facility, the laws of this state, including this chapter, govern. Notwithstanding any other provision of this chapter, if federal monies are used on an eligible facility and applicable federal laws conflict with this chapter or require provisions or procedures inconsistent with this chapter, the applicable federal laws govern.

B. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected.