



CHICAGO
INFRASTRUCTURE
TRUST

Chicago Infrastructure Trust Contracting Manual

Version 1.0

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Introduction

In April 2012, the Chicago Infrastructure Trust (“CIT” or the “Trust”) was created via executive order and Chicago City Council resolution. The Trust will provide focus and leadership to build a pipeline of executable Public-Private Partnership (“P3”) projects that will meet Chicago’s infrastructure needs, drive economic development and create jobs. Public-Private Partnership contracting is valuable to the people of the City of Chicago because it harnesses private investment, expertise and innovation to complete important infrastructure projects that the City of Chicago could not complete using traditional public finance. In addition, P3 contracting leverages the technical and operating expertise of private industry to perform design, construction, operational and maintenance functions that may not be core competencies of the City of Chicago.

This Contracting Manual explains how the Trust will identify infrastructure projects and the process and procedures for contracting using private partners. It includes policy discussions that will help architects, engineers, construction companies, financing sources, service companies, other interests and citizens understand how the Trust will operate.

Please note that terms in the manual will evolve over time, and you should look for the most current version on the Trust’s website, www.shapechicago.org.

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Definitions

There are a variety of terms that are used regularly in discussing infrastructure contracting. Definitions for a number of these terms are set forth in this Section I.

a. Potential Roles for Private Partner

- i. **Design** – Create design for a project as specified in the contracting process through competitive bid, collaborative bid, unsolicited bid, citizen-proposed bid or schedule contracting.
- ii. **Build** – Provide a plan and complete construction of an approved design as specified, within an agreed time-frame. The builder shall have the capability, in all respects, to perform fully the contract requirements and has the business integrity and reliability that will assure good faith performance.
- iii. **Finance** – Secure and provide financing to build and operate project requested. Methods to finance can include government grants, government loans, public debt, private debt and private equity. In many projects, there will be a mix of these sources. Financing approaches will be considered as part of the evaluation process. This will occur on a case-by-case basis, but generally the Trust will be concerned with the value for money, financial return, financial capability and capacity of the bidder.
- iv. **Operate** – Assume responsibility to manage and staff an asset for a defined period, according to project specifications. Operational performance will be subject to review at regular intervals and on an ad-hoc basis.
- v. **Maintain** - Assume responsibility to maintain and support an asset for a defined period, according to project specifications. Maintenance performance will be subject to review at regular intervals and on an ad-hoc basis.

b. Additional Relevant Terms

- i. **Availability Payment** – Compensation made by the Trust to a private concessionaire for its responsibility to design, construct, operate, and/or maintain an asset for a set period of time, based upon particular project milestones or facility performance standards.

- ii. **Best Price** – The proposal that provides the lowest price to fulfill the requirements as predetermined by the RFP.
- iii. **Best Value** - The overall combination of quality, price and various elements of the required services that, in total, are optimal relative to the Trust’s needs, as predetermined in the RFP.
- iv. **Contract** – The written agreement between the Trust and a vendor for the provision of goods and/or services to the Trust by that vendor.
- v. **Evaluation Team** – The board of directors and management personnel of the Trust, plus any additional third-party experts or advisors the Trust deems necessary, to evaluate proposals including RFI/RFQ/RFP, unsolicited bids, collaborative bids, bids from citizens or schedule bids. The evaluation team may vary by project depending upon the expertise required for evaluation.
- vi. **“Offeror” (also referred to as Bidder)** - any individual, partnership, corporation, or joint venture that formally responds to a Request for Information (RFI), Request for Qualifications (RFQ) or Request for Proposal (RFP). It also refers to suppliers who submit unsolicited proposals, participate in collaborative proposals or submit qualifications to be a schedule supplier. Offeror or bidder can include any company, firm, partnership, corporation, association, joint venture, or other entity permitted by law to practice engineering, architecture, construction contracting, or other services required in the City of Chicago. Any company, firm, partnership, corporation, joint venture or other entity that is barred or ineligible to perform the services required in the City of Chicago will be excluded. Typically, the term offeror (or bidder) is used prior to the award of a contract.
- vii. **Private Entity (also referred to as a Contractor)** – The private interest involved in P3 contracting that partners with the Trust to implement a project.
- viii. **Request for Information (RFI)** – A solicitation sent to potential suppliers for the purpose of securing feedback, developing strategy, building a database and understanding potential project approaches based on the suppliers’ expertise. While it is part of the competitive contracting process, it does not lead directly to contracting, which is done based on a follow-up RFP or RFQ.

- ix. **Request for Proposals (RFP)** – A solicitation to identify a preferred bidder to implement a new project. This can include any or all phases of the project: design, build, finance, operate and maintain. Bidders should expect to furnish evidence of their experience and ability to meet the Trust’s requirements along with a proposed price when responding to an RFP. This is because the Trust is as concerned with the Bidder’s capability as with its proposed price.

- x. **Request for Qualifications (RFQ)** – A solicitation released to obtain qualifications that will identify best-qualified bidders that possess a technical expertise in specific disciplines, financial capacity, financing capability and operating capability. RFQs differ from RFPs in that pricing information is not requested. Often, an RFQ will be issued to identify a set of potential bidders to receive an RFP.

- xi. **Sister Agencies** – A group of agencies that serve the people of the City of Chicago but subject to approval by the Chicago City Council, including: Chicago Public Schools (CPS); Chicago Housing Authority (CHA); Chicago Park District (CPD); Chicago Transit Authority (CTA); City Colleges of Chicago (CCC); Metropolitan Pier & Exposition Authority (MPEA); Metropolitan Water Reclamation District of Greater Chicago (MWRDGC) and Public Building Commission (PBC).

- xii. **Special Purpose Entity (SPE)** – Any one or more companies, firms, partnerships, corporations, joint ventures or other entities created or used for the express purpose of completing a project. They may be multi-disciplinary in nature to provide expertise for all required phases of a project. An SPE may be created in order to execute a contract with the Trust or with a bidder.


- xiii. **Value for Money** – The process of developing and comparing total project costs when considering traditional contracting vs. alternative contracting such as a P3. Value for money exists when the risk-adjusted costs of alternative contracting are less than the risk-adjusted costs of traditional contracting.

II. Best Practices Concepts

The Trust will structure each project to meet the specific needs of the people of the City of Chicago for successful completion. In general, projects will typically reflect a set of key best practices for Public-Private Partnerships:

- a. **Stakeholder Alignment** – The Trust will secure alignment among stakeholders from all relevant departments and agencies of the City of Chicago and the Chicago City Council. This will create stability in the contracting process and provide assurance to participants of the commitment to projects for which bid requests are released. Approval of terms of final bids may be subject to approval of the Chicago City Council or other Agency boards or Commissions, prior to contracting.
- b. **Duration** – Agreements will typically run for 20 – 40 years, to enable building of realistic financial models.
- c. **Shared Revenue Streams** – To create a true partnership between public and private entities, agreements may be designed to create mutual on-going interest through shared revenue streams.
- d. **Asset Ownership** – The Trust or City will typically retain ownership of underlying assets (e.g., real estate, roads, right-of-ways) even when procuring long-term operating and maintenance.
- e. **Shared Risk and Risk Allocation** – Risks associated with the project will be allocated between the public and private sectors based upon the party best able to manage and mitigate them. Shared risk is a cornerstone of alternative contracting models.
- f. **Risk Transfer** - As the private entity assumes a greater share of responsibility via project requirements, the private entity assumes a greater share of the risk. The table below describes the range of potential project requirements and the associated degree of risk transfer.

Figure 2.0 Project Requirements and Risk Transfer

Risk Transfer	Project Requirements	Description
 <p>100% Public</p>	<p>Design – Build</p>	<ul style="list-style-type: none"> • Traditional contracting • Government contracts for the design and construction of assets directly • Mix of interim and completion payments • Government to manage and operate assets
	<p>Design – Build with Operating Contract</p>	<ul style="list-style-type: none"> • Traditional contracting with an operating contract with private sector for operating the assets post construction • Often operating contract includes a payment penalty mechanism to ensure performance
	<p>Design – Build – Finance</p>	<ul style="list-style-type: none"> • Trust contracts with private developer to deliver newly constructed assets • Payment at completion or paid over time as lease • Government to manage and operate assets
	<p>Design – Build – Finance – Operate – Maintain</p>	<ul style="list-style-type: none"> • Trust contracts with private developer to deliver newly constructed assets and operate under a long-term “concession” agreement • Government and/or Trust can (a) pay fixed “availability payments” quarterly or (b) grant rights to the Private Developer to collect fees or tolls • 20-year+ operating period post-construction
<p>100% Private</p>	<p>Asset Sale/Full Privatization</p>	<ul style="list-style-type: none"> • Government and/or Trust sells constructed assets to Private sector • Government and/or Trust may retain some monitoring and enforcement rights

- g. Full Scale Projects vs. Demonstration Projects** – The Trust will target full-scale projects for competitive bids as opposed to demonstration projects.

 - i. Full-scale projects demonstrate a more significant commitment on behalf of the Trust and the City of Chicago than demonstration projects
 - ii. Consequently, they present the greatest opportunity to attract the strongest interest from private partners who respond to RFIs/RFQs/RFPs. This will maximize competition within the private sector and provide the most advantageous terms to the people of the City of Chicago.

- h. Evaluation Based on Short-term and Long-term Factors** – The Trust will consider a range of short-term and long-term factors when evaluating project approaches and bids, to ensure that completed projects best serve the needs of the people of the City of Chicago. These will be discussed in greater detail in Section VII, Proposal Evaluation. In general they include:

 - i. Financial
 - ii. Technical
 - iii. Timeline
 - iv. Experience
 - v. Appropriateness of Recommended Approach

III. Initial Programs and Project Selection

a. **Initial Programs** - The broad mandate for the Trust is to provide alternative, innovative financing and project delivery for transformative infrastructure projects of all types – including but not limited to renewable energy, transportation, utilities, social or cultural facilities, government facilities, educational facilities, water, waste management, real property, telecommunications, etc. Over time, the Trust anticipates working on projects across the infrastructure spectrum; however, in order to focus its early efforts, the Trust has prioritized the following initial program areas:


- **Energy:** Leverage energy technologies, systems or programs to provide more cost effective and environmentally friendly energy or reduce energy consumption.
- **Underutilized Property:** Repurpose underutilized city assets (land, improved properties, rooftops, right-of-ways, etc.) to their highest and best use to reduce cost and increase revenue.
- **Transportation:** Facilitate cost-effective renewal or expansion of transportation infrastructure to provide better service at a lower cost and reduce congestion.

At all times, the Trust is open to exploring infrastructure projects of all types or receiving unsolicited proposals related to any infrastructure project that aligns with its mandate.

b. **Project Selection** - The Trust will identify projects from a range of sources: its own research about emerging technologies and best practices; City of Chicago and Sister Agency operational goals, infrastructure needs and capital budget constraints; and input from potential investors, citizens, public interest groups and other potential users. Both greenfield and brownfield projects, defined as follows, will be considered:

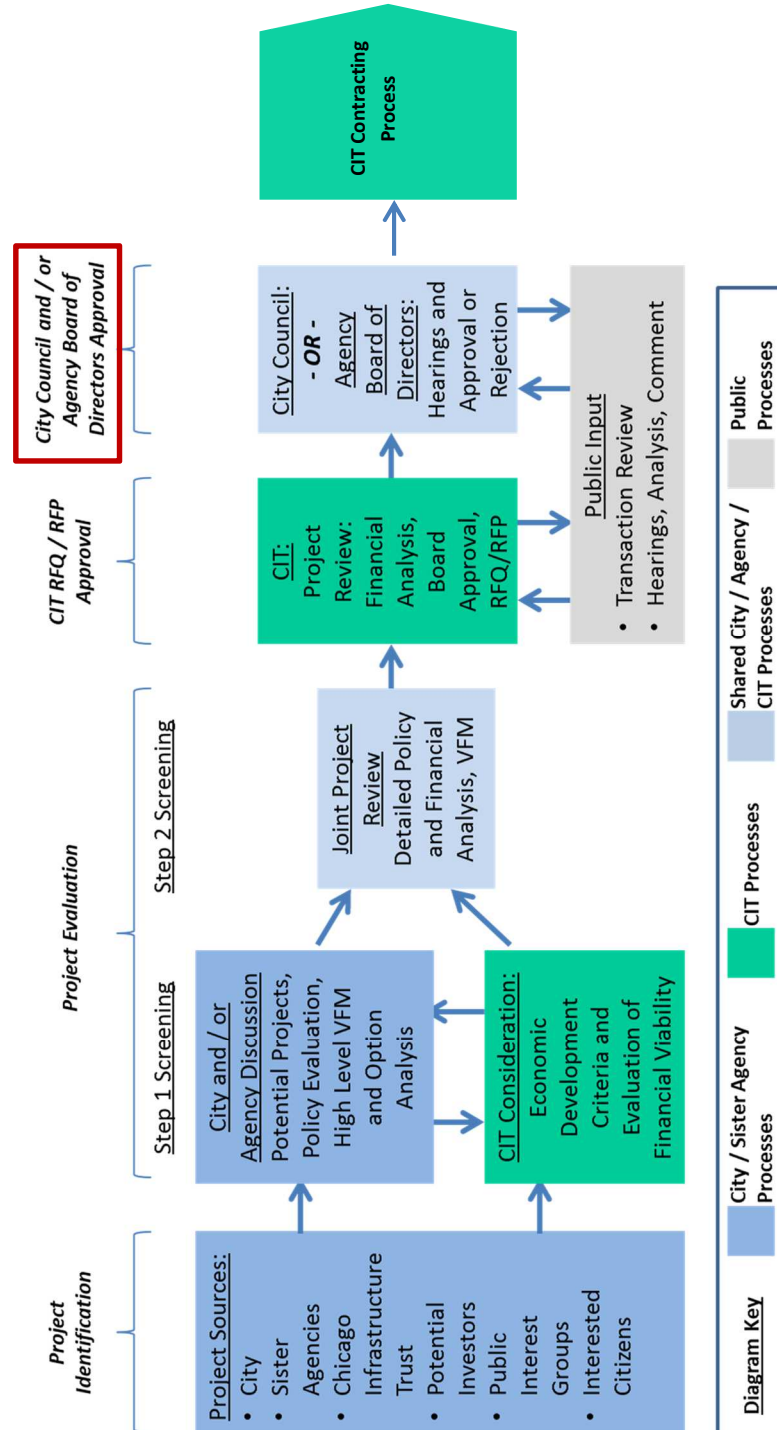
- **Brownfield Projects:** Existing assets or structure that require improvements, repairs or expansion and may be partially operational or generating income.
- **Greenfield Projects:** Assets or structures that need to be designed and constructed where no infrastructure improvements exist.

Figure 3.0 Example Projects

PROGRAMS				
	Energy	Property Utilization	Transportation	Other / Opportunistic
Greenfield 	<ul style="list-style-type: none"> • Vehicle Fuel Conversion • Renewable Energy Programs (e.g. wind, solar, geothermal) 	<ul style="list-style-type: none"> • Develop vacant property (market uses, affordable housing, urban agriculture) • Repurpose assets or portions of assets to higher use 	<ul style="list-style-type: none"> • New transit modes (e.g. Bus Rapid Transit) • Link transportation modes • Station redevelopment / Transit Oriented Development 	<ul style="list-style-type: none"> • Tourism projects (attractions, amenities, services) • Telecom infrastructure
	Brownfield	<ul style="list-style-type: none"> • Property Assessed Clean Energy (PACE) • Energy Retrofit 	<ul style="list-style-type: none"> • Rationalize city owned properties • Air rights development 	<ul style="list-style-type: none"> • Rehabilitate or expand existing transit

The Trust will maintain a pipeline of potential projects in different phases of pre-procurement that will be prioritized based on their economic and social impact and their feasibility. As part of the pre-procurement process, the Trust will engage the appropriate stakeholders and subject matter experts in the evaluation and development of the project business case and procurement approach. In all cases, the Trust will endeavor to obtain the government pre-approvals relevant to a given transaction that will increase project certainty for private sector participants before the CIT project contracting process is initiated. A high-level overview of this pre-approval process for projects that involve assets, rights, permissions and liabilities of the City of Chicago is outlined as follows:

Figure 3.1 Pre-Approval Process for City Projects



IV. Conflicts of Interest

- a. The Trust's consideration of potential conflicts issues will be managed in accordance with its Conflicts of Interest Policy.
- b. The Trust reserves the right, in its sole discretion, to make determinations relative to potential conflicts of interest on a project specific basis.
- c. The Trust may, in its sole discretion, determine that a conflict of interest or a real or perceived competitive advantage may be mitigated by disclosing all or a portion of the work product produced by the organization or individual subject to the conflict.

V. Project Advertisement/Announcement

- a. The Trust will publish submission requests on its public internet web site, www.shapechicago.org.
- b. The project advertisement will state a general description of the work and any technical qualifications desired, and the time frames for submitting a response to the solicitation.
- c. The duration of the proposal development period will be based on the project deadlines and level of complexity of the project (when allowed by the project schedule).
- d. The Trust may waive or alter a contractor's pre-qualification requirements based on any specialized nature of the project.
- e. The Trust has the right to contact potential bidders directly in addition to publishing submission requests. Contacting potential bidders directly will not indicate preference in the review process.

VI. Proposal Selection Process

- a. **Solicited Proposals** - Solicited proposals will be evaluated as part of a competitive bidding process.
- i. **Request for Information (RFI)** – The Trust will issue RFIs for specific projects publicly via its website (www.shapechicago.org), and reserves the right to contact potential suppliers directly with an RFI concurrent with public release. The RFI will include project objectives and provide evaluation criteria, and will request feedback, project strategy and understanding potential project approaches based on the suppliers' expertise. The Trust will not issue contracts based on RFI responses, but will instead generally follow the RFI responses with an RFQ or RFP. Based on RFI responses, the Trust has the discretion to:
1. Provide follow-up questions orally or in writing to all of the potential suppliers who submit an RFI response or with a subset of the potential suppliers
 2. Issue an open RFQ or RFP to all potential suppliers whether or not they have submitted an RFI response
 3. Issue an RFP only to a subset of bidders who have submitted an RFI response
 4. Suspend the project
 5. Permanently cancel the project
 6. Reissue the RFI at a later time
- ii. **Request for Qualification (RFQ)** – The Trust will release RFQs for specific projects publicly via its website (www.shapechicago.org), and reserves the right to contact potential bidders directly with an RFQ concurrent with public release. The evaluation criteria for a project will be published in the RFQ. The criteria will be consistent with the qualifications requested and will include a description of the Trust's project understanding, management approach and organizational structure; demonstration of applicable experience, manpower and equipment resources; experience in obtaining permits, obtaining right-of-way and successfully completing similar projects; and

financial capability and capacity to complete the work. Based on RFQ responses, the Trust has the discretion to:

1. Provide follow-up questions orally or in writing to all of the potential bidders who submit an RFQ response or with a subset of the potential bidders
 2. Proceed to an RFP with all bidders who submit an RFQ response, or with a subset of potential bidders
 3. Suspend the project
 4. Permanently cancel the project
 5. Reissue the RFQ at a later time
- iii. **Request for Proposal (RFP)** – The Trust will issue RFPs to all bidders, or to a subset of all bidders, who respond to an RFQ. The basis of award will be clearly defined in the RFP. The RFP will also define proposal requirements, including technical requirements and evaluation criteria. The evaluation process will consider understanding of the project, applicable experience, anticipated complex problems and the solutions to those problems. Thoroughness and quality will also be considered.
- b. **Pre-Development Proposals** - The Trust may enter into a pre-development agreement when a project is not completely defined; financial feasibility has not been determined, but looks financeable on a preliminary basis; or the Trust is seeking private sector innovation and expertise in accelerating an optimally feasible project.
- i. The private partner participates in project planning and design and prepares the master financial plan and master development plan.
 - ii. The private partner absorbs initial phase work – “sweat equity.”
 - iii. If project proves feasible, the private partner may deliver an unsolicited bid or participate in a collaborative bid covering implementation.
- c. **Unsolicited Proposals** – Private entities or individuals may choose to submit proposals to the Trust when no RFI/RFQ/RFP has been issued.

- i. The Trust is authorized to receive unsolicited proposals from private entities or individuals to design, build, finance, improve, operate and/or maintain facilities or projects related to infrastructure. Proposals should be submitted to:

proposal@shapechicago.org

- ii. Upon receiving an unsolicited proposal, the Trust has the discretion to:
 1. Reject the proposal
 2. Evaluate and enter into negotiations with the private entity or individual that submits the proposal.
 3. Publicly request competing proposals from one or more additional suppliers. The request for competing proposals will be posted on the Trust's website (www.shapechicago.org) for a specified number of days.
- iii. All content in an unsolicited proposal will be property of the Trust, and the private entities or individuals who submit an unsolicited proposal waive all rights to confidentiality and copyrights for the use of registered trademarks for the purpose of requesting competing proposals.
- iv. In taking any of the actions described above regarding unsolicited proposals, the Trust will not undertake any obligation to the private entity or individual that submits the proposal until a contract is executed.

- d. **Collaborative Proposals** – In some instances, the Trust will work with a potential partner to develop an approach or proposal to address a specific opportunity.

- i. Based on discussions/joint work, the bidder will submit a proposal that meets specific criteria.
- ii. The Trust will then publish a note of interest on its website (www.shapechicago.org) to request additional submissions of proposals or ideas within a specified number of days.
- iii. Based on responses received, the Trust will have the right to:
 1. Move forward with original responder.

2. Begin a competitive process by publishing an RFQ or by issuing an RFP to two or more responders.

e. **Citizen Submissions** – Citizens will submit ideas for potential projects to the Trust.

- i. Ideas should be submitted to:

proposal@shapechicago.org

- ii. The Trust will evaluate ideas in the context of current priorities and programs and decide whether to pursue through competitive bid, publish a note of interest for a collaborative bid or to forward to an appropriate City agency or department, or not pursue the proposal.
- iii. All content in citizen submissions will be the property of the Trust and the City of Chicago, and the private entities or individuals who submit a proposal forfeit all rights to ideas, confidentiality, financial interest and copyrights for the use of registered trademarks for the purpose of evaluating proposals or bidding.
- iv. In taking any of the actions described above regarding citizen submissions, the Trust will not undertake any obligation for specific action. Also, when citizens submit ideas to the Trust, they surrender all ownership of the ideas, copyrights, confidentiality and financial interest in the ideas.

f. **Contracting Schedules** – For some goods and services the Trust will issue publicly on its website (www.shapechicago.org) contracting schedules, similar to GSA or City of Chicago schedule contracting, depending upon requirements or task order contracts or master consulting agreements.

- i. Schedule contracting is intended to reduce costs, shorten lead times, operate with transparency and increase flexibility and choice.
- ii. The Trust will request specific terms, including item or service, period of time/end date, quantities required and price.
- iii. In addition, bidders will be required to demonstrate financial capacity, operating capacity and technical capability to provide the item or service specified.

- iv. Indefinite Delivery/Indefinite Quantity (IDIQ) – for some schedule contracting, the Trust will publish IDIQ requests. The Trust will use IDIQ when it cannot predetermine, above a specified minimum, the precise quantities of supplies or services required during the contract period. Minimum and maximum quantity limits are specified in the basic contract as either number of units (for supplies) or as dollar values (for services).

VII. Proposal Evaluation

Proposals will be evaluated on a variety of factors that will impact short-term and long-term project performance. These will be specified on a project-by-project basis in RFIs/RFPs/RFQs. In general, these will include:

a. Financial

- i. **Best Value for Money** – The proposal provides the best positive value for money over traditional public financing. This is calculated as total cost savings vs. traditional public financing. This will apply to RFPs only, as RFQs and RFIs do not include pricing information.
- ii. **Best Price** – The proposal that provides the lowest price to fulfill the requirements as predetermined by the RFP.
- iii. **Best Value** - The overall combination of quality, price and various elements of the required services that, in total, are optimal relative to the Trust's needs, as predetermined in the RFP
- iv. **Financial Impact** – The proposal provides the greatest positive cash flows for the people of the City of Chicago and the Trust.
- v. **Financial Capacity** – The proposal demonstrates that the bidder has the financial capacity to undertake and fulfill the responsibilities of the project in the short-, medium- and long-term.
- vi. **Financial Capability** – The proposal demonstrates that the bidder can raise the necessary financing and provide the funding if the bidder is selected. This typically includes commitment letters from prospective lenders, an analysis of the equity providers to ensure that they have the necessary liquidity and the bidder's experience in raising financing for similar projects.

b. Technical

- i. **Expertise** – The proposal indicates that the bidder has the technical knowledge to complete the project as requested.
 - ii. **Capacity** - The bidder has the resources available to ensure that the project is completed as requested. This may include the scale to complete large, complex multi-year construction projects and to fulfill operating and maintenance obligations as requested.
- c. **Timeline** – The proposal delivers the project per the timeline required and includes assessment of risks, plans to mitigate and contingencies.
- d. **Qualifications and Experience** – The bidder has a proven track record of successfully completing similar projects on-time and on-budget. Specifics will vary by project based on project requirements, and may encompass design, build, finance, operate and maintain criteria. Experience and qualifications include:
- i. Experience working with the public sector on public-private projects.
 - ii. Experience, training and preparation with projects of similar size, scope and complexity.
 - iii. The extent of personnel, logistical resources, bonding capacity and the ability to complete the project in a timely and professional manner.
 - iv. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, effective operation and maintenance of similar projects (if required), cost-control and project safety.
 - v. Demonstrated compliance with applicable laws, codes, standards, regulations and agreements on past projects.
 - vi. Demonstrated ability to obtain permits and to successfully pass inspections so that timelines are maintained.
 - vii. Knowledge of appropriate leadership structure and project manager's experience.

- viii. Demonstrated financial capability and capacity on projects of similar size, scope and complexity.

e. Appropriateness of Recommended Approach

- i. The bidder provides the soundest approach for project completion. This will apply to all project phases specified in the RFI/RFQ/RFP and risk assessment, management and mitigation. It may also include management of regulatory and permitting issues.
- ii. As necessary, the Trust will use third-party technical advisors/consultants to evaluate proposals.

VIII. Award of Contract

- a. Contract terms may be subject to approval by the Chicago City Council and/or a Sister Agency board.
- b. For competitive bids (RFI/RFQ/RFP), the Trust will select the bid that best delivers project requirement criteria, as described in Section VII.
 - i. Project award criteria will be included in requests when they are released.
 - ii. Once the successful bidder has been identified, the Trust will perform any appropriate follow-up as required. After the follow-up, the Trust will notify the successful bidder.
 - iii. The Trust can conduct negotiations with the selected bidder to clarify remaining issues regarding scope, schedule, financing, etc.
 - iv. If RFP evaluation does not indicate a clear winner, the Trust has the right to conduct follow-up discussions with all or some of the RFP bidders and request a Best and Final Offer (BAFO).
- c. For unsolicited proposals and collaborative bids that do not include competitive bidding, final terms will be negotiated directly.
- d. For schedule contracting, terms and criteria will be included in the notifications published on the Trust website (www.shapechicago.org).

IX. Rights and Obligations of the Chicago Infrastructure Trust¹

- a. For each project, the Trust reserves to itself all rights (which rights shall be exercisable by the Trust in its sole discretion) available to it under applicable law, including without limitation, the following, with or without cause and with or without notice:
 - i. The right to cancel, withdraw, postpone or extend an RFQ/RFP in whole or in part at any time prior to the execution by the Trust of the contract, without incurring any obligations or liabilities.
 - ii. The right to issue a new RFQ/RFP.
 - iii. The right to reject any and all submittals, responses and proposals received at any time.
 - iv. The right to modify all dates set or projected in an RFQ/RFP.
 - v. The right to terminate evaluations of responses received at any time.
 - vi. The right to suspend and terminate the contracting process for the project, at any time.
 - vii. The right to revise and modify, at any time prior to the RFI/RFQ/RFP submission dates, factors it will consider in evaluating responses to an RFQ/RFP and to otherwise revise its evaluation methodology.
 - viii. The right to waive or permit corrections to data submitted with any response to an RFQ/RFP until such time as the Trust declares in writing that a particular stage or phase of its review of the responses to this RFQ/RFP has been completed and closed.
 - ix. The right to issue addenda, supplements, and modifications to an RFQ/RFP, including but not limited to modifications of evaluation criteria or methodology and weighting of evaluation criteria.
 - x. The right to permit submittal of addenda and supplements to data previously provided with any response to an RFQ/RFP until such time as the Trust declares

¹ Virginia Department of Transportation, Design-Build Procurement Manual, October, 2010, p. 16-18

in writing that a particular stage or phase of its review of the responses to this RFQ/RFP has been completed and closed.

- xi. The right to hold meetings and conduct discussions and correspondence with one or more of the bidders responding to an RFQ/RFP to seek an improved understanding and evaluation of their responses to the RFQ/RFP.
- xii. The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to an RFQ/RFP, including the right to seek clarifications from bidders.
- xiii. The right to permit bidders to add or delete partners, contractors, advisors and/or key personnel until such time as the Trust declares in writing that a particular stage or phase of its review has been completed and closed.
- xiv. The right to add or delete bidder responsibilities from the information contained in an RFQ/RFP.
- xv. The right to designate and change appointees of the evaluation team.
- xvi. The right to use assistance of outside technical and legal experts and consultants in the evaluation process.
- xvii. The right to waive deficiencies, informalities and irregularities in an RFI/RFQ/RFP response, accept and review a non-conforming RFI/RFQ/RFP response or seek clarifications or supplements to a proposal.
- xviii. The right to disqualify any bidder that changes its submission without the Trust's approval.
- xix. The right to change the method of award or the evaluation criteria and scoring at any time prior to submission of the RFI/RFQ/RFP responses.
- xx. The right to respond to all, some, or none of the inquiries, questions and/or requests for clarification received relative to the RFI/RFQ/RFP.
- xxi. The right to use all or part of a proposal submitted by a bidder that accepts a proposal payment.

- xxii. The right to increase or decrease the number of bidders between the RFI/RFQ/RFP stages, if it is in the best interest of the Trust to do so.
- xxiii. The right to negotiate the allocation of prices identified for specific portions of the work depicted within a Proposal.
- xxiv. The right to disqualify and/or cease negotiations with a bidder if the Trust, in its sole discretion, determines that the bidder's proposal contains unbalanced pricing among the specific portions of work identified therein.

b. No Assumption of Liability

- i. The Trust assumes no obligations, responsibilities, and liabilities, financial or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to an RFI/RFQ/RFP. All such costs shall be borne solely by each bidder and its team members.
- ii. The Trust assumes no obligations, responsibilities, and liabilities, financial or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering submission of an unsolicited proposal, collaborative proposal, proposal by citizens or schedule contracting proposal. All such costs shall be borne solely by each bidder and its team members
- iii. In no event shall the Trust be bound by, or liable for, any obligations with respect to a project until a contract that is satisfactory to the Trust has been executed and authorized by the Trust. Upon execution of a contract, the Trust will only be bound by, liable for and obligated to the extent set forth therein.

X. Pre-Development Agreement, Interim Agreement and Comprehensive Agreement

Any pre-development agreement, interim agreement or comprehensive agreement (also called “contract”) shall define the rights and obligations of the Trust and of the counterparty with regard to a project. The Trust shall obtain all required approvals prior to entering into any interim agreement or comprehensive agreement. The Trust shall accept no liability for the project prior to entering into a contract.

- a. The Trust may enter into a pre-development agreement when a project is not completely defined; financial feasibility has not been determined, but looks financeable on a preliminary basis; or the Trust is seeking private sector innovation and expertise in accelerating an optimally feasible project.
 - i. The private partner participates in project planning and design and prepares the master financial plan and master development plan.
 - ii. The private partner absorbs initial phase work – “sweat equity.”
 - iii. If project proves feasible, the private partner may deliver an unsolicited bid or participate in a collaborative bid covering implementation.
- b. An interim agreement may be entered into prior to entering into a comprehensive agreement, in order to permit the counterparty to perform compensable activities related to the project. Prior to developing or operating a project, the counterparty shall enter into a comprehensive agreement with the Trust. The scope of an interim or pre-development agreement may include:
 - ii. Project planning and development
 - iii. Design and engineering
 - iv. Environmental analysis and mitigation
 - v. Surveying
 - vi. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis
 - vii. The timing of negotiation of the comprehensive agreement

- viii. Any other provisions related to any aspect of the development or operation of the project that the parties deem appropriate prior to the execution of a comprehensive agreement.
- c. The Trust and possibly the Chicago City Council and/or a Sister Agency board shall approve any comprehensive agreement entered into between the Trust and a counterparty. The Trust shall accept no liability for development or operation of the project prior to entering into a comprehensive agreement. The terms of the comprehensive agreement shall be tailored to address the rights and obligations of the Trust and the counterparty with regard to the project and may include:
- i. Project planning and development (if not completed under an interim or pre-development agreement).
 - ii. Design and engineering (if not completed under an interim or pre-development agreement).
 - iii. Environmental analysis and mitigation (if not completed under an interim or pre-development agreement).
 - iv. Surveying (if not completed under an interim or pre-development agreement)
 - v. Timelines and detailed budgets.
 - vi. The availability of financing for the proposal through financial and revenue analysis.
 - vii. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping or maintenance of the project.
 - viii. The review of plans and specifications for the project by the Trust.
 - ix. The rights of the Trust to inspect the project to ensure compliance with the comprehensive agreement.
 - x. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees to enable continued operation of the project.

- xi. The monitoring of the practices of the contracting individual or entity by the Trust and/or the City of Chicago, its sister agencies and departments to ensure proper maintenance.
- xii. The terms under which the contracting person or entity will reimburse the Trust for services provided.
- xiii. The policy and procedures that will govern the rights and responsibilities of the Trust and contracting person or entity in the event that the contract is terminated or there is a material default by the contracting person or entity, including the conditions governing assumption of the duties and responsibilities of the contracting person or entity by the Trust and the transfer or purchase of property or other interests of the contracting person or entity by the Trust.
- xiv. The terms under which the contracting person or entity will file financial statements prepared in accordance with generally accepted accounting principles on a periodic basis but not less than annually.
- xv. The mechanism by which user fees, lease payments or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the project.
- xvi. A copy of any service contract.
- xvii. A schedule of current user fees or lease payments.
- xviii. Classifications according to reasonable categories for assessment of user fees.
- xix. The terms and conditions under which the Trust may contribute financial resources, if any, for the project.
- xx. The terms and conditions under which site conditions will be assessed and addressed, including identifying the responsible party for conducting the assessment and taking necessary remedial action.
- xxi. The terms and conditions under which the Trust, the City of Chicago and/or its sister agencies and departments will be required to pay money to the contracting

- individual or entity or any other private entity and the amount of such payments for the project.
- xxii. A periodic reporting procedure that incorporates a description of the impact of the project on the City of Chicago and its residents.
 - xxiii. Other requirements of the P3 program or applicable law that the Trust deems appropriate.
- d. With respect to construction projects, the Trust generally anticipates addressing the following in the contract:
- i. The contracting person or entity will be expected to assume a single point-of-contact responsibility and liability for all planning, designing, financing, permitting, constructing, operating and maintaining of the project.
 - ii. The contracting person or entity shall perform a comprehensive geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the contracting person or entity in the contract.
 - iii. The Trust encourages the contracting person or entity to propose a formula for mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated into the comprehensive agreements.
 - iv. The Trust may enter into contracts with private entities that have formed business associations or special purpose entities such as joint ventures, limited partnerships and limited liability companies.
 - v. The contracting person or entity will normally be expected to identify a single point-of-contact to assume responsibility and liability for all planning, designing, financing, permitting, constructing, operating and maintaining of the project on behalf of the contracting person or entity.
 - vi. One or more of the principal members of the contracting person or entity will normally be expected to provide a performance guarantee of all obligations

undertaken in the comprehensive agreement. This agreement is in addition to the statutory requirement for a performance bond. Individuals, corporations or other businesses interested in entering into P3 projects with the Trust must be willing to provide this security if their proposal is submitted as part of a contracting person or entity that limits the liability of its members, owners or partners. Any changes in the terms of the contract as may be agreed upon by the parties from time-to-time shall be added to the contract only by written amendment. The contract may provide for the development of phases or segments of the project. Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and the ultimate selection of a proposal by the Trust. Accordingly, as part of a comprehensive agreement, the prospective contracting individual and its team members shall certify that all material representations, information and data supplied in support of or in connection with a proposal are true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event any material changes occur with respect to representations, information and data provided for the proposal, the prospective contracting person or entity shall immediately notify the Trust of same.

- e. The contract will specify detailed terms of substantial completion and project hand-off, including:
 - i. Performance requirements
 - ii. Inspections and approvals
 - iii. Regulatory requirements
 - iv. Operational and maintenance readiness, possibly including training for staff
- f. For projects that include on-going operations and maintenance, the contract will include performance standards and process for regular review and response to ad hoc comments from the people of the City of Chicago.
- g. The contract will include financial terms, including:
 - i. Payment amounts and schedules

- ii. Revenue sharing terms, if any
 - iii. Where applicable, allocation of revenues by the City of Chicago and/or a Sister Agency and the Trust
- h. The contract will include remedies for situations that arise, including, but not limited to:
- i. Delays in project delivery
 - ii. Budget over-runs
 - iii. Change in project scope
 - iv. Failure to perform required operations and/or maintenance, as required by the contract
 - v. Failure to meet financial obligations
 - vi. Early termination or default by either party

XI. Project Acceptance

- a. **Substantial Completion** – This often refers to the point at which the build phase of the project is complete. The contract will include a detailed definition of substantial completion for each project.
 - i. Typically, a project is substantially complete if it is operationally ready, including full functionality as specified in the contract, safety inspections, regulatory approval and licensing as necessary.
 - ii. If there is an operating and/or maintenance component to the project, the private entity will be required to demonstrate that capability.
 - iii. The Trust must formally accept that the project is substantially complete.

- b. **Project hand-off, if appropriate** – If there is no operational or maintenance requirement for the project, then it will be handed-off to the City of Chicago and/or a Sister Agency or the Trust.
 - i. The project will need to meet the criteria for substantial completion as specified in the contract.
 - ii. The contracting entity may be required by contract to provide operational and/or maintenance training for City personnel.
 - iii. The Trust must formally accept the project is substantially complete.

XII. Summary

The Chicago Infrastructure Trust thanks you for your interest in reading this manual, and offers its best regards and appreciation to persons or entities that seek to do projects with the Trust. We look forward to working together with contracting persons or entities on vital infrastructure projects that will serve the public interest of the people of the City of Chicago. Any comments or questions regarding the Trust and its work should be directed to the Trust at: comments@shapechicago.org