



Date: November 18, 2015  
To: High Performance Transportation Enterprise Board  
From: Nicholas Farber, HPTE Operations Manager  
Subject: Update on Report to Legislative Audit Committee

Purpose

The purpose of this memorandum is to summarize HPTE's report to the Office of the State Auditor regarding the US-36 Public-Private Partnership (P3) Project Performance Audit.

Action

Informational only - no action is required.

Background

At the March 30, 2015 US-36 Performance Audit hearing, the Legislative Audit Committee expressed a desire to be updated on HPTE's progress towards implementing each of the audit's recommendations. That hearing has been set for December 7. Further, a report detailing HPTE's progress was due to the Office of the State Auditor on November 6.

Details

Out of the 29 Recommendations, HPTE has implemented 26 and the remaining three will be completed by the end of the calendar year. The following recommendations are still outstanding:

- Recommendation 6 (VfM Updates): is partially implemented and will be implemented when the P3 Management Manual is finished by the end of December. HPTE already follows the recommendation, but it will become official when the manual is released.
- Recommendations 13a and 13b (P3 Best Practices): The P3 Management Manual is currently in draft form and will be finalized by the end of the calendar year. HPTE is also in discussions with CDOT regarding next year's Fee for Service Agreement and additional resources we might need because of a growing workload.

Next Steps

The HPTE will present to this report to the Legislative Audit Committee on December 7.

Attachments

Audit Recommendation Implementation Status Table

Rec. Number	Agency's Response	Implementation Status	Original Implementation Date	Revised Implementation Date (If applicable)
1a	Agree	Implemented	April 2015	
1b	Agree	Implemented	April 2015	
1c	Agree	n/a	Implemented	
2	Agree	Implemented	April 2015	
3a	Agree	n/a	Implemented	
3b	Agree	n/a	Implemented	
3c	Agree	n/a	Implemented	
4a	Agree	n/a	Implemented	
4b	Agree	Implemented	September 2015	
4c	Agree	n/a	Implemented	
5a	Agree	Implemented	July 2015	
5b	Agree	Implemented	July 2015	
5c	Agree	Implemented	July 2015	
5d	Agree	Implemented	July 2015	
6	Agree	Partially Implemented	September 2015	December 2015
7	Agree	Implemented	July 2015	
8	Agree	Implemented	September 2015	
9a	Agree	Implemented	September 2015	
9b	Agree	Implemented	September 2015	
10	Agree	Implemented	September 2015	
11	Agree	Implemented	Implemented	
12a	Agree	Implemented	July 2015	October 2015
12b	Agree	Implemented	Implemented	
12c	Agree	Implemented	September 2015	
12d	Agree	Implemented	September 2015	
12e	Agree	Implemented	September 2015	October 2015
13a	Agree	Partially Implemented	January 2016	
13b	Agree	Partially Implemented	January 2016	
13c	Agree	Implemented	January 2016	

Rec. Number	Description	Description of HPTE Work	Implementation Status
1	The High Performance Transportation Enterprise (HPTE) should work with the Colorado Department of Transportation's Office of Major Project Development (OMPD) and its toll services expert advisor to evaluate how toll services will be procured and managed for future projects involving toll facilities. The evaluation should result in:		
1a	Developing a comprehensive set of technical specifications and options for toll services which are identified and included at the RFQ stage in future P3 procurements.	On May 7, 2015 the State Controller executed the HPTE/E470 Tolling Services Agreement that sets forth a comprehensive set of technical specifications and options for toll collection and administration services to be provided by E470.	Implemented
1b	Providing detailed cost and technical specifications for any preferred or required toll services providers as part of the initial draft RFP documents and finalizing the technical specifications and costs for toll services as part of the final RFP, when the P3 project involves transferring toll services or toll revenue risk to the concessionaire.	On the Central 70 Project, HPTE is not transferring toll services or toll revenue risk to the concessionaire, therefore, detailed cost and technical specifications required by E470 are not being provided in the RFP. Nevertheless, on future toll revenue risk concession projects, HPTE is committed to providing this information to proposers.	Implemented
1c	Reviewing tolling authorities' operations and contracts in other states and jurisdictions to gain lessons learned for how to best manage toll services in the future.	HPTE is actively engaged in reviewing tolling authorities' operations and contracts in other states and jurisdictions to gain lessons learned for how best to manage toll services in the future. For	Implemented

		example, HPTE and OMPD participated this spring in FHWA-sponsored meetings with tolling providers in both Washington state and Florida	
2	The High Performance Transportation Enterprise (HPTE) should work with the E-470 Authority and the concessionaire to facilitate execution of the toll services agreement for the US-36 P3 Project as soon as possible to ensure a clear understanding of and accountability for toll services well in advance of the commencement of toll operations.	Both the P3 TSA (Plenary Roads Denver/HPTE/E470) and the HPTE/E470 TSA were signed by the State Controller on May 7, 2015.	
3	The High Performance Transportation Enterprise (HPTE) should improve the planning process for future P3 projects by partnering with its expert legal and financial advisors and approaching the Transportation Infrastructure Finance and Innovation Act Joint Project Office (TIFIA JPO) to examine TIFIA loan options prior to the procurement phase. If HPTE provides a Letter of Interest to the TIFIA JPO related to a possible TIFIA loan for a P3 project procurement, or if in the future HPTE has a TIFIA loan that will be assumed as part of the P3 project, HPTE should:		
3a	Work with its legal and financial advisors and coordinate with TIFIA JPO to prepare a detailed term sheet for inclusion in the draft RFP.	HPTE will work with its legal and financial advisors to coordinate with TIFIA JPO to prepare a term sheet which is as detailed as the TIFIA JPO is prepared to agree for inclusion in any draft RFP	Implemented

		for future P3 projects involving TIFIA loans.	
3b	Update the term sheet during the procurement phase in response to questions from prospective bidders and upon further interactions with TIFIA JPO.	HPTE has developed a format for analyzing actual cost data to be used as a basis for cost estimates and to further refine performance standards for operations and maintenance elements.	Implemented
3c	Ensure adequate detail on the project scope of services is defined and included in the RFQ and initial RFP.	<p>HPTE agrees to work with OMPD and CDOT to develop standardized reporting formats for analyzing actual cost data to be used as a basis for cost estimates and to further refine performance standards for operations and maintenance elements.</p> <p>HPTE's experience with the US-36 P3 Project and the observations of this audit report will inform this work, much of which is already being done for the I-70E project.</p>	Implemented
4	The High Performance Transportation Enterprise (HPTE) should:		
4a	Formalize practices for completing a thorough review of all major project components during the project development phase so that adequate information is available to identify the best value option and to provide adequate detail to prospective bidders in the procurement phase.	HPTE and OMPD, working under an MOU which establishes roles and responsibilities between the two, continue to formalize practices for making sure we are doing a thorough review of all major components during the project development phase so that adequate information is available to identify the best value option and to provide adequate detail to	Implemented

		prospective bidders in the procurement phase.	
4b	Work with the Colorado Department of Transportation (CDOT) to develop standardized reporting formats for analyzing actual cost data to be used as a basis for cost estimates and to further refine performance standards for operations and maintenance elements.	HPTE has developed a format for analyzing actual cost data to be used as a basis for cost estimates and to further refine performance standards for operations and maintenance elements.	Implemented
4c	Ensure adequate detail on the project scope of services is defined and included in the RFQ and initial RFP.	<p>HPTE agrees to work with OMPD and CDOT to develop standardized reporting formats for analyzing actual cost data to be used as a basis for cost estimates and to further refine performance standards for operations and maintenance elements.</p> <p>HPTE's experience with the US-36 P3 Project and the observations of this audit report will inform this work, much of which is already being done for the I-70E project.</p>	Implemented
5	The High Performance Transportation Enterprise (HPTE) should use the experience gained from the US-36 P3 Project and build comprehensive project schedules for future activities on the US-36 P3 Project as well as for future P3 projects. Specifically, project schedules should:		
5a	Identify all key tasks and include well-defined, appropriately-linked project activities.	The May 29th Addendum to the I-70 East Request for Qualifications (RFQ), which was released by the HPTE along with the Bridge Enterprise, contained a comprehensive schedule	Implemented

		to prospective proposers and the industry.	
5b	Assign resources and project costs to tasks and project activities.	HPTE and BE worked closely with advisors on the I-70 East Project and developed a comprehensive internal schedule that assigned resources and projects costs and tasks to specific project activities.	Implemented
5c	Specify realistic, achievable timeframes and due dates for when the work needs to be completed.	HPTE, working with OMPD, will ensure that adequate detail on the project scope of services with clear definition, and an appropriate level of detail, will be included in future RFQs and initial RFPs. For example, the May 29th Addendum to the I-70 East Request for Qualifications (RFQ) and the September 15 RFP, HPTE, along with the Bridge Enterprise, included a comprehensive schedule to prospective proposers and the industry.	Implemented
5d	Include adequate detail on how the work will be accomplished to enable responsible parties to accomplish project activities in accordance with the project schedule.	On the I-70 East Project, HPTE worked closely with CDOT, the BE and our consultants to develop a comprehensive project schedule that assigns resources and project costs to each task. The schedule is updated on an as needed basis to reflect changes in Project conditions.	Implemented
6	The High Performance Transportation Enterprise (HPTE) should ensure the HPTE Board has adequate information to support decision-making by developing policies outlining the	The first VfM analysis on the I-70 East Project was issued in December of 2013 and the subsequent version was issued on February 19, 2015. After	Partially Implemented

	<p>key points in the P3 decision-making and procurement processes where the Project Value Analysis and updates must be performed. Policies should specifically require performance of Project Value Analyses prior to (1) the decision to pursue the project as a P3, (2) selection of the preferred bidder and negotiations, and (3) financial close.</p>	<p>the last version was issued, the HPTE Board, along with the Transportation Commission decided to move forward with the I-70 East Project as a P3 project. This policy will be added to the P3 Management Manual (see Recommendation 13).</p>	
7	<p>The High Performance Transportation Enterprise (HPTE) should expand upon its Transparency Policy, the Governor's Executive Order D 2014-010, and the <i>Transparency Outreach Public Engagement Plan</i> and develop a comprehensive communications plan for informing and soliciting input from stakeholders, policy makers, and the general public for future P3 projects. Additionally, HPTE should maintain adequate and complete records of meetings and outreach efforts to follow up on outstanding issues and to assist with evaluating the effectiveness of its comprehensive communications plan.</p>	<p>The HPTE completed a Communications Plan that meets the goals of Gov. John Hickenlooper's Executive Order D 2014-010 and HPTE Board's Transparency Policy and produces a desired future state whereby increased communication enables broad understanding among key stakeholders and members of the general public of HPTE's mission, its policies and procedures.</p>	Implemented
8	<p>The High Performance Transportation Enterprise (HPTE) should continue to work with the Office of the Attorney General to develop a comprehensive open records and transparency plan for its P3 program that ensures compliance with the Colorado Open Records Act and with best practices. HPTE's plan should identify the key documents developed prior and during procurement, as well as during the construction and operation</p>	<p>The HPTE Board of Directors approved the First Amended Transparency Policy Relating to Public-Private Partnerships at their August 19, 2015 meeting. The policy balances the needs for transparency with confidentiality in a competitive bidding process. The policy will help the public understand the timing of documents</p>	Implemented

	<p>phases, that will become public records and determine milestones for when such documents will be released. HPTE should list these documents and their release dates in communications to prospective bidders as appropriate and make the open records and transparency plan and public records available to the public on its internet site.</p>	<p>that will be released during a P3 procurement.</p>	
9	<p>The High Performance Transportation Enterprise (HPTE) should work with the Colorado Department of Transportation's (CDOT's) Official Records Custodian to assess its records retention needs and develop processes and systems for records retention as outlined by statute, the Records Management Manual, and CDOT policies, procedures, and schedules. Specifically, HPTE should:</p>		
9a	<p>Inventory HPTE records and document the storage methods and retention requirements for both public and protected documents that statutes or procedures require be retained.</p>	<p>To create the HPTE Unique Records Schedule with the CDOT Records Custodian HPTE first had to document its storage methods and retention requirements for its public and protected documents. A memorandum from staff to the HPTE Director outlines this process.</p>	<p>Implemented</p>
9b	<p>Review existing CDOT records retention schedules, identify areas where the schedules are not adequate to meet HPTE's document management and retention requirements for long-term P3 projects, develop HPTE-specific records retention schedules, and submit the schedules to appropriate authorities for approval.</p>	<p>HPTE worked with the CDOT Records Custodian to create a records retention schedule in April of this year.</p>	<p>Implemented</p>

10	<p>The High Performance Transportation Enterprise (HPTE) should assess and evaluate resources for procuring a comprehensive document management system suitable for efficiently managing, maintaining, and accessing the documents associated with long-term P3 projects.</p>	<p>HPTE entered into a contract with Aconex in June of this year. Aconex, is a sophisticated cloud based document management software program that will allow HPTE to efficiently manage, maintain, and accessing the documents associated with long-term P3 projects</p>	Implemented
11	<p>The High Performance Transportation Enterprise (HPTE) should review processes and establish an adequate system of internal control for monitoring the performance and budget for contracted expert advisors to ensure the work remains within the budgeted amount and the services delivered are of sufficient quality and delivered in accordance with the requirements set forth in the contract. Additionally, HPTE should consider implementing the contract monitoring best practices outlined in statute and State Fiscal Rule 3-1.</p>	<p>Currently HPTE has tasked its Procurement liaison to track all of HPTE and OMPD's open contracts and task orders. Staff receives a weekly update on current work, what work is in the pipeline and what contract or task orders will soon expire. HPTE worked with CDOT to ensure it is now complying with Fiscal Rule 3-1. HPTE also continues to have weekly meetings with its Budget Analyst to review the budget and future obligations. Discussed are current and future needs, budget expended to date, projected budget expenditures, and remaining funds on each contract.</p>	Implemented
12	<p>The High Performance Transportation Enterprise (HPTE) should work with the Colorado Department of Transportation (CDOT) to develop a comprehensive monitoring framework and systematic mechanisms for managing and monitoring the concessionaire during the 50-year operations phase of the concession</p>		

	agreement. Specifically, HPTE should work with CDOT to:		
12a	Execute a project-specific agreement for the US-36 P3 Project specifying in detail HPTE's, CDOT's, and their contractors' respective roles and responsibilities for operations and maintenance monitoring.	The HPTE Board approved the Second Amendment to the HPTE US 36 Concession Agreement Intra-Agency Agreement on October 14 and the Transportation Commission approved it on October 15. The IAA spells out both HPTE's and CDOT's roles and responsibilities regarding oversight of the Plenary Roads Denver US 36 Concession Agreement and assigns OMPD as the oversight division.	Implemented
12b	Review and revise, as appropriate, the contract with the engineering firm responsible for monitoring the concessionaire's technical requirements to ensure adequate controls are in place to prevent the engineering firm from monitoring its own work.	The contracted engineering firm that is providing OMPD with technical monitoring support has engaged a subcontractor to independently monitor its engineering design work on the US 36 P3 project; and HPTE and OMPD/CDOT will ensure that the subcontractor's work comes to them directly and that there are appropriate firewalls and other contractual controls in place to ensure that the engineering firm is not monitoring its own work.	Implemented
12c	Provide training through "scenario workshops" to educate and obtain input from CDOT operations and maintenance personnel on the performance standards and related requirements outlined in the concession agreement.	On July 30, HPTE and CDOT conducted a scenario workshop with Operations, Maintenance and Traffic staff. The workshop identified a number of points of clarification about the concession agreement	Implemented

		that have since been worked out with Plenary Roads Denver.	
12d	Use the information developed through the “scenario workshops” to develop detailed monitoring management plans that ensure adequate technical review, provide for managing incidents and emergencies, establish protocols for addressing noncompliance, and incorporate processes for change and claims management for the operations phase.	HPTE’s Concession Agreement oversight consultant completed the Monitoring Management Plan in mid-September that incorporates the information received from the scenario workshop.	Implemented
12e	Further refine the monitoring framework by researching and incorporating leading practices and lessons learned from other U.S. P3 projects that are in the operations phase.	HPTE had a call with the Florida Department of Transportation on October 20 to learn from how they oversee their concession agreements. HPTE’s consultant will be incorporating lessons learned into the Monitoring Management Plan.	Implemented
13	The High Performance Transportation Enterprise (HPTE) should build upon the best practices and lessons learned from the US-36 P3 Project and strengthen its P3 program for the future by:		
13a	Developing a project management framework and detailed guidance for managing large and complex P3 initiatives. The framework should identify the key elements, decision points, information, and processes required for developing, procuring, and operating P3 projects in Colorado.	HPTE has engaged a consultant who is drafting a P3 Management Manual. As of November 6, HPTE and OMPD have reviewed and commented on two drafts. It is expected that the manual will be	Partially Implemented

		complete by the end of the 2015 calendar year.	
13b	Working with the Colorado Department of Transportation (CDOT) and the HPTE Board to develop strategies for acquiring adequate resources and project management expertise for managing, developing, and overseeing its P3 program.	In June of this year, HPTE and CDOT agreed to a Fee for Service Agreement, which acknowledges that HPTE possesses expertise and legal powers unavailable to CDOT, which enable it to accelerate the development and delivery of critical surface transportation infrastructure projects. For its services to CDOT, HPTE is paid \$2 million a year. HPTE is also in discussions with CDOT regarding additional staff to assist as its project workload grows.	Partially Implemented
13c	Identifying staff training needs and ensuring adequate resources are allocated to provide ongoing training, including project management training and specific training on HPTE's project management guidelines, to HPTE personnel and staff from CDOT, the Office of the State Controller, and the Office of the Attorney General working on P3 projects.	In the spring, HPTE and OMPD staff visited Washington and Florida DOT tolling divisions to learn more about their policies and procedures. Over the summer, HPTE, CDOT, and Attorney General Staff participated in the World Bank's P3 training program and have identified training opportunities over the next fiscal year.	Implemented

