

Public-Private Partnership Collaboration Unit Management Manual



COLORADO
Department of Personnel
& Administration

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I. Introduction

Purpose

The purpose of the Public-Private Partnership (“P3”) Collaboration Unit (the “Unit”) Program Guidelines is to comply with the requirements of Senate Bill 2022-130 (“SB 22-130”) through the “Public-Private Partnership Collaboration Unit Management Manual” (the “P3 Management Manual” or “Manual”) and to document clear, consistent, efficient and transparent standard operating procedures and policies that will be utilized to plan, design, manage, develop, operate, implement and govern the use of P3 projects for the Department of Personnel and Administration (“DPA” or the “Department”). The guidelines will be used for the Unit to ensure that development of P3 projects will be inclusive of finance, lease, acquisition, construction, or reconstruction of the project. The guidelines will be available to the public and private entities listed on the Department website.

The P3 Manual addresses the stages of a P3 project, process documentation, policies for unsolicited proposals and solicited proposals, and addresses the requirements for any P3 project that comes through the Unit. The P3 Manual is divided into four sections:

1. P3 Program Development and Management;
2. Project Planning and Development;
3. Project Solicitation and Procurement Phase; and
4. Project Management and Implementation Phase

The Manual is meant to supplement the existing laws and regulations in place for the Unit. The Manual incorporates links to existing laws and provides direction for the Unit and P3 projects that will be approved by DPA leadership and the Colorado Economic Development Commission’s Public-Private Partnership Subcommittee (the “Economic Development Subcommittee”).

Each P3 project may include an interagency agreement (“IA”), a memorandum of understanding (“MOU”), lease agreement to include terms and conditions, and/or deed restrictions and real estate sale documents that detail any sale of State-owned property dependent upon the agreement for the project.

Goals

The P3 Management Manual will establish requirements that are necessary for the initiation requests for all P3 projects, analysis and evaluation process for the public projects, solicitation requirements, timelines for unsolicited proposals, and documentation of any funding or funding alternatives that will impact the project. The Manual will establish an in-depth stakeholder engagement process as well as reporting requirements for the Economic Development Subcommittee proposal review process.

For projects that are selected and approved by the Department, the Unit shall determine the utilization of project delivery methods that will include but are not limited to:

- The development, building, financing, operation, and maintenance of cost-effective public projects that provide economic and social value in the community;
- The provision of a well-defined and transparent process to facilitate collaboration between state public entities and private partners while enabling access to private capital;
- The submission of innovative concepts and approaches to public projects; and
- Allow for cost, risk, and benefit sharing between public and private partners.

Administration

The Unit administers and manages all responsibility for P3 projects to include the creation of program requirements; analysis and approval or denial of the project proposals; documentation of funding and funding alternatives; due diligence requirements; reporting requirements; policies; standard operating procedures; project thresholds; and technical assistance for any approved public projects.

Unit Initiatives

The Unit is created pursuant to section 24-94-103(2), C.R.S. and reports to the Deputy Executive Director of Programs for DPA. The initiatives that are designated for the Unit to prioritize for funding through the public-private partnership are:

1. Increased behavioral health capacity
2. Affordable housing development
3. Increased access to child care services
4. Renewable energy facilities
5. Broadband deployment

These priorities and their order will be reassessed bi-annually.

The Unit is authorized to pursue public projects in the areas defined above and partnerships between public entities and private partners to include the following:

- Acceptance of a private financial contribution to a P3 project in exchange for public improvement that is suitable for the use of promoting public health, welfare, and safety. This can include income, revenue, cost sharing, technology, personnel, equipment, expertise, data, construction or maintenance services.
- Operation of a public project which can include, but is not limited to maintenance, improvement, modification, repair or administration of state public projects.

- Planning, design, construction, development , finance, lease, acquisition, installation, reconstruction or expansion of a public project.

Outside Consultants

The Unit may procure or engage the services of consultants to provide planning, study, and advice for public projects. The consultants may include: program management, financial, legal, technical, communications, community engagement, or other services needed by the Unit for public-private partnership projects. If any consultant is hired, the consultant would report to the P3 Director and would be used to provide direction on selected projects.

Unit Objectives

The Unit's objectives are to utilize public-private partnerships as an effective tool to leverage resources from both public and private sectors to accommodate multifaceted social infrastructure and operational needs. The Unit will deliver public projects through public-private partnerships to meet some of the State's most pressing needs such as increased behavioral health capacity, broadband deployment, affordable housing development, and child care services.

The guidelines will be utilized by the Unit to oversee and administer the procurement, implementation, funding and execution of the projects under the authority given in 24-94-101, *et seq.*, C.R.S. The Unit will provide a transparent process to facilitate and collaborate with State public entities and private partners while enabling access to private capital. The Unit will further define roles and responsibilities to ensure that the appropriate level of engagement occurs for each project selected. Transparency will be addressed throughout the process through utilization of the Economic Development Subcommittee, Capital Development Committee, and other stakeholders defined over time.

For the projects that are selected, the Unit will determine methods that may provide some or all of the following:

- Bring innovative thinking and approaches to public projects;
- Reduce total life-cycle costs of public projects;
- Allow for cost, risk, and benefit sharing between public and private partners;
- Greater partnership between public and private sectors;
- Greater cost certainty;
- Improved project life-cycle costs and/or quality of such;
- Enhanced utilization of State un-utilized or under-utilized properties;
- Environmental benefits;
- Improve quality of life for Coloradans;
- Increase access to housing in general and affordable housing in particular;
- Increase access to behavioral and mental health services;
- Utilization of enhanced technology systems, to include broadband; and

- Other public purposes and benefits that will arise from the proposed project.

Waiver of Requirements

The Unit, at its sole discretion, may waive or deviate from some or all of the guidelines listed in any P3 related document when it is necessary and is in the best interests of the State. In no event shall the waiver or deviation create a perceived liability for the State of Colorado, Departments of the State, or any other party in the public project.

P3 Subcommittee

The P3 Subcommittee is an advisory committee for the Unit that reviews and provides recommendations for all contracts, sales, or leasing of State property. The P3 Subcommittee shall review a report regarding the anticipated use, sale, contract or leasing terms for the State property and provide recommendations for the Unit within 60 days of receipt. The Unit may incorporate any recommendations made by the subcommittee, but it is not required. The appointment of the subcommittee will be voted on by the Unit Director and the Colorado Economic Development Commission annually.

Subcommittee Members

The subcommittee was established by September 1, 2022 and consists of at least three (3) members that were selected by the Economic Development Commission. The subcommittee members cannot be appointees from the same appointing authority. P3 Subcommittee members may include:

- Chair - Director of the Unit
- Representative member of Senate appointment
- Representative member of the Governor's appointment
- Representative member of the House appointment

P3 Subcommittee Meetings

The P3 Subcommittee will have monthly meetings to receive updates, proposals, reports and discussion surrounding the P3 Collaborative Unit projects and potential projects. The meetings will be open to the public unless otherwise necessary for the discussion with legal counsel or discussing confidential information related to project proposals.

P3 Subcommittee Period of Involvement

The P3 Subcommittee will operate as an advisory board and provide insight and direction to the Unit for the duration of the Unit's existence.

II. DEFINITIONS

The definitions contained herein are used in Article 94 of section 24-94-103(2) and may be modified in solicitation documents or agreements.

1. Agreement

“Agreement” means a binding document or series of documents between the State Public Entity, Unit and a Private Partner that outline the basis for which the planning, financing, construction, operation, or maintenance is created for an eligible facility, building, or parcel of land. The Unit will use Agreements, such as, but not limited to:

- Design-Build Agreement (DB)
- Design-Build-Finance Agreement (DBF)
- Design-Build-Maintain Agreement (DBM)
- Design-Build-Finance-Operate Agreement (DBFO)
- Design-Build-Operate-Maintain Agreement (DBMO)
- Design-Build-Finance-Operate-Maintain Agreement (DBFOM)

2. Concession

“Concession” means any lease, ground lease, operating agreement, easement, permit or other binding agreement that transfers the rights from the State Public Entity for the use of control, in whole or in part, of an eligible facility by the Department or other eligible entity to a Private Partner.

3. Contract

“Contract” means a binding document between the Unit and a Private Partner that outlines the basis for planning, designing, financing, constructing, operating, or maintaining the eligible facility.

4. Department

“Department” means the State of Colorado Department of Personnel and Administration.

5. Develop

“Develop” means to plan, design, develop, build, establish, finance, lease, acquire, install, construct, reconstruct, or expand a public project.

6. Eligible Facility

“Eligible Facility” means “unused state-owned real property” as set forth and defined at § 24-82-102.5(2)(c), C.R.S.; any facility developed or operated to include any enhancement, upgrade or new facility construction used for civic, child care services services, medical, utility, telecommunication, cultural, recreation, housing, or educational facility or service.

7. Evaluation Team

“Evaluation Team” means Department staff, outside consultants and other professionals that are identified by the Public-Private Partnership Director, to evaluate qualifications and proposals against the criteria that is established in the solicitation process.

8. Executive Director

“Executive Director” means the Executive Director of the Department of Personnel and Administration or his/her designee (Public-Private Partnership Director).

9. Finance

“Finance” means the supply by a private partner of resources to accomplish all or any part of the work or services for a public project, including funds, financing, income, revenue, cost sharing, technology, personnel, equipment, expertise, data, or engineering, construction, or maintenance services.

10. Invitation to Negotiate (“ITN”)

“Invitation to Negotiate” means an invitation to negotiate intended to solicit responses from potential vendors to determine the best method of achieving a specific goal or solving a particular problem to identify one or more responsive vendors with which the Department may negotiate to determine the response that is most advantageous.

11. Operate

“Operate” means to finance, operate, maintain, improve, equip, modify, repair, or administer a public project.

12. Pre-Development Agreement (PDA)

“Pre-Development Agreements” means an agreement with a Private Partner that provides development services for a project that is in its early development stage and not ready for a formal bid. The services can include, but are not limited to project concept and definition, scope, conceptual financial plans, financial arrangements, feasibility study, etc., that are not finalized and can be negotiated once the agreement has been executed.

13. Private Partner

“Private Partner” means any natural person, corporation, general partnership, limited liability company, limited liability partnership, joint venture, business trust, public benefit corporation, nonprofit entity, local government, other private business entity, or any combination thereof.

14. Proposal

“Proposal” means a submission by a potential partner, both Private or Public, to a Request for Proposal or an unsolicited basis for a P3 project.

15. Proposer

“Proposer” means a potential Public or Private Partner that submits a Proposal to develop a P3 public project.

16. Public-Private Agreement

“Public-Private Agreement” means any agreement between one or more private partners and one or more state public entities that contractually provides for the responsibilities of all parties negotiating, developing, or operating any aspect of a proposed or approved public project or financed purchase of an asset.

17. Public-Private Partnership

“Public-Private Partnership” means an agreement between one or more state public entities and one or more private partners by which a state public entity may allocate responsibility or risk to a private partner to develop or operate a public projectand, in return, the private partner may receive the right to all or a portion of fees generated by the public project, availability payments made by the state public entity, other public money, or any other legally available consideration.

18. Public Project

“Public Project” means any construction, alteration, repair, demolition, or improvement of any state-owned land, building, structure, facility, asset, or other public improvement suitable for and intended for use in the promotion of the public health, welfare, safety, and any maintenance programs for the upkeep of such projects. “Public Project” includes but is not limited to a project for civic, child care services, medical, utility, telecommunication, cultural, recreational, or educational facilities or services.

19. Request for Information (“RFI”)

“Request for Information” or “RFI” means a method to obtain preliminary information about a market or type of available service or product when there is not enough information readily available to write an adequate specification or statement of work. A request for information may ask for input from potential vendors to assist the state in preparing a specification or statement of work for a subsequent solicitation and may ask for pricing information only with the provision that such information would be submitted voluntarily.

20. Request for Proposal (“RFP”)

“Request for Proposal” or “RFP” means all documents, whether attached or incorporated by reference, utilized for soliciting proposals. Request for Proposal is the commonly used term for soliciting competitive sealed bids.

21. Request for Qualifications (RFQ)

“Request for Qualifications” or “RFQ” means a document issued by the Unit during the prequalification stage of the procurement process. The solicitation will demonstrate a partner’s ability to develop, design, build, finance, operate and/or maintain a public project or eligible facility. Partners who respond to the RFQ and meet the qualification

criteria will automatically be eligible to be included in the Request for Proposal (RFP) solicitation process.

22. Solicitation Documents

“Solicitation Documents” means the procurement documents that were initiated by the Unit to request information, qualifications, and/or proposals to develop a P3 project.

23. Solicited Proposal

“Solicited Proposal” means a public project that is initiated by the Unit as a result of its determination through 24-94-103(2) C.R.S. that the project would best be developed as a P3.

24. Stakeholder Meeting

“Stakeholder Meeting” means a meeting that is held to inform industry, partners, community, businesses, and the public about the opportunity and obtain feedback. The meetings may be informal one-on-one sessions or general open meetings.

25. State Public Entity

“State Public Entity” means any department, agency, or subdivision of executive branch of state government; except that “State Public Entity” does not include state entities that have specific statutory authority to enter into public-private partnerships, including but not limited to the authority specified in § 23-3.1-301(1), 23-3.1-306.5, 24-33.5-510, 26-6.9-102, 32-22-105(1)(a)(VIII), 40-2-123, and 43-4-806 C.R.S..

26. Subcommittee

“Subcommittee” means the Public-Private Partnership Subcommittee of the Colorado Economic Development Commission created in § 24-46-102(4) C.R.S..

27. Technical Assistance Meeting

“Technical Assistance Meeting” means a meeting held with the public project team to discuss conditions, revisions to the project, etc. These meetings can be held via phone, hybrid or in-person dependent on the needs for the project.

28. Unit

“Unit” means the Public-Private Collaboration Unit.

29. Unsolicited Proposal

“Unsolicited Proposal” means a written submission by a potential Partner that conforms to statutory guidelines for a P3 project which was not initiated by the Unit.

III. Project Procurement

If the Unit determines that a proposed Public Project serves a suitable purpose or potentially suitable purpose for P3 delivery, the Unit may request proposals for development, financing, construction, improvement, maintenance, or operation of an Eligible Facility.

Procurement Process and Project Delivery Mechanisms

Solicited and unsolicited proposals will accommodate different types of P3 project delivery methods. The type of delivery mechanism will be determined through the guidance of the Evaluation Team, P3 Subcommittee and the Capital Development Committee (“CDC”). The delivery mechanisms will include the project description, risk factors, timeline, funding, and goals. Potential delivery mechanisms for P3 projects can include:

- Pre-Development Agreements
- Design-Build-Finance Agreement (DBF)
- Design-Build-Maintain Agreement (DBM)
- Design-Build-Finance-Operate Agreement (DBFO)
- Design-Build-Operate-Maintain Agreement (DBMO)
- Design-Build-Finance-Operate-Maintain Agreement (DBFOM)

Phased Procurement

The Unit may utilize a phased process for procurement which may consist of the issuance of an RFI, issuance of an RFQ, issuance of an ITN, or issuance of an RFP. The Unit may determine which method to utilize for procurement phases based on project-specific needs.

For Unsolicited Proposals, a Proposal may be received and a determination will be made by the Unit on the Eligible Facility that serves a public purpose and that the Unit chooses to pursue.

Public Records and Confidentiality

Except as provided in § 24-103-201.5, C.R.S., no portion of a submitted proposal, solicited or unsolicited, other than the Executive Summary shall be released or disclosed by the Unit before the award of the P3 Contract and conclusion of the protest period or other challenge to the award, pursuant to § 24-101-401, C.R.S. See also § 24-72-203, C.R.S. and § 24-72-204, C.R.S.

IV. Unsolicited Proposals

If the Unit determines that procurements arise for Unsolicited Proposals, statutory authority allows for the acceptance of such proposals within a reasonable timeframe to be determined by the Unit. Consideration for Unsolicited Proposals shall follow the same project delivery methods as listed in the P3 Management Manual. Submission of an Unsolicited Proposal by a Private

Partner must conform to the regulations and statutory requirements as listed pursuant to § 24-94-102(9), C.R.S..

Costs Incurred

All costs that are incurred by the Private Partner or Proposer in preparation and submission of the proposal will remain solely on the Proposer. Under no circumstances will the Unit, State of Colorado, State departments or any of its agencies, representatives, consultants, directors, employees, or staff, be liable or obligated to reimburse costs incurred by the Proposer to submit the project proposal, whether selected or not for an agreement or award.

Public Input Process

At the sole discretion of the Unit, it may choose to seek public input through a stakeholder engagement process. This can include but is not limited to focus groups, other public meetings, public surveying or polling only during the Detailed Evaluation stage of the submission process.

No Appeal or Commitments

Once the Unit has made its final decision to reject any Unsolicited Proposal that decision is not subject to any appeal process. No rights or remedies of the rejection shall be afforded for any submitting entity for an Unsolicited Proposal.

Unsolicited Proposal Evaluation

- **Overview**

The Unsolicited Proposal evaluation will include three steps:

- Pass/Fail
- Initial Evaluation
- Detailed Evaluation

The purpose of the evaluation is to determine:

- The project and proposal meet statutory requirements
- The project has potential value for the State of Colorado
- The Proposer is qualified to execute the project if awarded
- The proposed project has probability of being a successful P3 project

If the Unsolicited Proposal is not compliant with statute or does not align with the State of Colorado goals and priorities, the Unit can reject the proposal. If the Proposal passes the three steps in evaluation, the Unit will begin a process to solicit consultants and team members to move forward to the initial evaluation phase.

Required Content for Unsolicited Proposal

To be eligible for and considered responsive to the Unsolicited Proposal process, all proposals must contain the following information for the Unit to evaluate the merit of the proposed project:

- **Executive Summary**

The Proposer must include an Executive Summary that will cover all major elements of its Proposal but does not address the financing plan or other confidential information that is subject to trade secrets that the Proposer intends to disclose in the summary. The Executive Summary is a public document and will be posted on the Unit's P3 website. The Executive Summary must include information that will assist the P3 Unit in determining whether the proposed project is cost-effective and efficient.

- **Contact Information**

- **General Project Information**

- **P3 Project Criteria**

- Project alignment with P3 Unit goals
 - The development, building, financing, operation, and maintenance of cost-effective public projects that provide economic and social value in the community
 - The provision of a well-defined and transparent process to facilitate collaboration between state public entities and private partners while enabling access to private capital
 - The submittal of innovative thinking and approaches to public projects
 - Allow for cost, risk, and benefit sharing between public and private partners
- Financial Capacity
 - Preliminary cost estimates
 - Estimated capital value of the assets
 - Cost covered by the Proposer
 - Resources being sought of the P3 Unit to implement the project
- Development Impacts
 - Size, type, and quantity of proposed improvement or changes to the parcel of State land being requested
 - Proposed utility needs
 - Impacts to existing infrastructure
 - Parking needs, if applicable
 - Potential environmental impacts
 - Compatibility with local zoning and adjacent land use
 - Lighting
 - Anticipated noise levels or issues, if applicable
- Community Benefit
 - Proposed program, service, or construction
 - Target audience for the project
 - Description of reduced fees, discount, or free programs tied to the proposal
 - Any accommodations made with ADA regulations

- Accommodation to address the needs of populations with limited English proficiency or those requiring ASL or similar assistance, if applicable.
 - Professional Qualifications
 - Profile, experience, and qualifications of the Proposer and all subcontractors to perform the work for the project

Once it is determined that an unsolicited proposal has been deemed appropriate for a project additional information may be requested by the Unit which can include the following:

- **Operations and Maintenance Plan**
A plan that describes the operations and/or maintenance of the completed Eligible Facility is required for all unsolicited proposals. The plan will describe how operations and maintenance will be addressed for the duration of the project to include management structure, utilities, capital maintenance, emergency response, routine maintenance, security, law enforcement (if applicable), and emergency response must be included.
- **Finance Plan**
The plan shall include all relevant finance documentation for the successful completion of the P3 project to include funding sources to develop, design, construct, operate and/or maintain the project. In addition, the proposal shall include Proposer equity, commercial debt, loans and any project revenue streams that have been identified for the P3 project. Any finance plan that includes the State to issue or incur a “financial obligation” (defined in statute) must comply with § 24-36-121, C.R.S. and requires the State Treasurer’s involvement.
- **Financial Feasibility**
Documentation shall include information that shows the P3 project funding from all relevant sources is sufficient to support the project in all phases of design, construction, maintenance, operations and development at the Eligible Facility. If this project is in pre-development stages, necessary information should be included to show how the Proposer plans to obtain adequate funding for the remaining phases of the project.
- **Bonds, Letters of Reference, Guarantees, and Insurance**
The Unsolicited Proposal must describe the performance and payment security and insurance that will be provided for the project. The Proposer must demonstrate any contractor is able to obtain performance and payment bonds, letters of credit, parent company guarantee or other security that is acceptable for the Unit based on the project. The Proposer must supply insurance coverage for general liability, auto liability, pollution liability and liability for errors and omissions as the Unit, at its sole discretion can require,
- **No Previous Breach of Contract or Disqualification**

The Proposer must disclose any breach of contract for itself, its consultants, and subcontractors within the past six years with the State of Colorado or if they have been disqualified from contracting with the State of Colorado.

- **Licenses and Certifications**

The Proposer must demonstrate that its staff, subcontractors, and consultants possess any necessary licenses and certificates that are required to perform the duties needed for the successful completion of the project within the State of Colorado.

V. Solicited Proposals

Overview

A solicitation may be initiated through the Unit's determination that an Unsolicited Proposal has merit or through its identification of a project which requires procurement as a P3 and is in the best interest of the State.

The solicitation process can be through an RFP process where it is advertised, or through a process that involves the issuance of an RFQ, ITN or other solicitation method as determined by the Unit and allowable by State procurement.

Stakeholder Engagement and Industry Meetings

Prior to initiating a formal procurement process, the Unit may choose to perform stakeholder engagement and outreach efforts through Industry Meetings. Industry Meetings can be held prior to the solicitation or issuance of an RFI, RFQ, RFP or ITN to better understand and inform the industry of the opportunity and to hear suggestions that the Unit can take into consideration prior to issuing any solicitation documents.

Request for Information (RFI)

In addition to other procurement methods, some projects may lend itself to utilization of an RFI. This method can be utilized to determine if there is sufficient interest to move a project forward within the Unit framework and assess what type of conditions would be aligned for the project in the private sector. The RFI can be the first step in the solicitation process.

Development for Request for Proposal (RFP)

Upon development of the shortlist of qualified proposers, the Unit will draft the RFP to begin the next phase of the P3 procurement process. The Unit may also issue an RFP without first issuing an RFQ or developing a list of qualified proposers. The RFP will include specific requirements such as:

- Instructions to Proposers
- P3 Project Agreement
- P3 Project schedules and technical requirements

Required Content for Response to RFP

Once the RFP has been issued by the Unit, Proposers are required to provide a Proposal containing at minimum, two components, a technical proposal and financial proposal. The Unit may issue an RFQ prior to the solicitation of an RFP if deemed necessary.

Technical Proposal

The Unit may require the Proposer to provide technical information that is relevant to the scope of work and technical requirements as deemed appropriate by the Unit. Required information may include, but is not limited to, design elements, project management approach, location, timeline for completion, quality control, utility needs, zoning requirements, parking assessments or needs, and other information appropriate for the project development. The intention of the technical proposal is to provide assurance that the Partner selected has the following:

- Sufficient understanding of the project scope and desired outcomes
- A design approach that meets technical and contractual requirements in accordance with State law
- The ability to deliver the project in a timely and cost effective manner

Financial Proposal

The intent of the Financial Proposal is to document the Proposers financial position and financial stability to complete the project.

If the solicitation and project scope require the Proposer to finance any portion of the project, a Financial Proposal must include a financial plan and the financial model that the Proposer will utilize to complete the project. The Financial Proposal shall include the project delivery method and market conditions at the time of submission to include:

- Contents and details of the Financial Plan
- If the Financial Proposal is fully or partially committed
- The permitted commitment and closing conditions that may be included in the project by the Proposer

Requirements for a Financial Plan are:

- Identification of all financial institutions involved in all transactions.
- Description of the debt finance, quasi-equity debt finance mechanism or any forms of financing that may be utilized.
- Identification of investors, underwriting banks, or quasi-equity providers and the level of project knowledge and due diligence that has been performed.
- Description of the type and purpose of each funding source.
- Description of the steps and timeframes for each financial close.
- Specific information for each bank or financial institution involved in the transaction to include details of the loan, if applicable, terms and conditions of the financing, events of default, drawdown schedule, loan facility, repayment moratorium, repayment schedule, security deposit required, if applicable, reserve accounts, interest rates, credit ratings, any proposed hedge arrangements, if applicable, and due diligence, and timeframes.

Overall requirements for a Financial Model submission shall include at minimum inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation), outputs (cash balances, returns on equity, cost of capital, net present value of construction costs, and reserves), and calculations. Proposers may be required to provide backup information and details of how the financial model operates as requested.

VI. Evaluation and Selection Process

General Evaluation Criteria

Pass/Fail and Responsiveness

Once a Proposal has been submitted, an initial evaluation of responsiveness will be made and reviewed on a pass/fail criteria basis that is set in the solicitation. In order to be considered responsive, the Proposal should conform to the instructions listed by the Unit required in the RFP/RFQ. Those Proposals not deemed responsive will be issued a fail rating and will not be considered further. The Unit may waive minor informalities and clerical mistakes which are unrelated to the overall context of the Proposal submission and may seek clarification to address such informalities.

Evaluation Criteria for Proposals

When a solicitation has been issued under the Unit, evaluation criteria may vary based on the project scope and goals for delivery. The specific evaluation criteria will be listed in the solicitation. Typical criteria for evaluation will include:

- Qualifications, experience and capabilities to perform the work in the solicitation
- Pricing
- Project scope
- Project technical approach
- Quality approach
- Financing plan and feasibility
- Operations and maintenance plan
- Project delivery timeline/schedule
- Technical approach
- Term length
- Public support
- Compatibility with the Unit's program goals
- Approach to User fees (if applicable)
- Other specific information as required in the RFP

General Evaluation Methodology

The Unit reserves the right to develop an evaluation approach that is specific to each project. The Unit will determine in advance the evaluation process and will develop an internal proposal evaluation plan. The Unit may utilize other evaluation methodologies such as low bid, lowest

adjusted cost, highest payment, lowest public subsidy, “trade-offs” and any other methodology deemed appropriate for the specific project.

Proposal Clarifications, Revisions and Best and Final Offers

The evaluation process the Unit may choose to request Proposal clarification following the process is outlined in the solicitation.

After the evaluation of the Proposals, the Unit may determine additional clarification, revisions or questions to the Proposers. Those Proposers that are responsive and are determined to fall within the “pass” or competitive range of the proposals will be permitted to submit revisions.

Negotiations

The Unit may engage in negotiations regarding specific elements of the project based on feedback from the P3 Subcommittee, stakeholders, and other vested parties regarding the scope, risk, financial terms, project financing structure, and technical requirements of the project if deemed necessary. This is to include negotiations with unsuccessful Proposers to determine the best course of action for the project and solicitation.

The Unit will not disclose any proprietary information of a Proposal to competing Proposers during the negotiation process.

VI. Contracting

Prior to developing, designing, constructing, financing, operating or maintaining a project, a Proposer selected must enter into an agreement with the Unit. Agreements for each project may vary based on the nature of the project and approaches for delivery methods for each specific project. The Unit will consider legal, policy, financial, and technical advice as it deems necessary for successful completion of each project. The Unit may seek advice, consultation, or additional involvement from state, local, and public entities during the negotiation process.

General Terms

The final agreement may include, but is not limited to the following:

1. The right of a Private Partner to plan, develop, design, construct, finance, operate, maintain, or any combination of the above listed, the project, the date of completion of the Private Partner’s authority; duties and rights with respect to the project; and other conditions under which the project will be returned to the responsible public entity if applicable.
2. The performance measures that will be utilized to track performance and requirements of the private Partner along with any security, development, design, construction, financing, operation or maintenance of the project
3. Responsibilities for any environmental assessments, permits, approvals for the project.

4. The extent in which the Private Partner and the Unit will work together to establish interoperability between the project and other public transportation facilities, if applicable.
5. Responsibilities for acquisition of necessary environmental approvals and other required permits and approvals for the project.
6. The design, construction, operation, maintenance and/or handback standards that the Private Partner must comply with.
7. The requirements of the Private Partner to submit plans for the scope of work for the project to include construction, design, development, operation, and maintenance of the project.
8. The role of any independent contractors to include engineers, surveyors, consultants, subcontractors, etc.
9. The right of the Private Partner to make and enforce any reasonable rules regarding the project during the operations and maintenance phases.
10. Any terms in which the Private Partner will reimburse the Unit for services provided.
11. Any terms in relation to the change of use for the project to include local land use and zoning.
12. The terms that compensation would be paid in the event of termination of the agreement (default, failure to close financing, or other specified termination event).
13. Any terms in which the property or project shall revert to its original use based on default or termination of the agreement.
14. The terms, conditions, and performance measures that apply to the Private partner.
15. Any events that will constitute default by the parties and revert the property or project back to its original use.
16. Lender's rights and remedies in respect to the Private Partner defaults and Unit remedies, if applicable.
17. The circumstances that will constitute time extensions or additional compensation and the remedies that the parties shall have with respect to this occurrence.
18. Insurance and bonding letter of credit that the Private partner will be required to meet during each phase of the project.

19. Allocation between the private Partner and the Unit for responsibilities, liabilities, property damage, personal injury, repair, site conditions, utility relocations, and hazardous waste remediation.
20. Obligations of the Private Partner to maintain records of inspection to the Unit.
21. Obligations of the Private Partner to provide and file financial statements in the term set in the agreement.
22. The roles and responsibilities for the Private Partner to engage in active external stakeholder engagement and third party approvals as needed.
23. Any other terms appropriate to the project.

Change of Use

Shall any change of land use be necessary, it shall be the responsibility of the Private Partner to conform with the requirements of the project local zoning regulations to hold use of the site.

Reversion Provision

At the end of the agreement term with the Private Partner, the project will be required to be returned to the Unit at the level of technical standards and conditions specified in the Contract, known as the Reversion provision. The Unit may evaluate whether to procure a new agreement or operate and maintain the project itself.