



Date: February 17, 2016
To: Transportation Commission / High Performance Transportation Enterprise Board
From: Nicholas Farber, HPTE Operations Manager
Subject: CDOT / HPTE P3 Management Manual

Purpose

The purpose of this memo is to summarize the draft final of the CDOT / HPTE P3 Management Manual.

Action

Information only. Over the next month HPTE and OMPD will be seeking your comments on the manual for final approval in March.

Background

The March 30, 2015 HPTE Legislative Audit cited that the “application of project management principles is crucial to managing [P3] projects for the maximum benefit to the State. As funding for transportation system improvement continues to be limited in Colorado, it is likely that the State will be embarking on more of these [P3] projects. A robust project management framework, supported by adequate guidance, training, resources, and expertise, is essential to establishing a sustainable program that manages these risks and commitments effectively for current and future projects.”

The P3 Management Manual provides a framework for both HPTE and CDOT for the development, implementation, and oversight of P3 projects. The manual addresses P3 program development and management, and walks through the different stages of project development and defined roles and responsibilities to ensure timely and responsive actions between HPTE and CDOT to address common needs of P3 projects.

Details

The slide deck attached goes into additional detail on:

- Background
- P3 Manual Approach
- Organization of the Manual
- Chapter Summaries / Highlights
- Questions on the Manual
- Next Steps

Attachment

February 4, 2016 Draft of the CDOT/HPTE P3 Management Manual



COLORADO
Department of
Transportation



HPTE P3 Management Manual

Feb. 17, 2016



Agenda

- Background
- P3 Manual Approach
- Organization of the Manual
- Chapter Summaries/Highlights
- Questions on Manual
- Next Steps/Completion/Adoption of Manual

Background

- US-36 P3 Project HPTE's First Public-Private Partnership
- US-36 P3 Project Post-Evaluation and Audit Emphasized Capturing Best Practices/Guidance for Future P3 Projects
- P3 Management Manual Draft Developed by the RS&H-Led Team with Clary Consultants, in Partnership with HPTE, CDOT OMPD, and Public Information Staff, as well as Attorney General

P3 Management Manual Approach

- Focused on Higher-Level Guidance (More Detailed Guidance to be Project-Specific (Project P3 Feasibility Analysis, RFQ, RFP))
- Guidance includes Best Practices and Strategies to Capture 'Lessons Learned'
- P3 Management Manual Expected to be a "Living Document"

Organization of P3 Manual

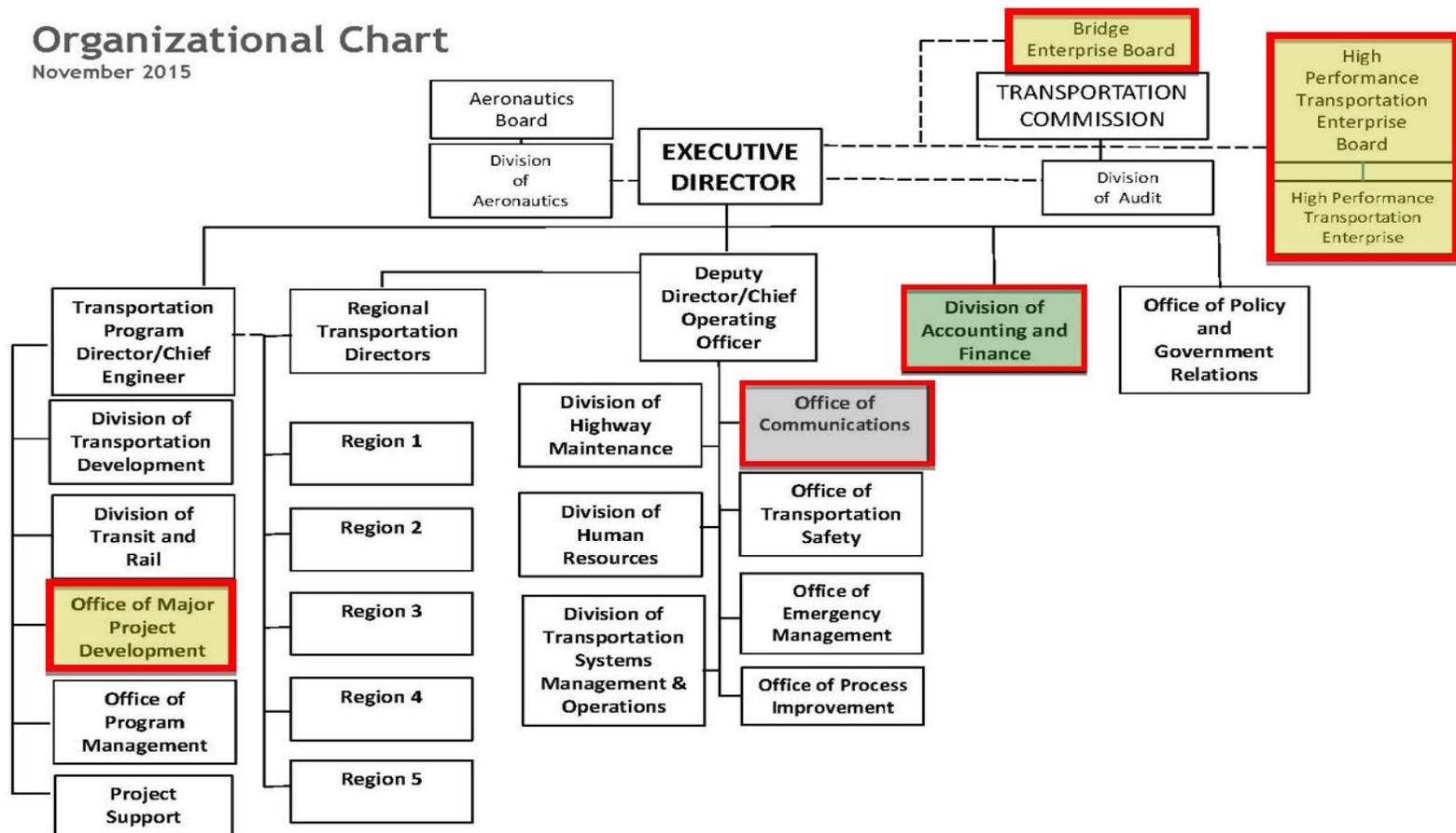
- Chapter 1 - Purpose and Goals
- Chapter 2 - P3 Program Development and Management
- Chapter 3 - P3 Project Planning and Development
- Chapter 4 - P3 Project Procurement
- Chapter 5 - P3 Project Implementation and Operations

Chapter 1 - Goals of the Manual

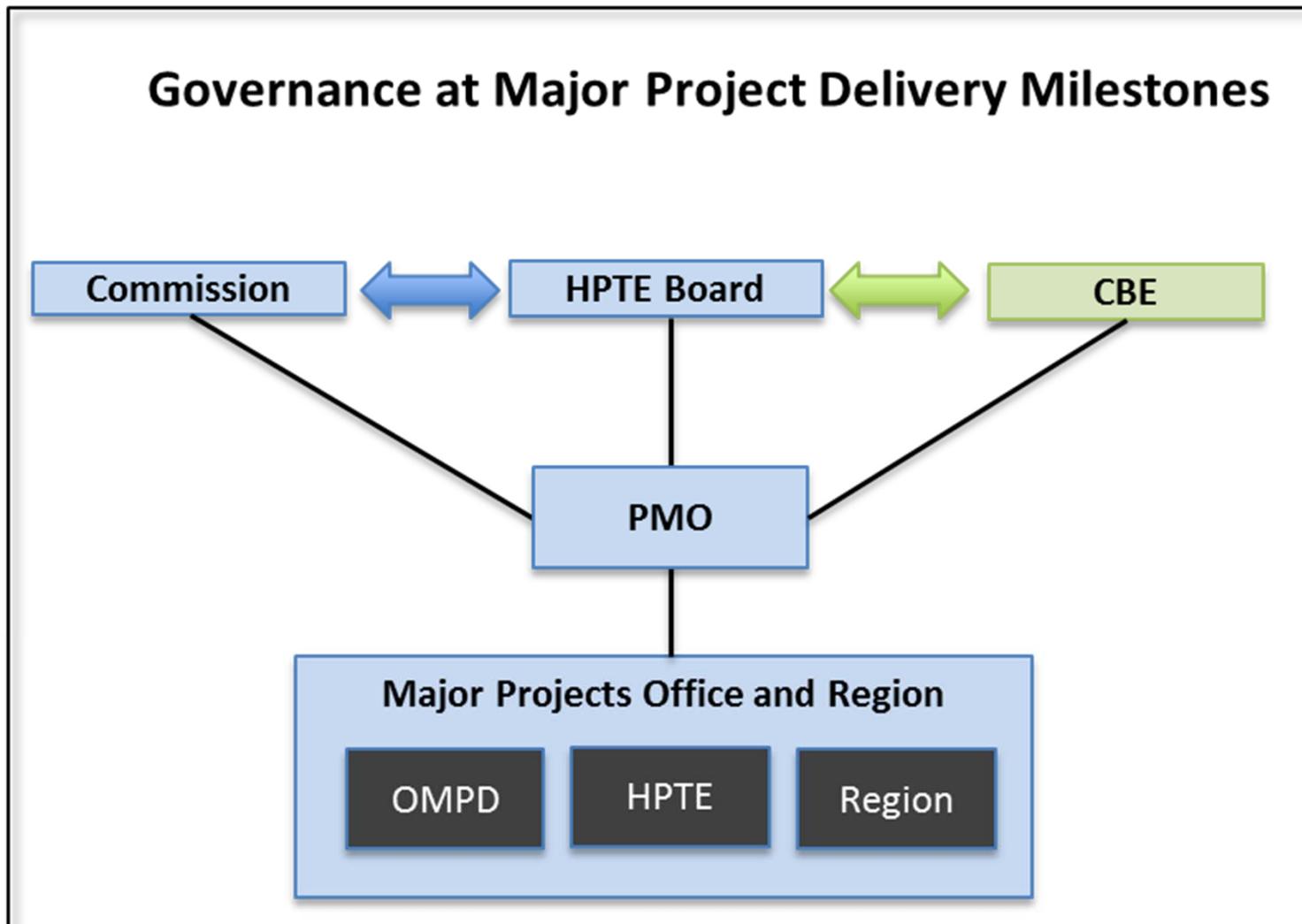
The P3 Manual will help HPTE and CDOT follow a consistent approach for selection of appropriate projects for the P3 delivery method and, once selected, optimize their efficiencies on accelerating projects through the P3 delivery method. By further defining roles and responsibilities, each team member will be able to take ownership of their responsibilities and ensure the appropriate personnel are being engaged at the proper time to help decision-makers make sound choices based on sufficient information in a timely manner, while addressing public concerns and transparency throughout.

Chapter 2 - Defines Roles and Responsibilities

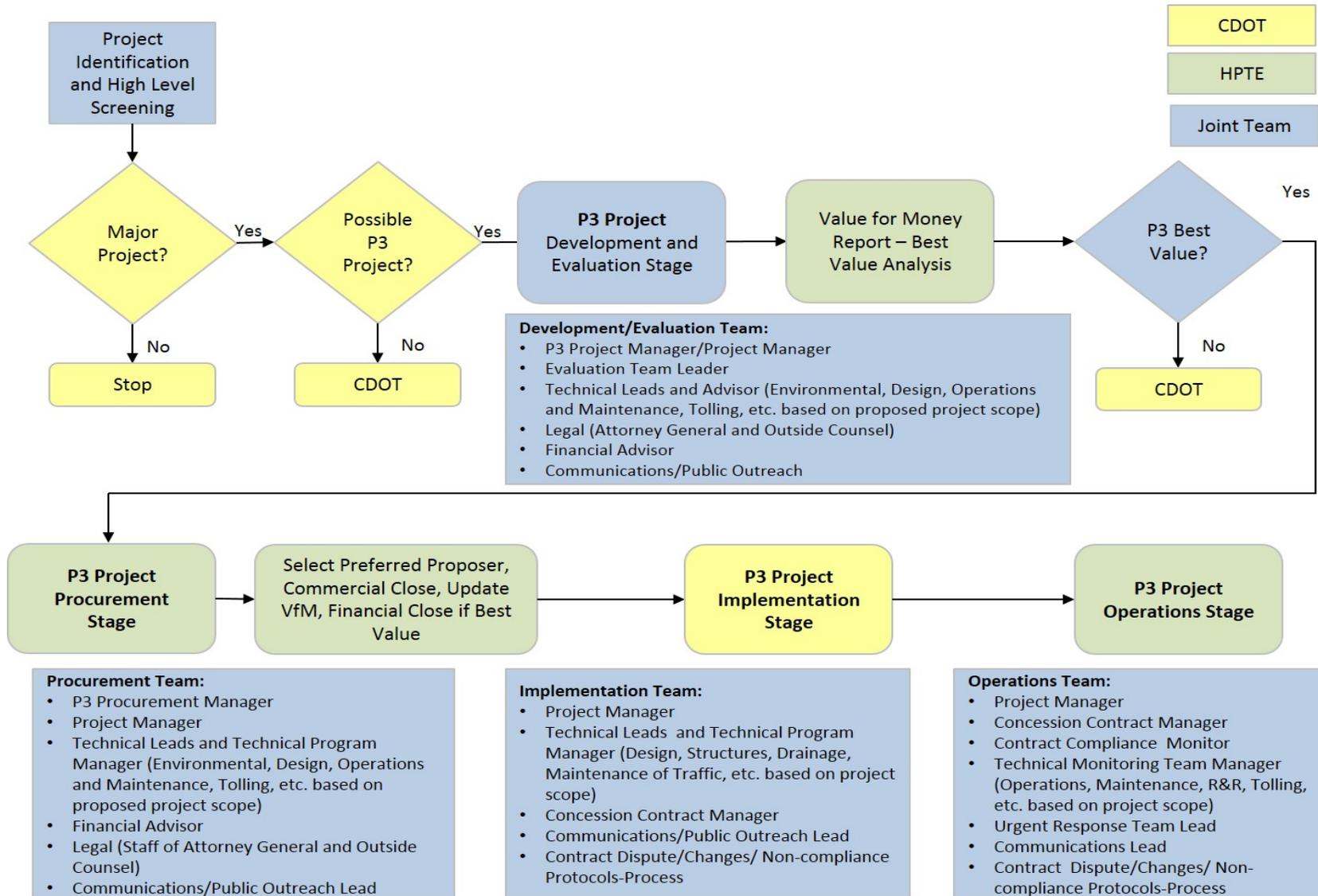
Organizational Chart
November 2015



Chapter 2 - Provides

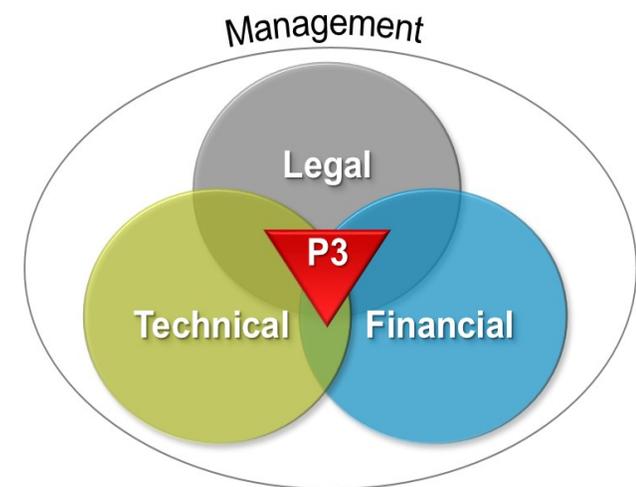
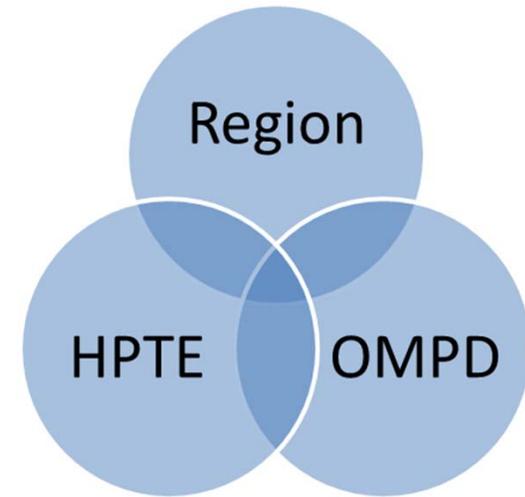


Chapter 2 – Provides P3 Process

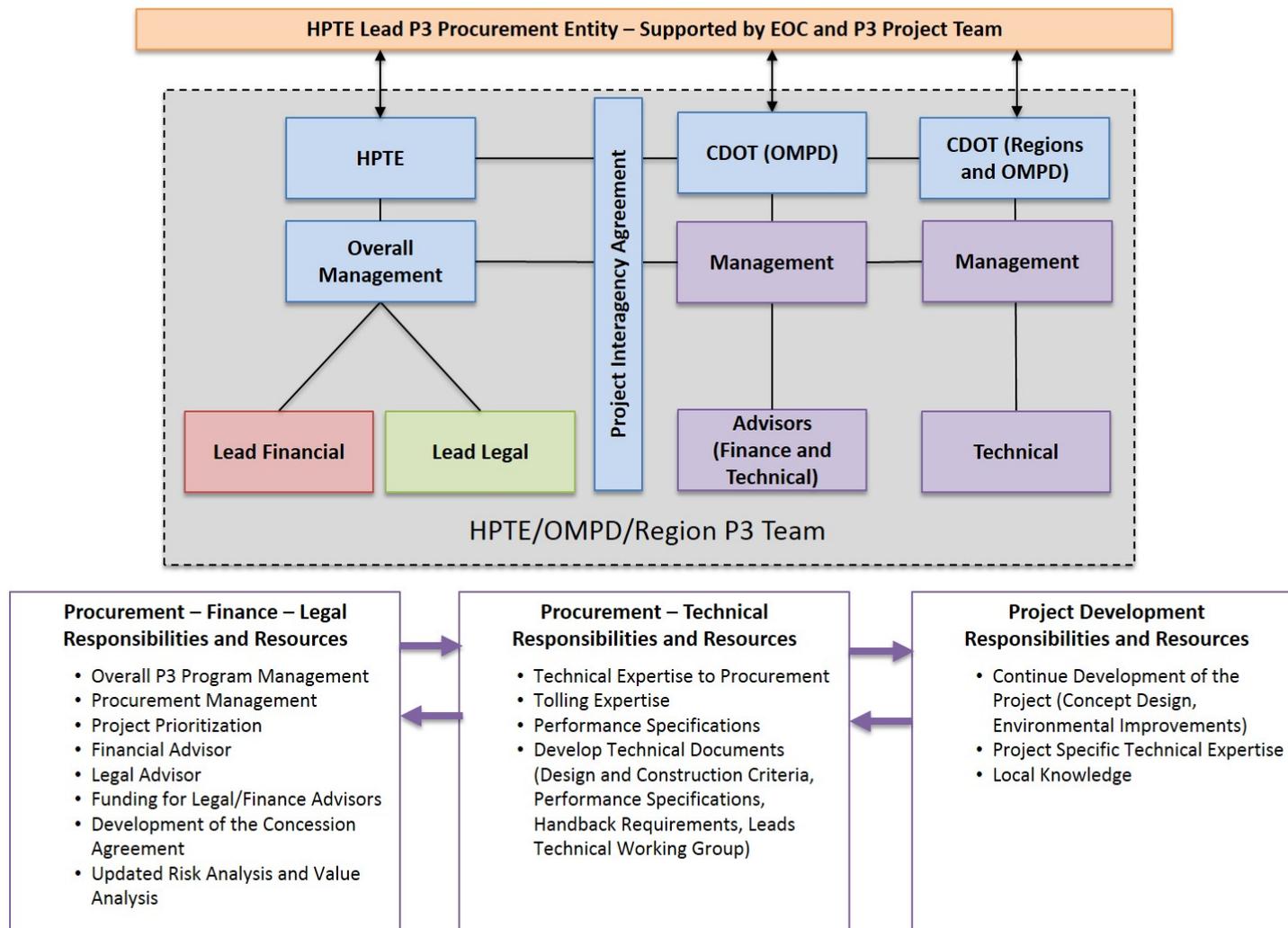


Chapter 3 – Provides Guidance on:

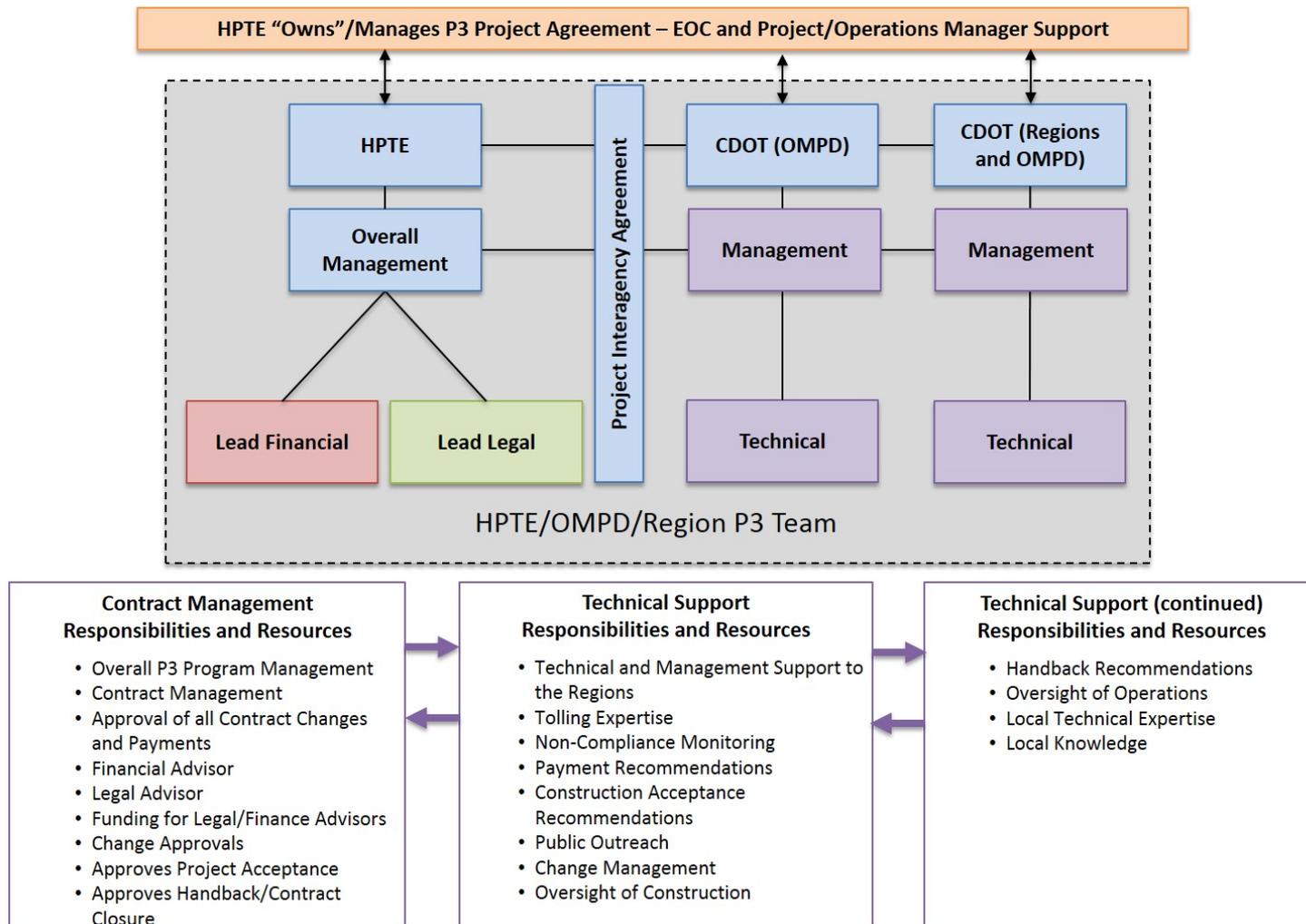
- The P3 Office 'flexible Linkages'
- Defines the P3 Team
- Feasibility of Project Delivery Approach (P3 vs Traditional)
- Initial Procurement Schedule, RFQ and RFP Development
- Project and Document Controls



Chapter 4 – Project Procurement Organization



Chapter 5 – Project Operations & Implementation Organization



Questions/Next Steps

- Comments/Questions on the P3 Management Manual - HPTE Board
- Final Updates to P3 Management Manual
- Adopting of P3 Management Manual - Planned for March HPTE Board Meeting
- Period Updates to the P3 Management Manual (Major Law Changes and Post-Evaluation of P3 Projects as Examples)

Colorado Department of Transportation

P3 Management Manual

High-Performance Transportation Enterprise

February 2016 (Draft)

Table of Contents

Table of Contents	1
I. Purpose and Goals	4
A. Purpose	4
B. Goal	4
C. P3 Defined.....	5
II. P3 Program Development and Management	6
A. Program Legal Direction and Policies.....	6
B. HPTE Mission/Goals.....	7
C. Program Organizational Chart/Decision-Making Authority.....	8
D. Overall P3 Process Chart.....	14
E. Identification of Potential P3 Projects	15
F. High-Level Screening of Potential P3 Projects.....	15
G. Priority Setting for Potential P3 Projects.....	17
H. Program-Level Public Outreach and Involvement Plan	17
I. Program-Level Resources and Periodic Resource Evaluation.....	18
J. Staff Training.....	18
K. Expertise Availability and Approach.....	19
L. Program-Level Procurement Policies	20
i. Unsolicited Proposal Process.....	22
M. P3 Program Transparency and Timing of Availability of Key P3 Program Public Records	23
N. P3 Records Management System	24
O. Conflict of Interest Policies and Review Process	25
P. Program-Level P3 Financial Policies	26
Q. Program-Level Funding and Project-Level Funding	27
R. Policies/Process for Dispute Resolution	27
III. Project Planning and Development (Pre-Procurement Phase).....	29
A. Decision-Making to Enter and Fund Project Planning and Development	29
B. Project-Level Organizational Chart.....	29
C. Decision-Making Authority, Roles, and Responsibilities and Key Decision Points ...	30
D. Identification of Team Needs and Contracts (Expertise Needed, Duration, Schedule, Funding, Contract Manger)	33

E.	Funding Partner Coordination.....	34
F.	Project and Document Controls.....	34
G.	Feasibility/Scoping of Project (Confirm Minimum Requirements).....	34
H.	Feasibility Schedule Development	35
I.	Risk Analysis.....	36
i.	Initial Risk Register Items.....	37
ii.	Risk Register Template.....	38
iii.	Risk Analysis Strategy.....	40
J.	Value for Money Analysis.....	40
K.	Procurement Goals/Guidelines	41
L.	Procurement Schedule Development.....	42
M.	Project-Level Public Outreach Plan	42
N.	Industry Outreach	44
O.	Report to HPTE Board and Transportation Commission.....	45
P.	RFQ Development	45
Q.	RFP Development	46
R.	Quality Assurance/Quality Control.....	49
IV.	Project Procurement Phase	50
A.	Commitment to Transparency.....	51
B.	Updating the Project Risk Assessment and Allocating Risk	51
i.	Risk Workshop(s).....	52
ii.	Risk Assessment	52
iii.	Updated Risk Analysis	53
C.	Schedule	53
D.	Two-Phase Procurement Process.....	54
i.	Finalizing the RFQ.....	55
ii.	Issuing the RFQ.....	57
iii.	Submission of SOQS.....	57
iv.	Evaluation of SOQs.....	58
v.	Shortlisting of Qualified Respondents	59
vi.	Developing the RFP.....	60
vii.	Selection and Award	68
viii.	Changes Prior to Execution of the P3 Project Agreement	69

- ix. Stipend Payment 69
- x. Protest Procedures 69
- E. Commercial Close 70
- F. Financial Close 70
 - i. Requests for Material Changes 71
 - ii. Failure to Reach Financial Close 71
 - iii. HPTE Acting as Conduit Bond Issuer..... 71
 - iv. Final Value for Money 71
 - v. Execution of Financial Close 71
- V. Project Implementation and Operations Phases 73
 - A. Organizational Chart/Decision-Making Authority 73
 - B. Program Organization, Roles, and Responsibilities..... 74
 - C. Project Management Team, Roles and Responsibilities..... 75
 - D. Technical Support 77
 - E. Project and Document Controls..... 77
 - F. Document Retention..... 78
 - G. Correspondence and Delivery 78
 - H. Serving Notices..... 78
 - I. Project Handoff Meetings..... 78
 - J. HPTE/CDOT Monitoring, Payments and Reporting..... 78
 - i. Milestone/Progress Payments to Private Partner..... 79
 - ii. HPTE/CDOT Monitoring Requirements 81
 - iii. Non-Compliance Monitoring Requirements and Payment Adjustments..... 81
 - iv. Claims Assessment and Processing..... 82
 - v. Third-Party Coordination..... 83
 - vi. Public Outreach..... 83
 - vii. Transition Plan Development for Operations..... 84
 - K. After Action Report for Implementation Phase 85

I. Purpose and Goals

A. Purpose

The High-Performance Transportation Enterprise (HPTE) Public-Private Partnership (P3) Management Manual provides a framework for both HPTE and the Colorado Department of Transportation (CDOT or “Department”) for the development, implementation, and oversight of P3 projects.

This manual addresses P3 program development and management, and walks through the different stages of project development and defined roles and responsibilities to ensure timely and responsive actions between HPTE and CDOT to address common needs of P3 projects. The manual is divided into five sections:

- 1) P3 Program Development and Management
- 2) Project Planning and Developmental/Pre-Procurement Phase
- 3) Project Procurement Phase
- 4) Project Implementation Phase
- 5) Project Operations Phase

The manual is meant to supplement existing laws, policies, and guidance already in place by CDOT for traditional projects and also by HPTE for P3 projects. The manual will not replace existing procedures for traditional projects, but is specifically addressing additional guidance and processes for P3 projects. The manual incorporates appropriate laws and applicable HPTE/CDOT policies, manuals, and guidance, and provides direction for the HPTE P3 Program and P3 projects that the HPTE Board approves to move forward. The manual is not meant to be all-inclusive and specific elements will need to be developed in more detail as P3 projects move forward. Each P3 project will include a project interagency agreement that provides project resources and may provide additional guidance for the P3 project. The interagency agreement will govern if there is possible confusion with guidance in the P3 manual. In addition, it is important that the P3 Manual become a living document that is periodically updated for law and policy changes, and at the completion of any phase of a P3 project for best practices and any lessons learned on a given project.

P3 projects are complex and each is unique. At times it will be necessary to implement specific guidance on a P3 project that is different than the guidance in the P3 Manual. This will be documented for that P3 project and if the different approach becomes practice, the P3 Manual will be changed at the next update. In addition, specific guidance will be provided for each P3 project in documents such as the Request for Qualifications (RFQ), Request for Proposals (RFP), and P3 Project Agreement that is much more detailed than the P3 Manual and specific to that P3 project.

B. Goal

The P3 Manual will help HPTE and CDOT follow a consistent approach for selection of appropriate projects for the P3 delivery method and, once selected, optimize their efficiencies on accelerating projects through the P3 delivery method. By further defining

roles and responsibilities, each team member will be able to take ownership of their responsibilities and ensure the appropriate personnel are being engaged at the proper time to help decision-makers make sound choices based on sufficient information in a timely manner, while addressing public concerns and transparency throughout.

C. P3 Defined

Under the Colorado Revised Statutes (CRS) HPTe is authorized to pursue P3s for surface transportation infrastructure projects. The CRS further defines the types of projects to include a highway, a bridge other than a designated bridge, or any other infrastructure, facility, or equipment used primarily or in large part to transport people on systems that operate on or are affixed to the ground. The P3 project scope includes multiple project elements, including those below, that will vary depending on the scope defined by HPTe in partnership with CDOT:

- Planning
- Design
- Engineering
- Construction
- Repair/reconstruction
- Maintenance
- Operations
- Financing

The P3 project agreement is between the public owner (HTPE) and the private partner that includes, but is not limited to:

- Acceptance of a private contribution to the P3 project in exchange for a public benefit concerning the project other than only a money payment.
- Sharing of resources and the means of providing P3 projects.
- Cooperation in researching, developing, and implementing the P3 project.

II. P3 Program Development and Management

The HPTE has outlined P3 Program goals and objectives to serve as a resource for innovative finance and P3s. This will allow careful due diligence that evaluates whether moving forward with the proposed P3 project based on preliminary analysis supports using the P3 approach as the best value. This section outlines the process for screening and identifying prospective major projects that might fit the P3 approach and the due diligence process that will be followed for presenting recommendations to the HPTE Board for decision-making prior to moving the project forward as a P3.

A. Program Legal Direction and Policies

In 2009, the General Assembly created the High Performance Transportation Enterprise (HPTE) in the Funding Advancement for Surface Transportation and Economic Recovery or “FASTER” Act [Section 43-4-801, et seq., C.R.S.]. The General Assembly specifically charged HPTE with the responsibility to seek out opportunities for P3s for the purpose of completing surface transportation infrastructure projects through any available means of financing that will allow the efficient completion of projects [Section 43-4-806 (1) (c), C.R.S.]. By statute, HPTE’s business purpose is to “pursue public-private partnerships and other innovative and efficient means of completing surface transportation infrastructure projects [Section 43-4-806 (2) (c), C.R.S.].” To accomplish that purpose, HPTE has authority to:

- Impose tolls and other user fees for the privilege of using surface transportation infrastructure.
- Issue revenue bonds secured by those tolls and fees.
- Contract with government and nongovernment sources for loans or grants to be used to support HPTE’s functions.
- Seek out and enter into public-private partnerships.

HPTE is a government-owned business established as a separate division within the CDOT. HPTE is an enterprise for purposes of Section 20 of Article X of the State Constitution (commonly referred to as “TABOR”), and accordingly is not subject to the revenue and spending limitations of TABOR as long as it receives less than 10 percent of its total revenues in grants from state and local governments. A seven member board of directors (the HPTE Board) oversees HPTE’s operations; four members are appointed by the Governor and three are appointed by the Transportation Commission. The HPTE Board appoints the Director and together, the HPTE Board and Director exercise powers and perform duties specifically given in statute.

In the “FASTER” Act that created the HPTE, the legislative intent expressed that innovation and flexibility be interpreted broadly to help facilitate moving key projects forward. As such, HPTE has flexibility in the development and procurement of P3 projects. To help guide this process the HPTE Board has adopted policies and also adopted key CDOT policies to

provide guidance for the implementation of the P3 Program. The below are rules and policies adopted by the HPTE Board as applicable to the HPTE that have been adopted, as periodically amended by the Transportation Commission. These rules and policies carry the same authority as law and must be followed at all times in the development and implementation of the P3 program. These sections and links are current as of September 2015 and should be verified from time to time on the CDOT intranet to ensure this is most current version of the applicable rule and policy.

This section outlines the legal direction for HPTE and the complete statutory language governing the HPTE can be found at the following links:

- [Colorado Revised Statutes](#)
- [Statute CRS 43-4-806 as of 2014](#)

The HPTE has adopted the following guidance for the HPTE Board that will be updated from time to time that should be reviewed as part of the P3 Program:

- [HPTE Articles of Organization](#)
- [HPTE Bylaws](#)
- [Mission Statement](#)

The P3 Program has the following directive process:

- Applicable federal and state laws must be followed at all times for the P3 Program and P3 projects.
- Rules have the same force as law and must be followed unless the rule is changed through the approved rule update process and policies can be adjusted by HPTE Board action. The below rules and policies directly related to the P3 Program and P3 projects adopted by the HPTE Board As of **September 2015** these include:
 - [HPTE Transparency Policy](#)
 - [Tolling Policy](#)
 - [Toll Enforcement Rules](#)
 - [Colorado Secretary of State](#)
- The HPTE by law is a part of the CDOT and part of the State of Colorado, however, as an “enterprise” the HPTE is provided broad flexibility to implement P3 projects. The rules, policies and procedures of the CDOT that have been adopted by the HPTE Board as applicable to the HPTE that must be followed for the P3 Program as shown in Attachment X, as of **September 2015**. These items should be checked from time to time on the CDOT intranet to ensure this is most current version of the rule and policy.

B. HPTE Mission/Goals

The following is HPTE’s mission:

“The mission of the Colorado High Performance Transportation Enterprise is to partner with local agencies, communities and private industry to seek out opportunities for creative means of financing and accelerating the delivery of multimodal transportation infrastructure projects.”

Identify Opportunities.

Develop Partnerships.

Provide Sustainable Alternatives.

Lead Innovative Financing.

Accelerate Program Delivery.

C. Program Organizational Chart/Decision-Making Authority

The overall organization for CDOT is shown below with the areas highlighted that are directly part of the efforts for the P3 Program and P3 projects. These include the primary offices of HPTe, Office of Major Project Development (highlighted in yellow), Division of Accounting and Finance (highlighted in green), and the Office of Communications (highlighted in grey)

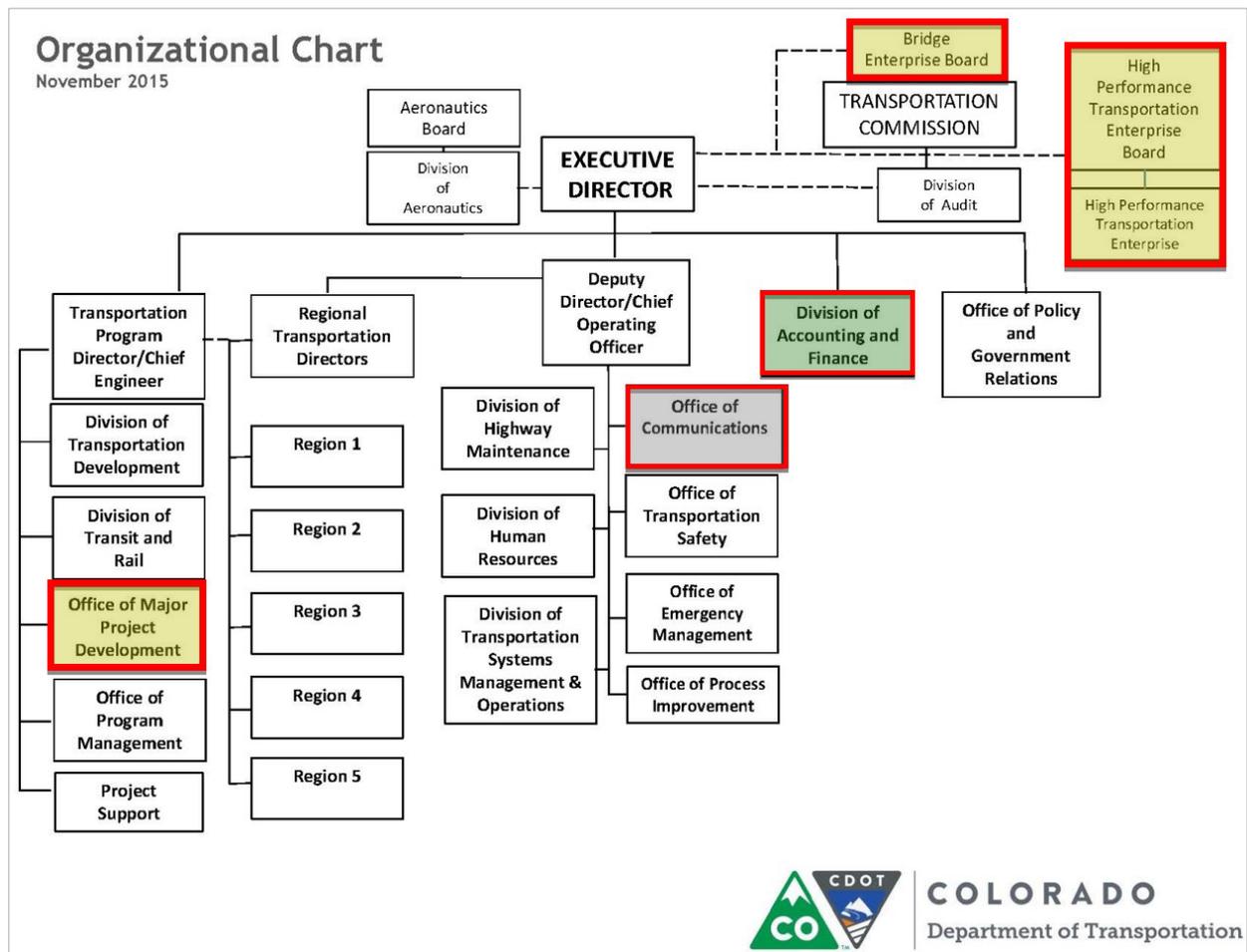


Figure 1 - CDOT Organizational Chart

It is important to always check for the latest organization chart at <https://www.codot.gov/about/CDOT-org-chart/view> as the organizational structure may be adjusted from time to time.

The organizational chart for the P3 Program relationships for major projects that become P3 projects is shown in Figure 2. The major policy boards and functional units include:

- Policy Boards
 - Transportation Commission – The Transportation Commission sets the overall policy for CDOT. Primarily related to major projects/P3 projects the Commission reviews and, if supported as the best approach, receives and/or approves:
 - Briefings on key projects
 - Approves moving a major project forward for consideration as a P3 in partnership with the HPTE Board
 - Approves CDOT funds allocated to the P3 Program and/or a P3 project
 - Approves agreements as needed for a P3 project, that CDOT is party to the agreement
 - Other items as required by the Commission as CDOT policy board related to a P3 projects
 - HPTE Board – Approves the project moving forward as a P3 and is briefed on major elements of the project process such as reviewing and, if supported as the best value for the state, receives and/or approves the key items shown below:
 - Approves the adoption of policies associated with the P3 Program
 - Briefings on issuing the Request for Qualification (RFQ) to begin the P3 procurement process
 - Briefing on the shortlist of proposers
 - Briefing on issuing the final RFP
 - Approves selection of the preferred proposer
 - Approves commercial close – signing the P3 project agreement
 - Approves financial close documents required for signature by the HPTE
 - Approves amendments to P3 project agreements
 - Receives briefings on major actions such as letter of interest for a Transportation Infrastructure Finance and Innovation Act (TIFIA) loan, serving as conduit bond issuer or other authorized actions associated with facilitating the financing for a P3 project
 - Receives briefing on accepting an unsolicited proposal
 - Approves toll rates or dynamic pricing algorithms
 - Approves other items associated with a P3 project as determined by the HPTE in coordination with the HPTE Director.
 - Colorado Bridge Enterprise (CBE) – Approves funding and/or financing for designated bridge projects that fall under the responsibility of the Bridge Enterprise. The HPTE Director will coordinate with the CDOT Executive Director and jointly present a proposal to the CBE for the CBE to participate in funding and/or financing for designated bridge projects that relate to a P3 project. The CBE Board will review the proposal and either approve or reject the proposal based on the best interest of the State and the CBE.
- Functional Units and Offices
 - Program Management Office (PMO) Governance Committee – The PMO Governance Committee (PMO) is composed of all major leaders in the

CDOT, including the HPTE Director. The PMO includes key activities associated with major projects and projects that move into the P3 arena such as:

- Serve as the “vetting organization” for key projects including receiving briefings from the Regions, OMPD and HPTE on key projects.
 - Discuss and with the assistance of the Region, OMPD and HPTE to review key projects that are brought forward for consideration as a major project that could move to the P3 approach.
 - When it is in the best interest of the state, the PMO will recommend to the CDOT Executive Director that a project should be designed as a major project and be considered for the P3 approach.
 - Consider and make recommendations related to CDOT regarding funding allocations for a major project in partnership with the Region Director where the major project is located. The recommendation for funding allocation will be made to the Executive Director and Commission.
 - In partnership with the Region Director and OMPD to develop policy and resolve policy questions related to technical aspects of P3 projects during all stages of a P3 project.
- CDOT Office of Major Project Development (OMPD) – The OMPD serves as an “internal consultant” for CDOT on projects that may be considered and ultimately are designated as a “major project.” Under a Memorandum of Understanding (MOU), the OMPD also serves as the technical advisor for the HPTE on P3 projects. The OMPD has expert resources in-house and via contracted resources related to:
 - Environmental reviews and approvals
 - Project management
 - Developing technical specifications such as design, construction, maintenance, and related elements associated with major projects
 - Tolling
 - Related technical elements associated with major projects
 - CDOT Division of Accounting and Finance headed by Chief Financial Officer (CFO) – While not shown on the chart, the CDOT’s CFO or their designee serves as a resource to HPTE for funding and finance aspects of major projects that move forward under the P3 approach. Typically, staff of the CFO will participate during the project development and procurement phases for the P3 project.
 - CDOT Regions – The CDOT Regions develop projects and may propose a project to the PMO for consideration as a major project. The regions will allocate funds that may be used for project development and later phases of the project in coordination with the Executive Director and in partnership with the PMO. If a major project is considered as a P3, the Region will lead the technical development of the project and rely on the HPTE and OMPD to run the due diligence process to determine if the project should be approved for moving forward as a P3 project. The Region will support HPTE’s/OMPD’s due diligence with cost estimating, risk assessments and cash flow information

needed for the HPTE's analysis. If the project is approved to move forward as a P3 project, the HPTE, in coordination with OMPD, manages the P3 process and serves in the role of "owner" of the project for the P3 process. The Region will lead the project for key elements, including:

- Project environmental review and approvals
 - Public communication related to environmental and technical elements
 - Technical lead in partnership with OMPD
 - Major team member in the P3 process and lead on technical elements in partnership with OMPD
 - Oversight of P3 project implementation (design-build) phase in partnership with OMPD/HPTE
 - Coordination on the oversight of P3 project operations phase in partnership with OMPD/HPTE.
 - Oversight of P3 project "handback" phase in partnership with OMPD/HPTE
- o HPTE – The HPTE has a small staff of experts and administrative staff that provide management and oversight for the P3 Program under the direction of the HPTE Board. The HPTE augments its resources with OMPD for technical expertise and contracted resources for legal, financial, and public outreach expertise. The HPTE partners with OMPD and the applicable Region on each project being considered as a major project as a resource to the Region with resources provided for the P3 project through a P3 project interagency agreement. Once the Commission designates a project as a major project to be considered for the P3 approach, HPTE assumes the leadership for the P3 aspects of the project in coordination with OMPD and the CBE (where applicable), including due diligence to determine if the project should move forward as a P3 project as the "best value" for the state. Should a project be deemed the best value as a P3 project, HPTE, in partnership with OMPD, CBE (where applicable) and the Region, leads the project procurement. HPTE "owns" the P3 project agreement upon execution and manages the P3 project agreement in partnership with OMPD and the Region once the project reaches commercial and financial close.

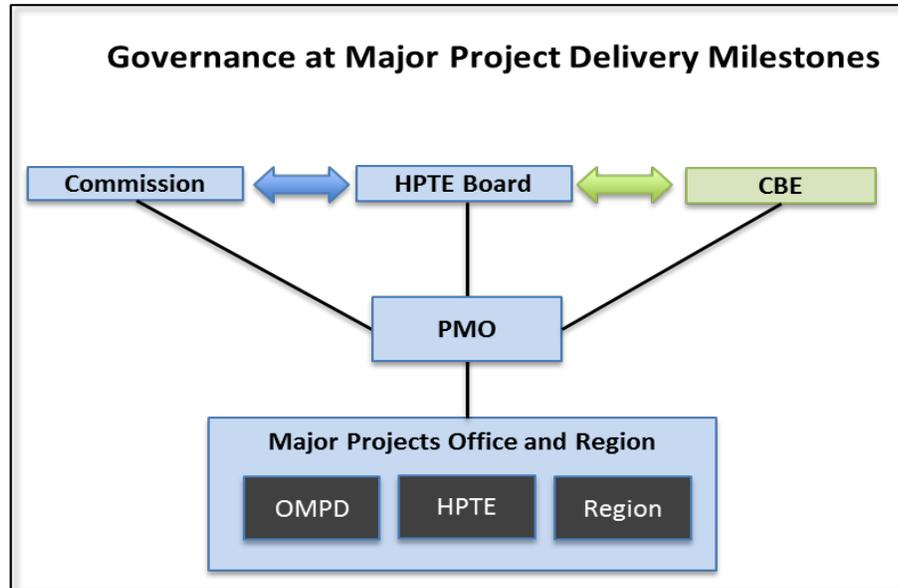


Figure 2 - Governance at Major Project Delivery Milestones

The following table provides general guidance on the differentiation of who leads and who supports certain activities. Upon adoption of this P3 Manual by the HPTE Board and the Transportation Commission, it shall amend and replace the MOU between HPTE and OMPD that outlines the key areas, as well as which leads and supports for each area.

Program / Project Phase	Description	Responsibilities and Resources (HPTE Eligible Projects Only)	
		OMPD	HPTE
Overall Program	<u>Management and Oversight:</u> Provide communications, overall administration and reporting of P3 Program	Support	Lead
	• Establish policies	Support	Lead
	• Provide strategic master planning	Lead	Support
	• Conduct program communications and marketing*	Support*	Lead*
	• Establish procedural guidelines and procedures*	Support*	Lead*
	• Conduct program-level budget planning and reporting	Lead (Commission)	Lead (Board)
Program Planning	<u>Management and Oversight:</u> Conduct initial feasibility, conceptual design, financial plan, initial environmental planning, delivery plan, ID and select projects, prioritization as major project and screening for P3 project	Lead	Support
	• Identify and prioritize potential projects	Lead	Support
	• Determine initial feasibility of potential projects	Lead	Support
	• Prepare conceptual project definition/scope/design	Lead	Support
	• Conduct Phase I T&R Study (revenue projections)	Support	Lead

	• Prepare conceptual cost estimates and scheduling	Lead	Support
	• Conduct environmental review (pre-NEPA)	Lead	Support
	• Prepare value-for-money analysis	Support	Lead
	• Prepare initial financing plan	Support	Lead
	• Engage industry (program info, initial interest)	Support	Lead
	• Conduct public engagement	Lead	Support
	• Conduct stakeholder engagement (local TR agencies)*	Support*	Lead*
	• Provide FHWA coordination and approvals	Lead	Support
	• Make P3 decision and prepare delivery plan	Support	Lead
Project Development	<u>Management and Oversight</u> : Conduct final feasibility, financing plan, NEPA, and preliminary engineering	Lead	Support
	• Provide overall project management	Lead	Support
	• Determine final feasibility of project	Lead	Support
	• Prepare preliminary project design	Lead	Support
	• Conduct Phase II T&R Study (revenue projections)	Support	Lead
	• Prepare preliminary cost estimates and scheduling	Lead	Support
	• Provide environmental clearance/approval (NEPA)	Lead	Support
	• Prepare value-for-money analysis	Support	Lead
	• Prepare final financing plan	Support	Lead
	• Engage industry (project information, RFI)	Support	Lead
	• Conduct public engagement (project specific)	Lead	Support
	• Conduct stakeholder engagement (local TR agencies)	Lead	Support
	• Provide FHWA coordination and approvals	Lead	Support
	• Develop project communications plan	Lead	Support
	• Develop project management plan	Lead	Support
• Make P3 procurement decision and define delivery plan	Support	Lead	
Project Procurement	<u>Management and Oversight</u> : Procure the project	Lead	Support
	• Provide overall project management	Lead	Support
	• Prepare solicitation documents (RFI, RFP, others)	Support	Lead
	• Prepare contract documents	Support	Lead
	• Prepare investment-grade T&R (revenue projections)	Support	Lead
	• Prepare final financial documents and requirements	Support	Lead
	• Prepare value engineering and technical requirements	Lead	Support
	• ATC reviews	Lead	Support
	• Coordinate procurement with industry bidders	Support	Lead
	• Review proposals and conduct evaluations	Support	Lead
	• Conduct public engagement (project specific)	Lead	Support
	• Conduct stakeholder engagement (local TR agencies)	Lead	Support
	• Provide FHWA coordination and approvals	Lead	Support
• Select winning bidder and negotiate contract	Support	Lead	
Construction	<u>Management and Oversight</u> : construct the project	Lead	Support
	• Provide contract management and administration	Lead	Support
	• Provide change management	Lead	Support

	• Provide budget management	Lead	Support
	• Provide financial reviews	Support	Lead
	• Conduct design reviews	Lead	Support
	• Construction oversight and quality audits	Lead	Support
	• Conduct final project acceptance	Lead	Support
M & O	<u>Management and Oversight: Operating the Project</u>		
	• Manage P3 project agreement and related contracts (incl. reporting)	Support*	Lead*
	• Toll collection	Support	Lead
	• Maintenance	Lead	Support

Figure 3 - Identification of Leadership and Support

*Denotes a change from the MOU

This manual will help provide guidance to help clarify what the lead role and support role means for the various categories as outlined in the chart above.

D. Overall P3 Process Chart

Each P3 project is unique in the project scope and also the expertise that might be required throughout the life of a potential P3 project. The leadership of OMPD, HPTE, and the Region, in coordination with the Executive Director, will partner to provide P3 project teams that bring together the most appropriate resources and skills for the applicable P3 project phase. In addition each phase may have different decision making hierarchy for major milestones and authorizations to continue as a P3 project. The chart below helps identify the key roles and responsibilities that occur throughout the life of a P3 project. Many of the steps of the project are shown as a joint responsibility that could be led by either HPTE or CDOT depending on the project and specific resources available and needed. It must be understood that many activities must overlap phases to continue the progress of the project and the procurement. The subsequent chapters in the P3 Manual outline in more detail the key roles and responsibilities at each stage of the P3 project.

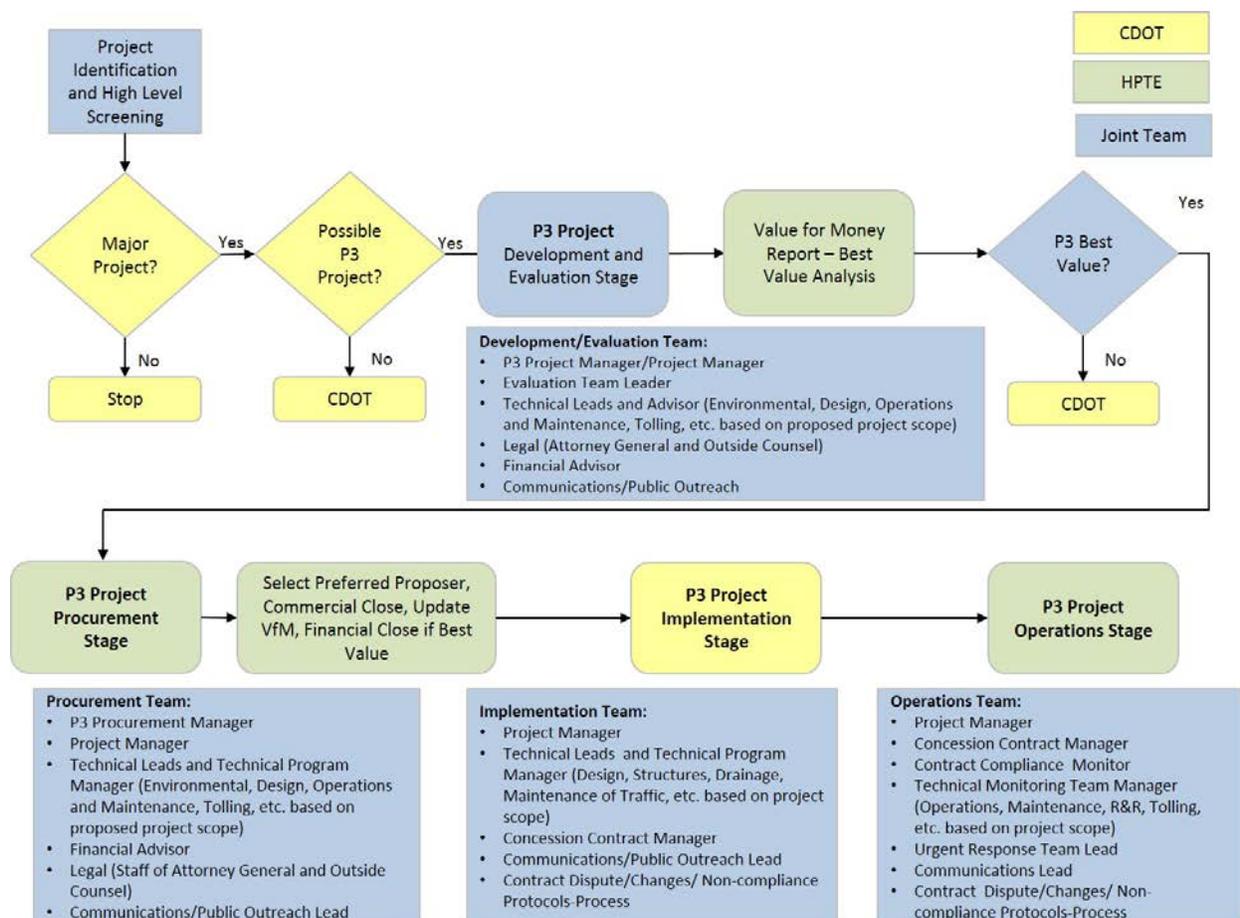


Figure 4 - Overall Process Flow Chart

E. Identification of Potential P3 Projects

As previously discussed, the CDOT Regions may bring projects forward for consideration as a major project for further evaluation by CDOT’s PMO and ultimately the Executive Director and Commission. Additionally, the PMO, Executive Director or Commission may bring a project forward as a major project in consultation with the applicable Region Director. The PMO and Executive Director will consult with the HPTE Director and Board to discuss the major projects to be considered for delivery through the P3 approach. Transportation projects that may not be owned by or being sponsored by the CDOT (such as a regional project) can be considered by the HPTE for a P3 approach provided the project falls within the jurisdiction of and meets the mission of the HPTE. Some of the factors to consider when identify projects and prioritizing them high level for screening may include those outlined in Section F. below.

F. High-Level Screening of Potential P3 Projects

The joint team of HPTE and OMPD, under the leadership of the OMPD, will provide a very high level screen of the list of major projects provided by the PMO for consideration for

delivery under the P3 approach. Although OMPD leads the overall efforts in project screening, HPTE will be making the recommendations (or approvals) of projects to move forward as a P3 in partnership with OMPD. The screening process will determine at a high level whether the project should be considered for prioritization and detailed due diligence for delivery as a P3 project, or eliminated from consideration as a P3. Projects that appear to warrant moving to the P3 Project Development phase will be recommended to the Executive Director and with concurrence to the Transportation Commission and HPTE Board for consideration as a P3 project. Some key elements to consider at the screening level include:

- Size of the project
 - Does the project size justify being considered for the P3 approach?
 - Generally, projects need to be a minimum of \$100 million in size to be considered a major project that warrants consideration for delivery under the P3 approach.
- Challenging project funding
 - Does the project have all funding identified in CDOT's Work Plan?
 - If so, the project might be more appropriate for a design-build approach instead of a P3.
 - Does the project generate revenues and if so, have these been forecasted at a preliminary level?
 - If the funding is identified over a long-term, such as ten years or longer in the cost feasible Long-Range Transportation Plan, or there are challenges finishing out the funding plan that equity or tolling could help solve, then this might warrant evaluation as a P3 project.
- Project complexity or uniqueness
 - Does the project include challenging elements that innovation and/or a life-cycle approach can help solve?
 - Combining phases such as design-build-operate-maintain are areas where P3 projects can be helpful.
- Project is broken up into multiple projects (accelerating improvements/project efficiencies)
 - Is the project being broken up simply due to funding challenges, which costs more, increases coordination challenges, and is more disruptive to the public?
 - If so, combining the project into a larger P3 may be an option.
 - If the project was done as a P3 would it free up funding for other projects that may not be viable as a P3?
- Environmental review process is underway or cleared
 - Has the project received environmental approvals or the environmental review stage is underway and can be completed in a reasonable time?
- Project risks
 - Are there risks that a P3 model could help transfer to the private sector for a long term agreement?

G. Priority Setting for Potential P3 Projects

When the initial screening is provided and there is more than one candidate P3 project under consideration by the HPTE, the HPTE Director will consult with CDOT's Executive Director, PMO and HPTE Board to set priority for the candidate P3 projects. Key items to consider include:

- Production readiness
 - What is the current production phase for the project?
 - Projects that have environmental approvals and required right-of-way in hand will generally receive a higher priority.
 - Projects that are in the later stages of the environmental review process will also receive consideration.
 - Acknowledgement, status and magnitude of any known project risks. This could include a project requiring extensive environmental mitigation, or high potential for encountering contamination. These examples may require long lead times to investigate and develop solutions that could be difficult to simply transfer to a private party therefore they could carry risk for a procurement as well as a risk of poor value to the Owner if the risk is transferred without fully understanding it.
- Relative benefit to the travelling public
 - What are the safety challenges, traffic levels, and congestion periods, and what benefit does the project provide to improve safety, relieve congestion, and provide options/choices for the travelling public?
 - Projects that provide a major benefit will receive a higher priority.
- Funding status
 - Has a preliminary funding plan been identified for the project under a P3 approach?
 - Projects that show a preliminary "path" for reaching financial close as a P3 project will generally be given higher priority.
 - This is not all inclusive as part of the mission of the HPTE is to help solve funding challenges.

H. Program-Level Public Outreach and Involvement Plan

By nature, P3 programs and projects require more public outreach and a comprehensive involvement plan. Each P3 project will have unique project characteristics, possibly the CDOT Region, the location, and interested parties. The HPTE Director will provide a comprehensive P3 Program-level public outreach and involvement plan (P3 Public Outreach Plan) in coordination with the HPTE Board, the CDOT Office of Communications and OMPD. The P3 Public Outreach Plan will be updated periodically based on feedback and periodic assessments of best practices and updates included in the revised P3 Public Outreach Plan. The P3 Public Outreach Plan will be included on the HPTE internet site and updated as changes are made to the Plan.

The P3 Public Outreach Plan will include key elements, such as:

- Key focus groups for outreach – The Plan will identify the key groups, including applicable elected officials, interest groups, and others.
- Key public outreach approaches and mediums – The Plan will identify the major approaches such as public meetings, official briefings, written materials, posting to the website, other forms of social media, and the overall delivery approach for the Plan.
- Plan implementation – The Plan will be put into action and delivered by appropriate officials, staff, and consultants.
- Evaluation of the Plan – The HPTE should maintain records of materials used for the Plan, meetings held, attendees, questions and responses, and other feedback on the Plan. This should be used to evaluate the effectiveness of the Plan and the results provided to the HPTE Board at least every other year and also utilized to update the Plan at the next update cycle, or more frequently as needed.

I. Program-Level Resources and Periodic Resource Evaluation

Annually, the HPTE Director will evaluate the resource level being provided in support of the P3 Program. The HPTE Director will coordinate with the CDOT Executive Director and PMO on the evaluation of resources to ensure that all aspects of the P3 Program are considered, evaluation and addressed. The HPTE Director will provide a resource update to the HPTE Board and the CDOT Executive Director at least once each year. The resource review will consider the number of P3 projects in operation, implementation, procurement, and due diligence. In addition, the HPTE Director will consider resources being provided as a consultant to CDOT under the Fee for Service Interagency Agreement to assist as an advisor for CDOT on innovative finance and consideration of projects as a possible P3 project. The resource review will consider the HPTE and CDOT in-house and consultant resources allocated to or available to the P3 Program to ensure that all elements of the P3 Program are addressed.

J. Staff Training

P3s are still new to the United States. As such, there is not “standard” training similar to engineering standards or other well established disciplines and standards. As such, it is important that staff training for the P3 Program be developed with a wide range of approaches and activities, and the training program be updated on an annual basis as the availability of training on P3s is changing each year. Some key areas to consider for inclusion in the P3 Program staff training:

- Federal Highway Administration (FHWA) Office of Innovative Program Delivery – The FHWA was directed by Congress to develop a range of P3 materials, including manuals, training, and related materials to assist the states in the consideration and implementation of P3 programs. In addition, FHWA through the Office of Innovative Program Delivery and the Colorado Division Office can set up special workshop sessions on key topics based on requests by the CDOT. The FHWA materials can be accessed here: www.fhwa.dot.gov/ipd/p3/.
- Conferences – Various conferences are held across the United States that focus on key aspects of P3 programs and case studies of P3 projects. It important to vet the

scope of the conference program to ensure the topics are useful to the staff. Most conferences provide affordable registration fees for public sector participants.

- Partnering with other states – States that have experience in P3s are often open to partnering with other states to share knowledge, experience, and best practices on P3 programs and projects. This can be accomplished through assistance from AASHTO, FHWA, or by reaching out directly to the other states. As of 2015, the following states had a P3 project in operation, implementation, and/or procurement for major rehabilitation/capacity improvement P3 projects:
 - Alabama (private toll road P3)
 - Arkansas (design-build-finance or DBF)
 - California (concession)
 - Florida (DBF and concession)
 - Georgia (DBF)
 - Indiana (concession)
 - Maryland (concession)
 - Michigan (DBF)
 - New York (Port Authority – concession)
 - North Carolina (DBF and concession)
 - Ohio (concession)
 - Pennsylvania (concession)
 - Virginia (concession)
 - Texas (concession)
- Peer exchanges – Canadian provinces have extensive experience with P3 programs and projects as well as other countries in Asia, Australia, Europe, and South America. Peer exchanges can be helpful to learn from countries that have been in the P3 space much longer than the United States to allow for forward planning for areas such as operations and maintenance and handback. In many cases FHWA, AASHTO, TRB, and other organizations can help facilitate peer exchanges.
- Topic-specific training – Topic-specific training can be provided from expert consultants available to the HPTE and CDOT that provide more detailed guidance on major topics related to technical, financial, and legal areas for the P3 Program.

K. Expertise Availability and Approach

It is the direction of the Commission and the HPTE Board that the in-house staff level of the OMPD and HPTE remain small and that expertise and resources be augmented from expert consultant resources. In addition, the in-house legal resources are provided by the Office of the Attorney General. The following expertise will be provided for the P3 Program:

- HPTE expertise
 - In-house
 - Director
 - Project Managers (may be more than one depending on resource needs)
 - Communications (shared with the CDOT)
 - Office Manager/Board Secretary

- Consultant expertise
 - Financial
 - Legal
 - Insurance Advisors
 - Public outreach
 - Contract monitoring
- OMPD expertise
 - In-house
 - Director
 - Environmental
 - Project management
 - Toll services
 - Consultant expertise
 - Broad based technical (this can be in one group or individual consultant services)
 - Environmental
 - Design
 - Construction
 - Operations
 - Maintenance
 - Project management
 - Toll services
 - Financial
- Office of the Attorney General
 - In-house legal services

L. Program-Level Procurement Policies

The HPTE is exempt from state procurement laws, policies, and guidance. This is to allow flexibility to implement P3 projects in the most efficient and cost effective manner. This Manual and the P3 process are designed to meet Federal procurement requirements and the HPTE Director and OMPD Director will partner with the FHWA Division to ensure the P3 procurement process meets applicable Federal requirements on projects that include Federal funds and/or part of the Federal-aid highway system. The HPTE has instituted policies and practices in the US 36 P3 project and the Central 70 P3 project. Key elements of these policies that will apply at the P3 Program level and accordingly apply to each HPTE procurement:

- HPTE Board approval – The HPTE Board must be briefed at key points and approve the major decision points in the procurement process, including:
 - Briefing on a candidate P3 project moving forward into the procurement process
 - Briefing on the RFQ and RFP
 - Briefing on the short-list
 - Approve the selected preferred proposer
 - Approve the P3 project agreement at commercial close

- Financial close (as applicable such as the P3 project agreement requires an amendment for financial close and any financing documents required for financial close that HPTE is a party to the agreement such as serving as a conduit for private activity bonds)
- Public outreach – At a minimum, public outreach will be conducted prior to moving into procurement, after selection of the preferred proposer, and prior to financial close. In general public outreach should consider the timeliness of educational messages to ensure the public understands why P3's are being considered and the benefits that they will achieve.
- P3 Project Manager – A P3 Project Manager will be assigned to serve as P3 Project Manager prior to procurement. The P3 Project Manager will be responsible for all aspects of the procurement under the direction of the HPTE Director and OMPD Director.
- Two-step procurement process – Generally P3 procurements that are solicited by HPTE will involve a two-step procurement process comprised of the below steps. However, in some instances the P3 project may warrant less or more steps as determined jointly by the HPTE Director and the OMPD Director in coordination with the CDOT Executive Director.
 - RFQ – The RFQ stage involves the P3 Project Team preparing and HPTE issuing an RFQ that outlines the key qualifications that must be met by the private teams interested in proposing on the P3 project procurement. The private teams will submit a Statement of Qualifications (SOQ) in response to the RFQ. The P3 Project Team will lead the evaluation of SOQs and recommended shortlisting to move into the next step.
 - RFP – The RFP stage involves the P3 Project Team preparing and HPTE issuing an RFP that outlines the instructions to proposers, technical provisions, draft P3 project agreement, and related documents and exhibits. The shortlisted proposers will provide a proposal in response to the RFP. The P3 Project Team will lead the evaluation of the proposals.
- Team approach – Each procurement effort shall be a team approach that includes HPTE, OMPD, the applicable Region for the P3 project (or other entities if they are the project originator/sponsor), CDOT CFO, Attorney General, State Controller, funding partners (if other than the CDOT and HPTE), FHWA, and expert technical, financial, and legal advisors. The P3 Project Manager, working with the HPTE Director and OMPD Director, shall develop sub-teams or 'P3 Project Teams' as needed for major elements of the procurement.
- Office of the Attorney General – In coordination with the HPTE, staff of the Attorney General lead the legal review for all documents to be signed by the HPTE, including the P3 project agreement. The Attorney General will be assisted by expert legal advisors available to the HPTE.
- State Controller – The State Controller must approve and sign all contractual documents associated with the procurement, including the P3 project agreement.

i. Unsolicited Proposal Process

The HPTE legal authority allows for the submission of unsolicited proposals. As a general policy, HPTE **would prefer to use a solicited procurement process** as this provides an efficient and effective procurement process with more probable outcome for both the public sector and the interest industry participants. However, this is not to say that unsolicited proposals will not be considered. Interested industry participants are encouraged to meet with the HPTE Director to discuss ideas in one-on-one sessions prior to submitting an unsolicited proposal.

Should the HPTE receive an unsolicited proposal, the following guidelines are outlined with more detailed direction contained in the CDOT and HPTE interagency agreements. The detailed guidelines will govern for any conflicts between the detailed guidelines and the P3 manual.

- The HPTE Director will provide the unsolicited proposal to OMPD and the applicable Region Director where the project is located for review. The review will use similar criteria as those outlined in the previous high-level Screening of Potential P3 Projects section for the initial screening.
- The assigned P3 Project Manager with input from the CDOT PMO and the Region Director for the region where the unsolicited proposal project is located, will make an initial recommendation to the HPTE Director and CDOT Executive Director to either reject the unsolicited proposal or perform more due diligence. This initial recommendation should generally be made no later than 45 days after receipt of the unsolicited proposal by the HPTE.
- The HPTE Director may require that an additional fee, beyond the mandatory \$1,000 be paid by the private team that submits the unsolicited proposal to cover the cost of providing the due diligence review of the unsolicited proposal. If a fee is requested in writing by the HPTE Director and the unsolicited proposal Team fails to pay the fee the HPTE Director will return the unsolicited proposal without further consideration.
- If the HPTE Director in coordination with the CDOT Executive Director decides to reject the unsolicited proposal, the HPTE Director will provide a written notification of rejection of the unsolicited proposal to the submitter.
- If the recommendation is to continue with due diligence of the unsolicited proposal the HPTE Director in coordination with the CDOT Executive Director will present the recommendation to the Transportation Commission and HPTE Board to move the unsolicited proposal forward as a proposed P3 project for additional due diligence to determine if the P3 approach is the best value for the project. The HPTE Director will notify the unsolicited proposer in writing that the project is moving to the more detailed due diligence stage. This notice should generally be delivered no later than 120 days after submittal of the unsolicited proposal.
- If the due diligence supports the P3 project as the best value and the HPTE Director and CDOT Executive Director concur, HPTE will authorize an advertisement for open competition for a time period determined by the HPTE Director in coordination with OMPD and the CDOT Executive Director based on the size and complexity of the project. The time period for advertisement will generally be not less than 30 days

and, after receipt of any other proposals, the P3 Project Team will evaluate all proposals and recommend the preferred proposer as the best value proposal to the HPTE Board

- Under no circumstances is the HPTE required to accept the unsolicited proposal. The HPTE may discontinue the process at any point prior to commercial/financial close when determined in the best interest of the state.

M. P3 Program Transparency and Timing of Availability of Key P3 Program Public Records

Transparent processes and open records are fundamental to successful P3 projects and procurements. Transparent processes help stakeholders and the public understand the complexity of these projects and the types of risks that will be transferred to the private sector or retained by the public owner/agency. Transparent processes also eliminate conflicts and misunderstandings and ensure an attractive environment for private investors and government partners. To that end, the General Assembly specifically required HPTE to be subject to the Colorado Open Records Act (CORA) [Section 43-4-809 (2) (b), C.R.S.]. The CORA [Section 24-72-201, et seq., C.R.S.] makes most of HPTE's documents and information, with some exceptions outlined in law, subject to disclosure as public records. In addition, the HPTE has adopted a CORA Policy relating to Public-Private Partnerships. In the case of any conflicts or confusion of the P3 manual and the CORA laws and HPTE CORA policy the law and policy will govern.

- P3 projects and procurements involve an enormous variety of documents and information of interest to stakeholders, including legislators, the public, local governments, and private sector proposers. The following example documents, created as part of the P3 Program and procurement process, are public records under CORA including:
 - **Minutes and documents** provided at HPTE Board meetings will be published to the HPTE website within a reasonable time after each Board meeting.
 - **Initial project value analysis** and any subsequent updates that evaluate the feasibility of pursuing a P3 project compared to a conventional public sector approach will be published to the HPTE website after presentation and acceptance by the HPTE Board. Updates to the project value analysis will be published to the HPTE website after presentation and acceptance by the HPTE Board.
 - **Key procurement documents prepared by HPTE**, such as the RFQ, initial and final RFPs, shortlists of the prospective bidders, and selection of the preferred bidder will be posted to the HPTE website when approved and/or issued publically by the HPTE Board.
 - **Qualifications and proposals submitted by the prospective bidders**, which include the bidders' detailed proposals in response to the RFQ and RFP, are subject to being released publically during the procurement process except for items that are marked as not subject to disclosure under CORA. All public information will be maintained by HPTE staff for up to six years after contract expiration and will be readily available for public inspection in either

electronic and/or paper file, based on the media format that is most efficient. After that point the HPTE staff may archive the materials as “public” and “confidential” in accordance with standard CDOT policies and procedures.

- o **Commercial and financial closing documents**, which include the contractual and financing agreements executed between the state and the selected bidder, except for those documents or portions of documents protected from release by law, will be posted to the HPTE website. The P3 project agreement on the website will be updated as amendments are executed on the P3 project agreement. All public information will be maintained by HPTE staff for up to six years after financial close and will be readily available for public inspection in either electronic and/or paper file, based on the media format that is most efficient. After that point the HPTE staff may archive the materials as “public” and “confidential” in accordance with standard CDOT policies and procedures.
- o **Major monthly monitoring reports and related documents** that are generated by the private partner and HPTE during the design-build and operation-maintenance stages of the P3 project will be posted on the HPTE website.
- As part of each procurement effort for a P3 project, the HPTE will notify the proposers of the following requirements in the RFQ and RFP:
 - o All information provided by proposers is subject to and will become public records in accordance with the HPTE Transparency and HPTE CORA Policy as well as CORA.
 - o Confidential commercial and financial information and trade secrets may not be public records. However, proposers have the burden of proof for establishing what information is confidential and must proactively identify this information and be prepared to defend against release if the CDOT/HPTE requests the information be made public record.
- The HPTE will consult with the Office of the Attorney General on any questions that arise about whether P3 Program documents may be public record prior to the release of any documents that a proposer or private partner asserts is confidential.

N. P3 Records Management System

Colorado Revised Statutes outline specific records management requirements to ensure agencies have adequate systems to maintain and manage their records for the purpose of providing public access and for conducting business and managing operations. Specifically, Section 24-80-102.7(2)(a), C.R.S., requires that “each state agency shall establish and maintain a records management program for the state agency and document the policies and procedures of such program.”

In accordance with CDOT Procedural Directive 51.1, the HPTE has identified the HPTE Office Manager as the HPTE records coordinator who, among other duties, (1) works with the CDOT’s Official Records Custodian on records retention and disposition requirements, (2) completes a “Record Analysis Sheet” that lists the types of documents retained and the state or federal statute requiring retention, and (3) advises the Official Records Custodian of

any documents not included in existing records retention schedules and develops a schedule for those records.

The HPTE Records Coordinator, in coordination with the HPTE Director, has created Attachment A (HPTE State Archives and Public Records Disposition Schedule) to the P3 Manual that outlines the requirements for records management for the P3 Program. This includes the identification of the follow major items:

- Contractor Proposal and Supporting Documents Procured by HPTE
- Concession Agreement(Contract) and Supporting Documents
- Project Monitoring Files applicable to P3/Toll Projects
- Project Monitoring Files applicable to Other Projects

O. Conflict of Interest Policies and Review Process

It is critical that conflicts of interest be prevented for the P3 Program and if encountered, dealt with in a timely manner. It is impractical to address all potential individual conflicts of interest that might arise over time in the P3 Manual. However, there are certain elements that can be generalized here that include:

- Employees of the HPTE/CDOT are expected to be aware of and shall follow applicable laws and policies related to conflicts of interest both during employment and post-employment.
- In the future, no firm and/or individual may advise the HPTE or CDOT on a P3 project that is also an integral member of a proposer team on the same P3 project, such as an equity owner, design-build joint venture member, lead operations, lead maintenance team member, or lead advisor for the equity owners such as technical, financial, or legal advisor, In the case of any situations that existed prior to this manual, HPTE shall ensure appropriate firewalls are in place to ensure that a team that participated as an integral member of a the private partner team on a P3 project are not reviewing work performed as part of the P3 project and to avoid any sensitive information being shared regarding contract language, pending claims or other information that would jeopardize HPTE's ability to ensure there are no conflicts of interest on the applicable P3 project.
- All firms and/or individuals that perceive a real or potential conflict of interest shall promptly notify the HPTE Director in writing via e-mail or certified mail.
 - Cases will be examined on a case-by-case basis in collaboration with the Attorney General's Office.
 - To ensure a timely review and response, the firm and/or individual will outline the real or perceived potential conflict of interest in their notice to the HPTE Director. The HPTE Director may request follow up information as needed. In the submittal, the firm and/or individual agree to abide by the decision of the HPTE Director on the question of whether a conflict of interest exists or not.
 - The HPTE Director and OMPD Director will review the information within 10 days of receipt.
 - The HPTE Director will notify the firm and/or individual of the HPTE's decision.

P. Program-Level P3 Financial Policies

The HPTE is an “enterprise” for purposes of section 20 of Article X of the State Constitution, so long as it retains the authority to issue revenue bonds and receives less than 10 percent of its total revenues in grants from the State and local governments. The HPTE has the ability to implement tolls, serve as a conduit bond issuer, facilitate finance options, and pass through grant funding as appropriate. Some major program-level financial considerations are outlined below:

- The HPTE may submit a letter of interest to US DOT for an allocation of private activity bond (PAB) capacity for an eligible project as part of the P3 procurement effort.
 - The amount of the PAB allocation will be determined in consultation with US DOT based on the availability of PAB capacity and interaction with the prospective proposers at the industry forum, one-on-one sessions, advice from financial advisors, and other related information.
 - All debt incurred by the private partner on P3 projects shall be non-recourse to the HPTE and the State.
 - The HPTE is open to serving as the conduit bond issuer for bond issues in support of P3 projects. To do so, the following major elements shall be met:
 - The private partner in the P3 project will express in writing they desire for the HPTE to serve as a conduit bond issuer for the applicable P3 project.
 - The HPTE and State shall not be liable for conduit bonds issued and shall be indemnified by the private partner in the P3 project against any cost that may be incurred as part of the bond issue. All offering documents and bonds issued shall bear a statement on their face that the HPTE and the State are not liable for the bonds.
 - The conduit bond issue will be the best value for the State as demonstrated by the financial model presented by the private partner on the P3 project.
 - All applicable costs of the bond issue are the responsibility of the private partner, including any cost incurred by HPTE for the bond issue.
- The HPTE may submit a letter of interest to the US DOT for availability of a TIFIA loan for a P3 project and/or may be the applicant in select instances for the TIFIA loan. The HPTE will operate under the following guidelines for TIFIA loans where HPTE is providing the option of a TIFIA loan to the private partner:
 - The HPTE will serve as a “facilitator” to have a TIFIA loan available for a P3 project procurement effort to the extent the project meets the TIFIA loan requirements, TIFIA loan funds are available, and the US DOT expresses openness for a TIFIA loan on the P3 project subject to appropriate due diligence.
 - The amount of TIFIA loan being requested in the letter of interest will be determined based on the applicable TIFIA loan program requirements in consultation with the US DOT TIFIA Joint Program Office (JPO).

- The HPTE will work with the TIFIA JPO to provide information needed for the JPO to evaluate whether the project qualifies for a TIFIA loan and also to respond to questions about the project and procurement effort.
- The HPTE will work with the shortlisted teams to facilitate questions on their behalf to the TIFIA JPO related to a prospective TIFIA loan.
- The HPTE will facilitate a draft term sheet, to the extent possible, working with the TIFIA JPO and provide this as part of the RFP package of documents for the shortlisted teams.
- The HPTE will appropriately note on any documents facilitated on a possible TIFIA loan in the RFP package of documents that the HPTE assumes no responsibility or liability for the documents provided on a prospective TIFIA loan.

Q. Program-Level Funding and Project-Level Funding

The HPTE is responsible for ensuring that both the HPTE program and each project being pursued has a budget allocated for forecasted program expenses and project needs. The HPTE will develop an overall P3 Program budget and funding sources for the overall P3 Program budget. HPTE will partner with project sponsors (CDOT Regions and others) and the OMPD for allocations at each project stage, including:

- P3 Program Management:
 - General P3 Program Management (staffing, public outreach advisor)
 - P3 Project Screening and Priority Setting (staffing, public outreach advisor, other advisors may be funded/provided via the CDOT at the screening and priority setting stage)
 - HPTE P3 project oversight (staffing and consultant advisors)
- P3 project
 - Project Due Diligence and Development (staffing and public outreach/financial/legal advisors, with technical advisors supplied by OMPD)
 - Project Procurement (stipends, staffing, and public outreach/financial/legal advisors)
 - Project Implementation/Operations (project subsidies, availability payments, dedication of project revenues – if revenue risk, HPTE contract monitoring)
 - Project Handback (advisors)

R. Policies/Process for Dispute Resolution

The HPTE will review claims/disputes that occur on P3 projects in a partnership with the CDOT with the intent to resolve these in a partnership effort with the private partner while protecting the public interest. However, from time to time disputes will occur that involve a formal dispute resolution process.

The HPTE will utilize the CDOT's standard dispute resolution Dispute Review Board (DRB) process for disputes that occur on P3 projects. The DRB process is outlined at the CDOT website: www.codot.gov/business/designsupport/dispute_review_board.

The HPTE will include the requirements for the DRB in the procurement documents and final P3 project agreement for P3 projects. The HPTE will partner with the CDOT and appropriate advisors on disputes that occur on P3 projects and follow the DRB process for the resolution of disputes that cannot be resolved via discussions and escalation of negotiations to the executives of both HPTE/CDOT and the private partner.

In select instances the HPTE Director, in coordination with the OMPD, may utilize an alternative dispute resolution approach where this best fits an element of a project or the overall project.

III. Project Planning and Development (Pre-Procurement Phase)

A. Decision-Making to Enter and Fund Project Planning and Development

As discussed in Chapter 2, the CDOT Executive Director and PMO will first evaluate and approve a project moving forward as a “major project” and to be evaluated as a P3 project in conjunction with HPTE. The HPTE Director will be part of the discussion and decision-making for this process.

Once the project has been initially screened and prioritized by the HPTE Board as discussed in Sections 2.5 through 2.7, the prospective P3 project is evaluated further by the HPTE in partnership with CDOT. The PMO, in conjunction with the HPTE Director and CDOT Executive Director, makes the final decision to move a project forward for due diligence in the Project planning and development stage as outlined in Chapter 3.

The HPTE and CDOT will work together to identify funding to pay for the costs associated with the P3 Project planning and development stage (P3 Project Development Stage) of the proposed P3 project.

On projects that involve Federal funds and/or major Federal highways HPTE will coordinate with OMPD and the Region to ensure that the FHWA Division is part of the P3 Project Development Stage, and involved in the consideration of a project as a P3 project. OMPD and the CDOT Region will coordinate with the FHWA Division Administrator on the appropriate timing for a Project Stewardship and Oversight Plan. This plan will outline FHWA involvement in the project. In addition, for proposed P3 projects that meet the threshold for a major project under the Federal definition (currently greater than \$500 million and/or projects that will involve a TIFIA loan), OMPD and the Region will ensure a Project Finance Plan and Project Management Plan are developed timely and updated annually in coordination with HPTE and submitted to the FHWA Division Administrator.

B. Project-Level Organizational Chart

At the P3 Project Development Stage the HPTE will take the project lead in coordination with OMPD and the Region for the day-to-day responsibility for due diligence and for the evaluation of a project as a P3. The applicable CDOT Region will be the lead for key elements for the project, including the environmental review and public involvement, as well as the lead for all project level data. The CDOT Region will be assisted by OMPD for the technical aspects of the project. The HPTE Director and OMPD Director will collectively identify the key members of the P3 Project Team for the P3 Project Development Stage in coordination with the Region Director and other CDOT managers as needed. The P3 Project Team will include the key roles and responsibilities identified for the P3 Project Development

Stage outlined in further detail in the next section below. The P3 Project Linkages diagram below shows how the Region-HPTE-OMPD are linked together in a “team approach” for the proposed P3 project

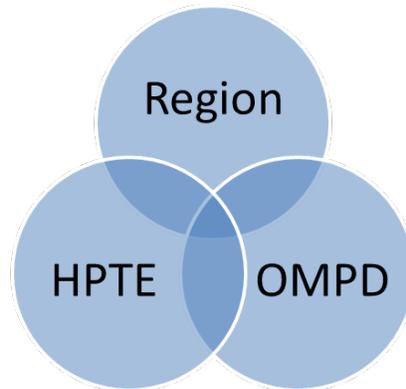


Figure 5 - P3 Project Linkages

C. Decision-Making Authority, Roles, and Responsibilities and Key Decision Points

The high level decision-making authority, key roles and responsibilities, and key decision points in the P3 Project Development Stage are shown below.

- CDOT has ultimate responsibility for the project’s scope and environmental approvals and will work closely with the HPTE on the P3 aspects that will be needed to help deliver the most effective project that provides the best value, including:
 - Environmental review, public hearings and related elements required to achieve environmental approvals.
 - Project scope.
 - Project phases and elements such as design-build, operate and maintain, toll operations/services, etc. to be included in the project.
 - Project subsidies and/or funding to be provided from the CDOT.
 - Interaction, presentations, and recommendations to the Transportation Commission related to a CDOT project.
- The HPTE Board will review and make decisions related to the following elements of a proposed P3 project.
 - Moving the proposed project forward as a P3 project.
 - Approving the budget for HPTE funds for the Project..
- The HPTE Director in coordination with the OMPD Director will have ultimate responsibility for the day-to-day direction of the P3 Project Development Stage:
 - The HPTE Director and the OMPD Director in coordination with the Region Director will identify key personnel for the P3 Project Team, including the following roles and responsibilities for the P3 Project Development Stage:

- P3 Project Manager – The HPTE Director and OMPD Director will delegate the day-to-day management to the designated P3 Project Manager under the supervision and direction of the HPTE and OMPD Directors.
- Identify P3 Project Team technical team leaders based on the Project Scope such as:
 - Environmental
 - Design/Engineering
 - Traffic Engineering
 - Operations and Maintenance
 - Tolling Services
- Identify P3 Project Team outside technical advisor team
- Identify P3 Project Team legal team leader (staff of the Office of the Attorney General) and outside expert P3 legal counsel team
- Identify P3 Project Team financial team leader and outside expert P3 financial advisor team
- Identify the public involvement and outreach team leader and outside expert public outreach team.
- In identifying the P3 Project Team members the HPTE Director and OMPD Director, in coordination with the applicable Region Director, will consider the following key elements:
 - Project scope including the Project phases and elements such as design-build, operate and maintain, toll operations/services, etc. to be included in the project.
 - Thoughts on the initial risk allocation among the HPTE/CDOT and the proposer/private partner, Project subsidies and/or funding approach.
 - Key elements of the Value for Money analysis
 - Anticipated funding partners.
 - Anticipated public involvement and outreach approach and effort.
 - The Project Team will include representation for expertise on key elements of the Project from the following areas where the skills best fit for the proposed P3 project moving into the P3 Project Development Stage:
 - HPTE
 - CDOT OMPD
 - CDOT CFO
 - CDOT Region
 - Office of the Attorney General
 - CDOT Office of Communications
 - FHWA
 - Funding Partners
 - Expert Advisors
 - ❖ Financial
 - ❖ Legal
 - ❖ Technical

❖ Public Outreach

- The OMPD Director will partner with the P3 Project Manager to coordinate the technical elements of the proposed P3 in coordination with the CDOT Region and HPTE.
- The “P3 Project Team” for the P3 Project Development Stage under the direction of the P3 Project Manager will be responsible for the planning and development of the project as a proposed P3 project. The P3 Project Manager will coordinate the day to day activities of the Project Team for the P3 Project Development Stage for the proposed project. This will include, but not be limited to:
 - Develop and maintain the proposed P3 Project Team distribution list.
 - Develop and manage the schedule of key activities for the P3 Project Development Stage of the proposed P3 project as further outlined below. The P3 Project Manager will coordinate the development of the schedule that identifies the overall schedule of key activities that includes at a minimum:
 - Schedule for the P3 Project Development Stage.
 - Key decision-points in the process and the applicable decision-maker.
 - Major elements to be analyzed in the due diligence including for the proposed P3 project.
 - Assessment of the status of the environmental review and the steps and timing required to achieve environmental approvals.
 - Identify document control systems and records management for the proposed P3 project.
 - Estimated project costs and schedule by major project phase assuming:
 - Traditional project delivery approach
 - P3 approach
 - Assumed risk allocation for major elements of the proposed P3 project and the cost/cost savings, schedule/schedule savings for each:
 - Traditional project delivery approach
 - P3 approach
 - Development of the initial Risk Matrix.
 - Assumed cost of financing assuming:
 - Traditional project delivery approach
 - P3 approach
 - Industry Forum and one-on-one sessions
 - Project delivery options and analysis of the options
 - Initial Value for Money analysis
 - Public outreach that includes:
 - Education on the P3 approach
 - Workshops on the proposed P3 project in the geographical area of the project
 - Outreach to elected officials and interested parties
 - Other public outreach as needed
 - Summaries and recommendations to reject or approve moving forward as a P3 project

- If moving forward, development of the initial RFQ for the proposed P3 project
- Other activities as may be needed depending the unique elements of the proposed P3 project such as assessment of toll services
- Establish sub-groups as needed among the Project Team and a lead member for each sub-group to help the P3 Project Manager coordinate the efforts of the Project Team for that particular sub-group. Sub-group activities may include:
 - Identification and Sizing of non-compliance points regime
 - Sizing of Financial adjustment regime
 - Formula for Best Value Selection(appropriate weighting of financial and technical scoring)
 - Development of Performance Specifications
- Schedule working sessions, meetings, presentations, etc. as needed.
- “Bump-up” major decisions as needed to the HPTE Director, OMPD Director, Region Director or others as applicable.
- Develop briefing materials on the proposed P3 project in coordination with the HPTE Director/OMPD Director/Region Director/Public Outreach experts.
- Assist the applicable Directors with public outreach as needed.
- Provide briefing updates on the progress for the P3 Project Development Stage. The periodic briefing updates may include the following elements as applicable for briefings of the HPTE Board, PMO, CDOT Executive Director, and Transportation Commission as appropriate to help these entities make decisions on the project:
 - P3 project description.
 - Description of the P3 Project Development Stage for the proposed P3 project.
 - Schedule for the P3 Project Development Stage with the current status in the schedule.
 - Summary of major activities during the past month.
 - Summary of planned major activities for the next month.
 - Summary and timing of the next major decision point in the P3 Project Development Stage for the proposed P3 project.

D. Identification of Team Needs and Contracts (Expertise Needed, Duration, Schedule, Funding, Contract Manger)

The HPTE Director and OMPD Director shall jointly identify the expertise needed for the P3 Project Development Stage of the proposed P3 project including the HPTE Director identifying the expert advisors for financial, legal and public outreach (related to the P3 elements) and the OMPD Director (or Region Director, as appropriate) identifying the technical advisors for the P3 project. The respective directors will identify the following for the advisory services contracts:

- Contract manager for the expert advisor contract.
- Budget manager for the expert advisor contract.

- Funding and budget for the expert advisor contract.
- Term and amount for the contract and/or task order.
- Monitoring of the contract budget, work, invoices and overall performance of the expert advisor.

The P3 Project Manager will coordinate the expert advisors efforts for the P3 Project Development Stage.

E. Funding Partner Coordination

The P3 Project Manager will ensure that funding partners are an integral part of the P3 Project Development Stage. This includes the following elements:

- Public outreach to the funding partner on the P3 approach and to others that the funding partner may wish the P3 Project Team to provide public outreach to as part of their funding partnership.
- Have the funding partner identify a key contact or contacts for the proposed P3 project.
- Add the key contact(s) to the distribution list for key activities, meetings, status reports, presentations, and related information.
- Scheduling and tracking the development and execution of any intergovernmental and/or funding agreements.

F. Project and Document Controls

The HPTE will develop a project document control system and utilize the system for each proposed P3 project once the P3 Project Development Stage begins. The project document control system will facilitate the development, management and storage of documents for the proposed P3 project. This project document control system will include the minimum elements outlined below. CDOT may utilize the Department's internal system (currently ProjectWise) and HPTE's Aconex system where HPTE and CDOT agree for documentation and management of these documents at the Regions and OMPD to accomplish these requirements.

- A system that has the ability to store and share large documents among multiple P3 Project Team members that is secure/access protected and limited to only authorized users to ensure the integrity of the process.
- A system that will store a large volume of documents in an electronic format that provides for search and retrieve capabilities by authorized users
- A document control manager will be assigned for each proposed P3 project that will be responsible for project document control system.
- A system that can track the performance of the contract through implementation and operations

G. Feasibility/Scoping of Project (Confirm Minimum Requirements)

The P3 Project Team will discuss and outline the scope for the project that will include consideration of the following key project elements as the P3 Project Development Stage moves forward:

- Project phases to include in the proposed P3 project, including the major project phases of design-build-operate-maintain. Note that Projects that include design-build phases with no elements of proposer financing will be managed by the CDOT and not under the guidelines of the P3 manual.
- Consideration of whether a segmented series of projects or a portion of these will be combined into one overall project through financing by the proposer/private partner.
- Term of the proposed P3 project.
- Consideration of project elements that may be unique for each project such as:
 - Toll services for projects that include tolling.
 - The inclusion of optional services such as operate-maintain segments of roadway that may be adjacent to the proposed P3 project where it is more cost effective for the proposer/private partner to deliver these services as part of the P3 project.
 - Separating certain elements as between HPTE and CDOT, and between HPTE/CDOT and the private partner, such as:
 - The process to set toll rates and who collects tolls.
 - HPTE/CDOT retains certain elements of operate-maintain such as snow/ice removal or other elements.
 - Linkage of risk allocation to the project scoping to best align the risk sharing with the party (HPTE or private partner) that is in the best position to manage the risk in the most cost effective manner.
 - Revisiting the project scoping as cost estimates, risk allocation, financial evaluation and the overall initial Value for Money analysis is refined to help provide the best value option for the project scope for the proposed P3 project.

H. Feasibility Schedule Development

The P3 Project Manager in partnership with the P3 Project Team will develop the overall proposed P3 project schedule that will involve the below major elements:

- P3 Project Development Stage schedule at a very detailed level as outlined in in section F.
- P3 Proposed Procurement Stage schedule at a level that details the major steps for the Procurement Stage and the time to accomplish the Procurement Stage. This schedule will be revisited in more detail should the decision be made to move the proposed P3 project to the Procurement Stage.
- The proposed Implementation Stage schedule at a level to identify the overall time period from design-construction of the project until it is planned to open to traffic. This schedule will be developed in more detail for the RFP should the decision be made to move the proposed P3 project to the Procurement Stage.
- The proposed Operate-Maintain Stage schedule that outlines the time period from opening to traffic and start of the operating period to the handback period and the end of the P3 term.

I. Risk Analysis

The intent of this manual as it pertains to risk analysis is to provide the basic framework and guidance for expectations of risk analysis and efforts throughout a project's life. The purpose of a risk analysis is to help define the risks for the project as well as the procurement, and understand how these risks can impact schedule and costs. By discussing these in a workshop setting it allows input from many P3 Project Team members with a variety of experiences. The P3 Project Team will normally identify as many risks as possible and then discuss each risk on a comparison basis with the base project assumptions initially in the P3 Project Development Stage. Early on the base project lacks detail and most risks are discussed in a qualitative manner and as the project progresses and more details are available it will shift to a more quantitative analysis such as during the later portion of the P3 Project Development Stage and into the Procurement Stage. The workshop discussions allow the P3 Project Team to develop expected costs and schedule impacts both qualitative and quantitative depending on the information available. The discussion will also help identify mitigation actions that can be taken to help reduce or eliminate particular risks. The risk listing or risk register that is developed can be updated on a regular basis as risks will change throughout the life of the project. It is recommended that the P3 Project Team conduct risk analysis workshops to update the risk register at key decision making times of the project. The risk analysis will also produce a range of most likely costs and schedules based on the participation of the group and the statistical analysis that is run by the risk workshop facilitator. The recommended timing of risk workshops and updates to the risk register are:

- P3 Project Development Stage – At this stage of the project there may be a lack of detailed information and the focus may be on the procurement risks including the development of a feasible project, competition and overall procurement and implementation schedules. Identifying and discussing these risks can help the team focus on the needs and actions that will help define a feasible project and mitigation actions to help ensure realistic costs and schedule. Risks will also be prioritized to help the project team manage the risk in an efficient manner.
- Pre-Procurement – Prior to entering procurement it is recommended to update the risk register to help define and confirm the risk allocations on the project as well as the probability of costs to ensure the project is still viable and there have been no changes that would affect the delivery method chosen. A risk workshop should be held to provide the team time to react and ensure that the RFP documents incorporate the risk decisions that have been made.
- Procurement – When major changes are made to the draft RFP and final RFP and prior to executing a contract it is recommended that the risk register be updated to support updates to the value for money analysis to ensure any changes that have taken place during procurement have been accounted for and included in the value for money analysis prior to entering into the P3 project agreement.
- Implementation – It is recommended that the risk register be updated to focus on the owner obligations to help the P3 Project Team develop a risk management approach to the design and construction that is effective and efficient. Since many risks are transferred to the private party the P3 Project Team can prioritize those

elements of the project that will be the owner's responsibility after construction, as well as those assets being designed and constructed that will outlive the P3 project agreement term.

- Operations – Again, it is recommended to update the risk register for the operations period. This will allow the P3 Project Team to manage its limited resources efficiently. In addition to owner obligations, there could also be a focus on items that affect public safety and public perception.
- Handback – Prior to the actual handback of the facility, the risk register should be updated for specific handback activities to help plan and manage the handback process. This assessment will also provide CDOT with information they may desire to make decisions on how to manage the facility after the handback.

i. Initial Risk Register Items

The P3 Project Team will identify a list of risk items referred to as the risk register that will focus on the major elements of the project, the listing will include the anticipated risk allocation that best manages risk to provide the state the greatest value for the proposed P3 project.

Potential risk-related elements to be considered include:

- Project scope
- Project costs
- Environmental approvals
- Permitting
- Utilities
- Operations
 - Enhanced elements
 - Service patrols
 - Acceptable down time/availability
- Maintenance
 - Routine
 - Periodic
 - Renewal and replacement
- Project revenues and funding
 - Revenue risk
 - Funding subsidies
 - Availability based
- Financing
- Emergency events
 - Traffic incidents and clearing
 - Storm Events
 - Major events such as road closures
 - Major event damage
 - Clearance
 - Repairs
- Term of the proposed P3 project
- Third Parties
- Competing Facilities

- Contamination
- Latent Defects
- Right of Way
- Law Changes
- Standard Changes
- Force Majeure
- Handback
- Warranties
- Insurance
- Toll services (if applicable)

ii. Risk Register Template

The risk register template is typically a spreadsheet that expands on the risk items that have been identified to include a variety of categories that will allow the P3 Project Team to review, organize, distribute, track, prioritize and follow up on the risk management actions that are identified to be done during the risk discussions and meetings. The risk register template will also include the risk modeling outputs that are typically calculated in an embedded macro-program within the file housing all the risk inputs. The following list of items is meant to provide a general overview of the inputs to be expected in the risk register.

- Risk number – It is recommended that each risk be given a sequential number to allow for quick reference in discussions and meetings. It is expected the number of risks will grow as a project progresses and more details made available. Consideration can also be given to sequential numbering the risks by categories, although many risks may overlap categories.
- Risk category – Organizing by category allows the team to sort the risk register by specific categories that can be assigned and tracked by team members. The categories can vary depending on the desires of the P3 Project Team and the scope of the project. Example categories can include Policy, Technical, Funding/Financial, Government Approvals, Tolling, etc.
- Risk topic – Although similar to category, the P3 Project Team can utilize risk topics as a secondary sorting mechanism to efficiently manage the risks. An example would be under the Technical Risk Category the P3 Project Team may elect to have topics such as Roadway, structures, ITS, Tolling etc.
- Impact stage – This is the phase that the particular risk will come to fruition. Typical phases would include; development, procurement, design, construction, operations and handback.
- Risk description – This is simply a description of the risk that is detailed enough that one not familiar with the project could read and get a good understanding of the risk.
- Expected value/Monte Carlo Analysis Inputs – The below items can be utilized to develop the expected outcomes through a statistical analysis that evaluates the outcomes and the probability of these outcomes occurring based a range of assumptions for the data typically referred to as a Monte Carlo Analysis. This analysis provides an expected outcome for the project's cost and schedule based on an

iterative statistical analysis. The formulas and specific information required for input should be reviewed with a risk facilitator prior to beginning a workshop and collecting the input.

- Consequence of risk – The consequence the risk will typically be brief description of the impact of the risk. Typically this will cost or schedule but could also be detailed as having a safety, environmental or reputation consequence.
- Probability range – These are ranges that a risk event would occur and have a negative impact on the project. It is important to discuss these as a group to get all feedback on the likelihood of a risk event materializing. These ranges can help prioritize efforts when managing the risks. Typical ranges can be in 20% increments where risk items with a 90% or greater likelihood should be considered to be part of your base project.
- Qualitative cost and schedule impact – This will be a range, typically by percent and weeks or months, of the base project cost and schedule impact the risk could have on the project.
- Quantitative cost and schedule impact – When more detail is available the risks can be quantified versus just qualified. The range of impacts could be specific quantities as the minimum, maximum and most likely Impact that can be expected.
- Monte Carlo Simulation (distribution, modeling notes) – These are notes that outline the risk being evaluated and the range of assumptions applied for the risk that supports the calculation for a particular risk.
- Risk response method (mitigation, transferences) – This is where specific strategies can be identified for the P3 Project Team to follow up on as part of their risk management.
- Risk allocation – Which party in the P3 project is responsible for the risk - the Public Owner, Private Partner, or shared.
- Risk allocation notes – Some risk allocations may need explanation if they are shared or potentially expected to change over time. This will help the team understand the expectations as well as the potential action items that may be identified.
- Risk tracking (critical path, owner actions, mitigation, planned mitigation cost, review dates, status, comments) – ??? Can we explain what this is saying?
- Risk Closure Notes- identifying how and why a particular risk is no longer relevant or does not exist any longer. These notes will help when going back through the history of the project to help document decisions.
- Lessons learned notes – All projects will bring lessons learned. The P3 Project Team should be diligent in documenting these and carrying them through to other projects to ensure there is continuity in policy and practice where appropriate.

By developing a risk register that can be sorted by columns the team can easily track particular aspects of the risks and utilize this template to help manage the project based on the risks. These risks can be prioritized and specific actions included in the template will allow the team to follow up on actions and update the risk as it changes.

iii. Risk Analysis Strategy

The risk analysis provides an excellent opportunity to educate the P3 Project Team on the risks as well as collect feedback from a multi-disciplined group that will help provide sufficient information for sound decision making. The P3 Project Manager can utilize the risk analysis to prioritize the team's actions as well as brief senior management. Specific Strategies can include:

- Identify key risk elements that will be needed for policy discussions with the HPTE Director, OMPD Director and the CDOT Executive Director for approval or direction or that should be further evaluated by the P3 Project Team.
- Keep the risk register up to date as further discussions occur among the P3 Project Team, with the industry and as decisions are made by HPTE and CDOT management.
- Solicit feedback from industry on particular risk elements and include the feedback in the analysis and potential mitigation strategies.

J. Value for Money Analysis

A Value for Money (VfM) analysis will be conducted at key stages in the process for the proposed P3 project. These major stages include:

- Initial Value for Money analysis as part of the P3 Project Development Stage. The Initial VfM builds the template for the project that includes all major elements including:
 - A Public Comparator that models the project based on a traditional delivery approach such as design-build, public financing, and operations and maintenance by the CDOT. The P3 Project Team will develop and/or have developed the information supporting the Public Comparator such as:
 - Schedule for a traditional delivery of the project.
 - Cost estimate for design-build traditional delivery for the project.
 - Cost estimate for traditional delivery of operations and maintenance for the project. This will include ongoing renewal and replacement such as resurfacing, bridge repairs, etc.
 - Public financing cost for the project.
 - Possible risk factors such as cost overruns, schedule overruns, inflation for future delivery of phases, and other key items associated with traditional delivery.
 - P3 Delivery that models the project based on a P3 delivery approach where the P3 Project Team has outlined the P3 project scope. At the Initial VfM analysis stage the HPTE Director, OMPD Director, CDOT Executive Director, and other senior managers and Transportation Commission or HPTE Board members may want the P3 Project Team to evaluate more than one project scope and P3 delivery approach, for example: 1) shifting revenue risk to the private partner or an availability payment approach; 2) leaving all or part of the operations and maintenance such as snow removal with the CDOT; and 3) providing "options" such as the proposer "bidding" to provide operations

and maintenance services on adjacent lanes or roadways to the main P3 project. The P3 Project Team will develop and/or have developed the information supporting the P3 Delivery approach such as:

- Schedule for P3 delivery of the project.
 - Cost estimate of the capital cost (design-build) for the project.
 - Cost estimate for the operating period for the project including operations and maintenance
 - Renewal and replacement costs.
 - Handback requirements
 - Merge the cost factors into a life-cycle cost model for the overall term of the P3 project.
 - Risk analysis and the impact upon cost and schedule.
 - Financing cost for a P3 delivery approach.
 - Other factors associated with the P3 delivery approach such as cost savings from advancing the project, shifting of revenue or partial revenue risk, availability performance standards, HPTE and CDOT costs, stipends, and related elements.
 - Based on direction from the HPTE Director, OMPD Director, CDOT Executive Director, Transportation Commission or HPTE Board there may be multiple delivery approaches modeled for the P3 Delivery approach to evaluate the best alternative for delivering the project.
- The Public Comparator will be matched against the P3 Delivery approach(es) and this results in a “Best Value” analysis that shows whether the Public Comparator or the P3 Delivery approach is the apparent Best Value for delivering the project. These results will be part of the briefing package presented to the HPTE Director, OMPD Director, CDOT Executive Director, Transportation Commission and HPTE Board to help make a decision to reject or approve the project moving forward as a P3.
- Update the Initial VfM prior to selecting the Preferred Proposer in the Procurement Process. This is further discussed in Section 4.
 - Update the Updated VfM prior to financial close for the P3 project. This is further discussed in Section 4.F.

K. Procurement Goals/Guidelines

The major goals for procurement of a P3 project are for the HPTE, in partnership with the CDOT, to:

- Provide comprehensive, consistent and timely information, and evaluations supporting a fair and open procurement process,
- Protect the integrity of the procurement process,
- Protect the public interest,
- Select the best value proposal, and
- Strive to reach financial close provided the P3 project is the best value to the State.

The policies and major guidelines governing the procurement of a P3 project are outlined in Section L of Chapter 2. The procurement process is outlined in more detail in Chapter 4.

L. Procurement Schedule Development

The P3 Project Team will develop the initial procurement schedule. The schedule will identify the key activities for the procurement process and include adequate time to accomplish these activities to reach financial close in a timely manner. Key activities to be included in the initial procurement schedule are shown below:

- Development of the draft RFQ as further discussed under RFQ development in Chapter 3 below.
- Environmental approval (if pending)
- All FHWA approvals
- Briefings for HPTE Director, OMPD Director, CDOT Executive Director, the Transportation Commission and HPTE Board before the final decision to move into the Procurement Stage for the P3 project.
- Development of the draft RFP as further discussed under RFP development in Chapter 3 below.
- HPTE Director and OMPD Director approval of issuance of the RFQ.
- Due date for Statements of Qualifications
- Review and evaluation of the Statements of Qualifications
- Presentation and recommendation to the HPTE Director and OMPD Director for approval of the Short-List of Proposers
- Issuance of the draft RFP
- ATC Process, including meetings, submission, and response due dates
- Interactive One-on-One Sessions with Short-Listed Proposers
- Formal written question and answer periods
- Issuance of the Final RFP
- Due date for Proposals
- Review and evaluation of the Proposals
- Update the Value for Money Analysis
- Presentation and recommendation to the HPTE Board – HPTE Board selection of the Preferred Proposer
- Protest period
- Negotiations on final P3 project agreement
- Presentation and recommendation to the HPTE Board – HPTE Board approval of the P3 project agreement
- Commercial Close
- Negotiations on financing documents
- Updated Value for Money
- Presentation and recommendation to HPTE Board –HPTE Board approval of financing documents
- Financial Close
- P3 project moves to Implementation stage

M. Project-Level Public Outreach Plan

HPTE adopted a transparency policy and has developed an overall P3 Program Public Outreach Plan that has been included on the HPTE internet site located at _____. HPTE

will ensure that public outreach is accomplished within the requirements of the transparency policy as part of the P3 Project Development Stage. The HPTE Director, in coordination with the OMPD Director and Region Director, will direct the development of a public outreach plan for the proposed P3 project.

The P3 project public outreach plan will address at a minimum the following requirements:

- Identify the key groups, individuals and geographical areas that are the focus of the public outreach.
- Develop briefing materials on the P3 project and update these as the proposed P3 project moves forward.
- Identify the media approaches to deliver the public outreach such as:
 - Web site project information
 - Media packages
 - Public Workshops
 - Focus Group sessions
 - Key official briefings
 - Board meetings
- Identify a schedule for delivery of the public outreach for the major stages. The public outreach plan for the P3 project will start with the P3 Project Development Stage and be expanded for additional stages should the P3 project move forward beyond the P3 Project Development Stage.
 - P3 Project Development
 - Procurement
 - Negotiation/Financial Close
 - Implementation
 - Operations
- Recordkeeping for the public outreach effort that includes:
 - Identification of attendees/participants for public outreach
 - Summary of key input and questions received in public outreach
 - Follow up in response to input and questions received
 - Input on materials used in the public outreach
- Periodic evaluation and update will be accomplished based on feedback from public outreach sessions and the P3 Project Team will utilize the evaluation to update the public outreach plan to continually improve the public outreach effort for the P3 project.

As part of public outreach the HPTE Transparency Policy calls for HPTE, in coordination with interested local governments, to hold a minimum of three public town hall meetings in relation to a potential P3 project. These meetings will:

- Be held either at a location near the primary communities expected to be affected by the project and at such other forums as HPTE may deem appropriate to provide access to the public.
- Allow for comment, input, and questions from the public and response from staff or board members of the HPTE.
- Update the public on additional developments regarding the project and other information as required by, or consistent with, the HPTE Transparency Policy.

- To the extent possible these public town hall meetings should be coordinated with other project activities such as the environmental review and public hearings associated with this review and other required public hearings to avoid duplication and confusion about the project.

All meetings required by the HPTe Transparency Policy will be preceded by full and timely notice. This includes posting a notice on the project website and providing notice to appropriate media, members of the General Assembly whose districts include any geographic area located within the expected boundaries of the project, and the county/municipal governing bodies of those geographic areas.

N. Industry Outreach

Industry outreach can be accomplished in a number of forms and can be useful in the P3 Project Development Stage to assist the P3 Project Team in developing the proposed P3 project. Typically these will be held before procurement begins to help generate interest and momentum for the project, as well as provide industry input for consideration by the P3 Project Team as the project moves into procurement. Proper Outreach and marketing of the program and projects will help maximize competition on projects. Some key options for industry outreach include:

- Industry forum – Industry forums may be held once the P3 Project Team has developed adequate information to share on the proposed P3 project such as a tentative project scope, timing, and key elements related to possible procurement, finance approach, key technical elements and related information. The focus of the Industry Forum is to share and gather information to help develop the best P3 project, delivery approach and process that delivers the best value for the State. The Industry Forum normally includes:
 - General Sessions where HPTe/CDOT share information on the project, project scope, and ideas on finance approach, key technical elements, etc. Industry may provide limited input during the general sessions, but not normally specific input.
 - One-on-One Sessions where the industry participants are offered the opportunity to share specific ideas or concerns with HPTe/CDOT on the project and approach.
 - Follow up evaluation of the input and use by the P3 Project Team to help define the proposed P3 project and approach.
- Request for Letter of Interest can be used to request written responses from industry to evaluate the level of interest and any specific comments that are provided by the industry participants that respond with a Letter of Interest. The P3 Project Team will evaluate the input to help define the proposed P3 project and approach.
- P3 conferences and national meetings (ARTBA, AASHTO, and TRB as examples) can be used to share brief information on the proposed P3 project and solicit informal feedback from industry on the proposed P3 project and approach. These are very useful in building interest in the proposed P3 project.
- Industry requested meetings with HPTe/CDOT are common once information regarding a potential P3 project becomes known. These meetings can be held

during the P3 Project Development Stage prior to issuance of the RFQ document and operate similar to One-on-One meetings at the Industry Forum.

It is important for the HPTE/CDOT to share consistent information with industry participants on the proposed P3 project to ensure consistent feedback is received from industry. It is critical that HPTE/CDOT only answer technical questions in meetings with the industry participants and hold all policy issues and decisions for discussion among the P3 Project Team and interaction with the HPTE Director, OMPD Director, and CDOT Executive Director.

O. Report to HPTE Board and Transportation Commission

The P3 Project Team under the direction of the HPTE Director and OMPD Director will develop a report on the proposed P3 project after completion of due diligence in the P3 Project Development Stage that includes the following key elements for the proposed P3 project. The report will include at a minimum:

- Project description
 - Summary of the project scope
 - Key project elements/unique features
- P3 project schedule
- Term of the P3 project
- Estimated life-cycle costs over the term
 - Estimated design-build cost
 - Estimated operating period cost (operations, maintenance, and renewal and replacement)
- Delivery options considered and the suggested approach
- Finance approaches considered and the suggested approach
- Summary of the Value for Money analysis that compares the P3 delivery options with the Public Comparator (Value for Money report attached)
- Summary of the risk analysis and key project risk
- Summary of industry outreach and input
- Summary of the public outreach and input
- Overall recommendation based on the assessment of delivery options and the Value for Money analysis identification of the best value.

In addition the P3 Project Team will prepare and deliver a summary presentation for the HPTE Board that summarizes the report and the recommendation for the best value approach for the project for consideration by HPTE Director, OMPD Director, Region Director and the CDOT Executive Director.

P. RFQ Development

The RFQ is used to solicit the SOQs from interested private sector P3 firms/teams (respondents). The RFQ asks interested respondents to submit a SOQ in response to evaluation and selection criteria defined within the RFQ. The primary objective of the RFQ is to receive SOQs to evaluate and select a pool, or "shortlist," of qualified, potential proposers for the project. It is a formal and structured process that must comply with federal regulations, state statutes, and the Colorado code of regulations.

Respondents are required to submit a SOQ in response to the RFQ by a specified cut-off date identified in the RFQ.

The P3 Project Team will develop a draft RFQ for the proposed P3 project that includes the following key elements:

- Summary level P3 project description
- P3 project scope and goals
- Overall P3 project schedule
- Draft procurement schedule
- Minimum technical qualifications
- Key personnel and their minimum qualifications
- Minimum financial qualifications
- Minimum experience on prior P3 projects
- Unique project elements or challenges
- RFQ schedule
- Key standard elements such as communication limitations (generally referred to as “cone of silence”), conflicts of interest, CORA requirements, etc.
- Instructions for qualifications package submittal
 - Format
 - Limitations
 - Due date
- Brief description of the qualifications package evaluation and short-list process

One of the most important aspects of the RFQ will be to define the project and procurement goals. Although these goals may change over time, establishing them early allows for both the P3 Project Team and potential respondents to focus and prioritize around meeting these goals. These goals should also play a large part in the evaluation of proposals that will further incentivize proposers to elaborate and find ways to achieve the goals set for the project.

The draft RFQ may be shared with industry representatives for input if desired and the input considered for developing the final RFQ document.

The final draft RFQ will be presented to the HPTD Director and OMPD Director for approval once the decision has been made to move forward with the project as a P3 project. The RFQ is further refined and the process for evaluation and short-list is further outlined in Chapter 4.

Q. RFP Development

After the HPTD Director, OMPD Director and the CDOT Executive Director have approved the project moving forward as a P3 project the P3 Project Team will begin development of the RFP documents. The major documents to develop at this stage include the following:

- Draft Instructions for Proposers (ITP)
- Draft P3 Project Agreement
- Reference documents
- Draft Technical Requirements

Development of the documents comprising the RFP should be underway prior to issuance of the RFQ and during the RFQ period of the Procurement stage with the intent to provide a comprehensive draft RFP to the shortlisted proposers shortly after announcement of the shortlist. It is important to note that P3 brings a uniqueness and complexity to the RFP documents that many project team members may not be familiar with if only accustomed to working on typical design-build type projects. This section of the manual is meant to highlight some of the more unique items that will need to be considered and addressed in the RFP documents. A P3 project can provide tremendous opportunities for risk transfer, but requires technical, financial, and legal advisory teams to be working together to ensure the RFP documents address each element appropriately (see figure 6). The below figure represents that it takes the union of the technical, finance, and legal expertise to handle the P3 uniqueness of a project but these working groups must be managed.

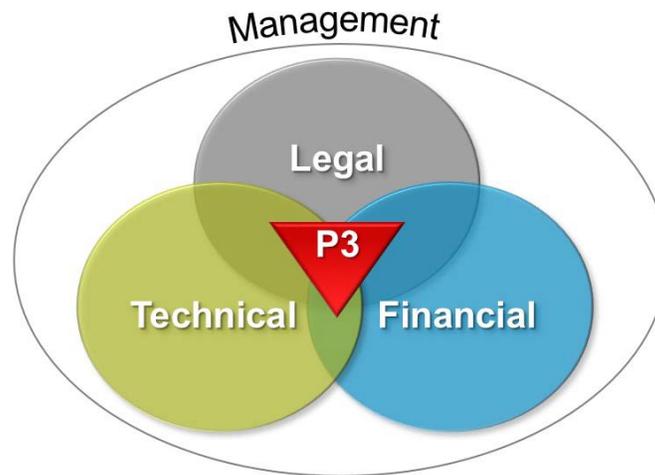


Figure 6 - Technical, Financial, and Legal Teams

The project team should hold an RFP kickoff session where they can discuss all portions of the RFP in detail to ensure assignments and schedules are clear and the interaction the team will need to complete the Draft RFP. As mentioned earlier, this section is intended to identify and explain some of the inter-relations of items that need to be addressed in the development of the RFP. All items do not need to be finalized in the initial draft of the RFP and can change throughout the development and procurement, but early understanding of all elements associated with a P3 RFP will put the team in the best position to manage priorities and meet schedules and avoid surprises in the process.

Risk Allocations – As mentioned in the risk sections of this manual, the risk register and information that is developed in the risk workshops and analysis must transfer to the RFP. The risk register can be used as a checklist to ensure each item is handled appropriately as well as a QC document for verification.

Project Goals – Are the project goals clear and up to date? Do goals align as it pertains to scope and costs?

Evaluation Criteria – Are the evaluation criteria clear, do they tie to the project goals, and will the selection criteria provide value between technical and finance?

Submittal Requirements – Do the submittal requirements fall in line with the pass-fail needs and the evaluation criteria? Is there value in everything being asked for?

ATC Process – Evaluate lessons learned from previous procurements and ensure schedule allows for sufficient time.

Design and Construction Criteria-

- How will criteria be dealt with in the future for renewal/rehabilitation work?
- Are current criteria too prescriptive?
- What flexibilities should be given with base criteria versus forcing an ATC?
- What should be the design submittal requirements? Should this be open to flexibility for the private partner?
- Are the tolling requirements and agreements needed for tolling clear?

Operations and Maintenance (O&M) – There are many aspects of O&M that will need to be addressed in the RFP, which include:

- Limits of responsibility and performance expectations during construction.
- Limits of responsibility and performance expectations during operations.
- Maintenance of third party assets- will there be temporary or long-term responsibilities for existing or newly constructed assets that are not part of the CDOT system? This could include cross roads, ITS devices, signal systems, bus facilities, or other areas that would need to be coordinated.
- Are there existing assets that may be transferred to the private party and is sufficient information available to assess the risk of these items?
- Are the tolling responsibilities clear and will there be a need for separate agreements needed for tolling operations?
- Performance Standards- review latest performance standards and compare with other states and lessons learned to ensure requirements are reasonable and cure periods to address and re-occurrence are appropriate and defensible.
- What will be the level of owner oversight and should it be paid by the P3 firm?
- How should any financial adjustments be sized for non-compliance or violations?
- How should the non-compliance point system be sized and the overall lengths of time to be considered for accumulation of points (i.e., one year, three years etc.)?
- What will be the consequence for the accumulation of too many points?
- What should trigger a replacement or rehabilitation of an asset?
- How should a renewal be planned and funded?
- How should traffic operations and safety issues be handled?
- How will emergencies be handled (evacuations, state of emergency, lifting of tolls, contraflow)?
- How will shared assets be handled for inspections, repair and funding?
- How will future improvements be handled? Construction of, impact of and maintenance of?
- How will change in standards be dealt with?

Handback Requirements –

- How will a handback reserve be sized, funded and drawn? What should be the timetable and activities involved for early asset assessments that could trigger additional work prior to handback?
- What condition is expected at handback? What maintenance inventory is expected?

Administration –

- Will the private partner be responsible to provide project offices to HPTE/CDOT during implementation? During operations?
- What are the roles and responsibilities for document control during implementation and operations, and what long-term provisions should be considered?
- What are roles and responsibilities for public outreach during implementation and operations?
- How will change in ownership be handled? Is there a minimum time period before allowing a transfer?
- What should the insurance requirements be during implantation? During operations?

As the RFP develops it will be important for the team to track and document decisions by creating an RFP matrix that identifies the lead for each section of the RFP and any decisions or direction that is needed for the section. As this direction is given it should be the leads responsibility to document the decision/direction with sufficient detail so as much of the RFP language will be challenged throughout the process there will be a history of how the draft language was developed which will allow the project team to react quickly and appropriately during any challenges. P3 agreements are complex and are intended to provide value to CDOT, but it takes a multidisciplinary team to develop and understand all aspects of the contract. Also, it is important to listen to proposers to find and ensure the final RFP language and requirements will provide CDOT with the greatest value.

R. Quality Assurance/Quality Control

There are a number of key analyses being performed and reports/presentations being generated during the P3 Project Development Stage. The P3 Project Manager will review the quality control process that ensures that each of the major processes includes adequate quality control by the P3 Project Team to ensure that work is cross checked by experienced members of the P3 Project Team prior to the finalization of analyses and reports/presentations. The processes are varied during the P3 Project Development Stage so the HPTE Director/OMPD Director/P3 Project Manager will review each major area and have the applicable P3 Project Team members provide their quality control processes for review and approval by the P3 Project Manager.

The HPTE Director and OMPD Director may authorize a quality assurance review of any major element of the P3 Project Development Stage. For example, an outside firm independent of the P3 Project Team could be engaged to peer review one or more of the following major elements, depending on the risk valuation of that particular element:

- Value for Money analysis
- Risk matrix and analysis
- Traffic and revenue forecast and analysis

- Public outreach plan
- Delivery options analysis
- Draft RFQ or RFP

IV. Project Procurement Phase

Colorado’s Transportation Commission is the state’s transportation policy decision-making body. CDOT manages the state’s transportation system under the direction of the Transportation Commission. The procurement of P3 projects is the responsibility of HPTE but they will need to work closely with CDOT and the CDOT Regions to manage a successful procurement. The Below graphic illustrates the organizational structure of the offices during Procurement (see Figure 7).

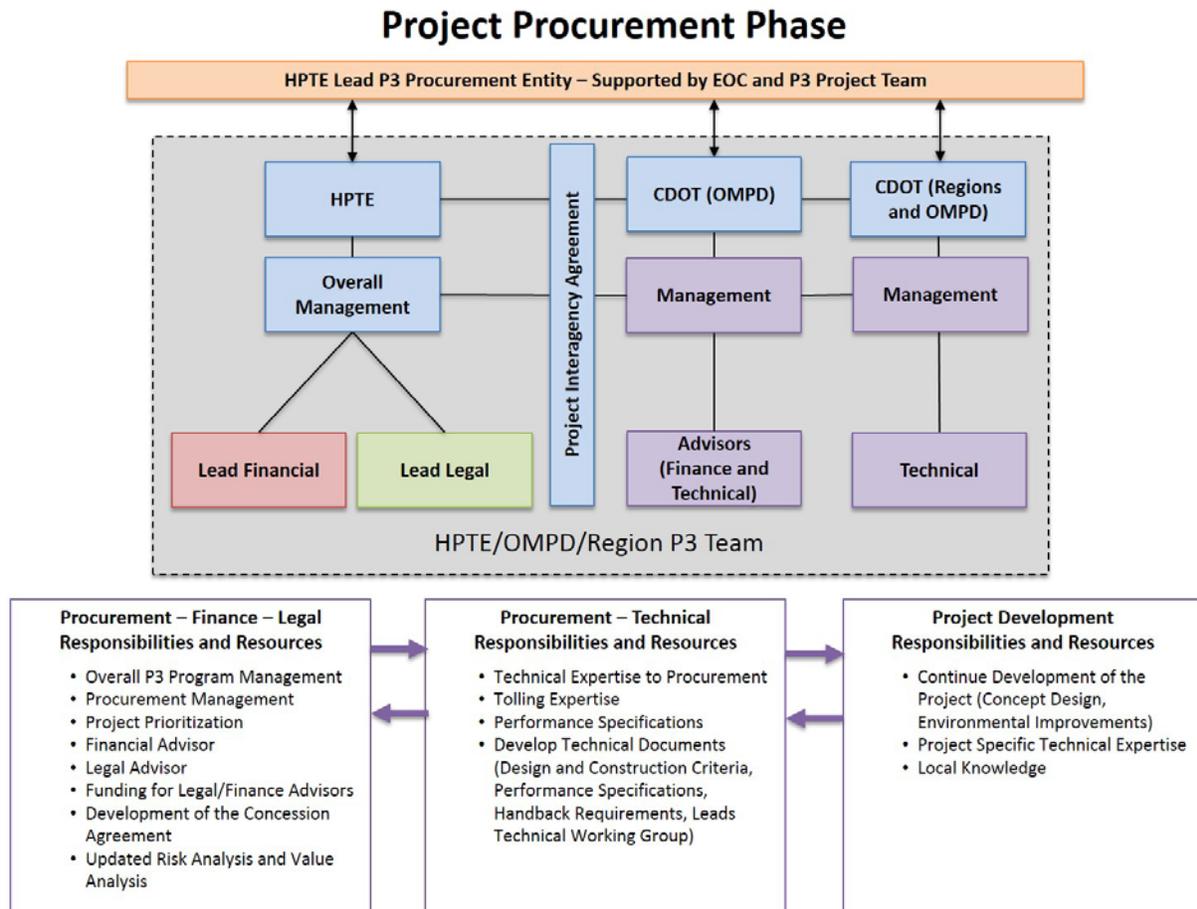


Figure 7 - Team Structure, Roles, and Responsibilities – Project Procurement Phase

This section describes the competitive P3 procurement process and provides guidance on related activities for all projects that have been selected for P3 procurement.

A. Commitment to Transparency

The HPTe is committed to being transparent during the procurement of P3 projects. HPTe's board adopted the "HPTe Transparency Policy" to ensure transparency and accountability for, and public participation in, any P3 entered into by HPTe.

In accordance with the HPTe Transparency Policy, the Procurement documents for a P3 project should include:

- The procurement documents will include provisions to facilitate the public disclosure of information provided by proposers.
- The HPTe will make available other relevant information relating to the project that will assist the public in considering meaningful comments.
- When the P3 agreement is executed, the HPTe will post the fully executed agreement together with a summary of the key terms of such agreement on the project's website.

B. Updating the Project Risk Assessment and Allocating Risk

Once P3 projects are approved for procurement, the HPTe initiates the procurement process starting with the issuance of RFQ documents, followed by the issuance of the RFP. An increased level of project definition will be available prior to finalizing the draft RFP and will provide the team an opportunity to update the project risk assessment. Some new risks may be identified and some risks may be closed out from the previous risk assessments performed during project development. As the P3 project agreement and technical requirements are developed, it is important that the risk register and risk allocations are updated to reflect current project conditions.

The risk register should be updated prior to issuance of the RFP based on the decisions that have been made prior to completing the RFP. This allows quantifying and qualifying the risk decisions that have been made and how they affect the project's cost and risk profile. Updating the risk register and risk analysis has a number of benefits throughout the procurement process:

- Enables updating project cost, revenue, and schedule risk adjustments.
- Provides input into the cost analysis.
- Helps identify and/or confirm the commercial Risk Allocation that should be incorporated into the P3 project agreement.
- Helps identify risk mitigation strategies that can be implemented to reduce/eliminate risks.
- Increases overall confidence in appropriate allocation of commercial project risks.
- Helps identify the high cost and schedule risks that will help in risk management when prioritizing team resources and actions.
- Prepares the team for the upcoming proposer challenges regarding risk allocations in the P3 project agreement.

i. Risk Workshop(s)

The HPTE project manager should review previous risk management activities and analyses that may have been conducted on the project Risk Workshop(s) should have been conducted and a risk register should have been developed for every P3 project regardless of size and complexity. Also an expected value (or Monte Carlo) analysis may have been performed. The HPTE project manager may decide to update the risk register and risk analyses via targeted meetings with experts and other stakeholders or have a subsequent Risk Workshop(s).

ii. Risk Assessment

Step 1 – Update Risk Identification and Quantitative Risk Analysis

The P3 Project Manager, in collaboration with the project manager, should review new information that might have become available as a result of further design studies and input from the initial Risk Workshop during project development. This new information is likely to require a review of the identification and quantification of the previously identified risks. If additional risks are identified, they must be added to the risk register by filling in the risk category, risk topic, impact phase, and risk description columns. Changes in the base cost estimate or the schedule may alter the percentage cost risk impact or number of months delay respectively. It is the responsibility of the P3 project manager to arrange the necessary workshops/meetings in order to make these changes to the risk register through discussion with the appropriate personnel that can contribute to the identification of risks.

Step 2 – Update Risk Response

After updating the information in Step 1, the P3 Project Manager, in coordination with the person or entity most familiar with the risk, should update the risk register to reflect mitigations carried out and new mitigation strategies for the procurement. Other forms of response may also be deployed and recorded in the risk register. At this point, the focus should be on risks that have been previously identified as having a high risk value (combination of probability and impact). The P3 Project Manager may elect to hold a facilitated 'workshop' to keep the meetings focused and productive in addressing and documenting each risk.

Step 3 – Update Potential Risk Allocation

The undertaking of Risk Allocation becomes more significant during procurement as risk transfer has to be fully defined in the P3 project agreement. The allocations listed in the risk register must align with the P3 project agreement and technical requirements. It may be helpful to record the section reference of the P3 project agreement that relates to the assignment of a particular risk event in the risk register notes column. This documentation can also aid in any peer review or quality control review of the documents that will help ensure the documents have been drafted in accordance with the intent of the risk allocations.

iii. Updated Risk Analysis

The procurement phase represents an opportunity to update the quantification of risks. Input information should be well developed by this stage and be appropriate for an expected value (or Monte Carlo) analysis. The output and details of the risk analysis, along with the other risk assessment information, should be captured by the P3 Project Manager in the risk register. Using the outputs and details of the risk assessment information and risk register, the P3 Project Manager will lead the updates to:

- Any risk management plan that has been developed from the risk register or the overall management plan if a specific risk management plan does not exist. An update to estimated project costs
- Calculation of risk adjusted costs and scheduling of project milestones
- Revision of the HPTE's project contingency costs/amounts
- Consideration of risks and potential allocations as input for industry review meetings

It should be noted that all risks will need to be reassessed if the base cost and schedule have been modified to ensure the inputs are still correct relative to the updated base information.

C. Schedule

There will be significant interaction between the HPTE and private industry during the RFQ phase and between the HPTE and the shortlisted proposers during the RFP phase of the procurement. The procurement process must be planned and well executed to avoid potential delays and challenges. The HPTE project manager will need to develop a procurement schedule for the overall procurement since critical procurement milestone dates will need to be included in the RFQ and the RFP. These milestone dates include, but are not limited to:

- RFQ issuance
 - Industry forum
 - RFQ issuance
 - Final date for RFQ comments
 - Final date for responses to RFQ comments
 - SOQ submission deadline
 - Deadline for submission of public disclosure SOQ
 - Interviews (if required)
 - Anticipated announcement of shortlisted proposers
- RFP process
 - Issue draft RFP to shortlisted proposers
 - Proposer comments/questions due (set 1)
 - First one-on-one meetings(set 1)
 - Proposer comments/questions due (set 2)
 - Update of RFP
 - Second one-on-one meetings
 - Last day for alternative technical concept (ATC) submittals
 - Last day for change to proposer team

- o Issue final RFP
- o Final responses to ATC submittals
- o Final one-on-one meetings
- o Proposal due date
- o Proposal evaluation
- o Select preferred proposer
- o Negotiations
- o Execute P3 project agreement (Commercial Close)
- o Further negotiations on financial plan
- o Financial Close (amend P3 project agreement as needed)

The project development status of the project must be considered in preparing the procurement schedule including NEPA/environmental clearance, due diligence activities (such as surveying, geotechnical investigations, subsurface utility investigations, hazardous materials investigation, etc.), right-of-way acquisition, utility coordination and relocations, capital and lifecycle cost estimates, traffic and revenue estimates, and feasibility and value for money analyses. The procurement schedule needs to accommodate required timeframes for state and federal reviews necessary due to project funding.

Each P3 project will have unique considerations affecting it's the procurement schedule. Factors that need to be considered when finalizing a procurement schedule include the completeness of project development (specifically status of NEPA/environmental clearance), the size and complexity of the project, risk factors and allocation, and complexity of the procurement, decisions pending, whether an investment grade T&R will be needed, etc. It should be noted that an investment grade study takes approximately 9 months to complete. The procurement schedule should be updated at least monthly, reflecting current status of procurement activities and incorporating any changes to the procurement approach/strategy.

D. Two-Phase Procurement Process

Typically HPTE uses a two-phase procurement process. The P3 procurement process (see figure below) consists of: (1) the RFQ phase and evaluation of SOOs resulting in a "shortlist" of qualified proposers; (2) the RFP stage including issuance, evaluation of the proposals, and selection of a best value proposal and preferred proposer to enter into a P3 project agreement to develop and implement the project. HPTE does have the flexibility to go directly to the RFP stage and as part of the evaluation of the proposal to include Pass/Fail criteria. It should be noted that during the RFQ phase a draft RFP could be released if available. The HPTE serves as the primary point of contact for P3 procurements, in consultation with the CDOT and the Colorado Attorney General's Office, and ensures that the process is administered in accordance with applicable law. The HPTE Director is responsible for managing a consistent, transparent, and well-defined procurement process.

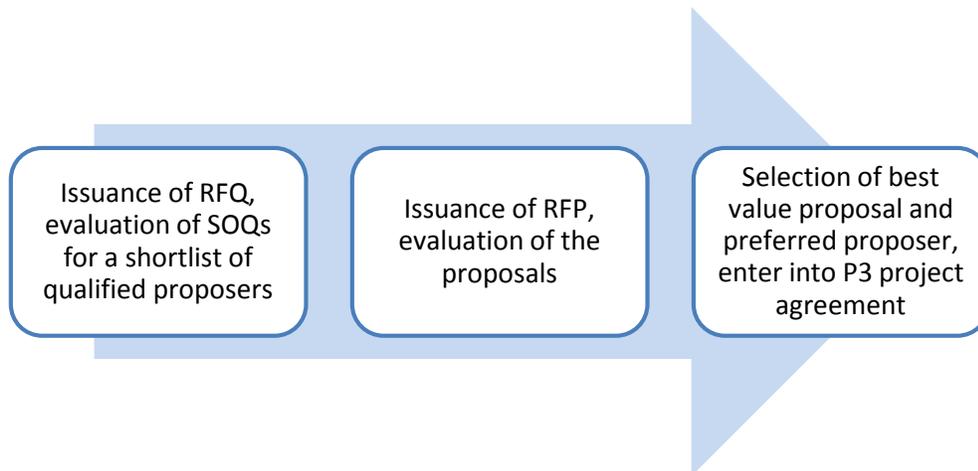


Figure 8 - Two-Phase Procurement Process

i. Finalizing the RFQ

As discussed in Chapter 3 once the HPTE Board has approved moving forward with the proposed P3 project, the HPTE initiates the first phase of the P3 procurement process by issuing a RFQ. The draft RFQ was developed in the latter stages of the Project Development Stage. This draft RFQ is updated and finalized based on industry input, review by the P3 Project Team and updates on the project. One of the key areas that is normally updated from the draft RFQ relates to the minimum qualifications based on the extent of industry interests, the complexity of the project, and adjustments in project scope.

Typically the final RFQ format includes of eight major elements:

- Executive summary/introduction of the project/Establishment of the goals for the project and procurement
- Background information, including relevant information about the development status and funding of the project
- Description of the procurement process
- Procurement rules including communications, conflicts of interest, and confidentiality
- Submission requirements for the SOQs
- Evaluation process and criteria
- Protest procedures and debriefings
- Submittal forms

a. Evaluation Criteria for the SOQ

Specific content of the SOQ must be identified in the RFQ, and should be developed using proven methods that will determine the true qualifications of the respondents. Evaluation criteria usually include: 1) technical criteria including the organization, structure, experience, and performance of the firm/team on similar projects and 2) financial criteria, including the financial qualifications and capacity of the firm/team and financial approach to the project.

The evaluation criteria contained in the RFQ focuses on specialized capabilities required for the project. Individual criteria are weighted according to their relative importance to the successful completion of the project. The actual criteria selected for use should be applicable to the project and the respondent's ability to perform the work. When setting the evaluation criteria the project goals should be considered and how the evaluation criteria will support those goals. With this in mind, it is also important to avoid criteria that are so restrictive that few, if any firms/teams can meet the minimum requirements. Criteria that may be considered are:

- Organization, structure, experience and performance of the firm/team
 - Project team organization
 - Key project team members
 - Minimum qualification requirements/experience for individual experience of team members
 - Staff/resource capacity and availability (project manager, design manager, construction superintendent, quality manager, etc.)
 - History of the proposed team working together
 - Corporate experience with P3 projects
 - Experience in similar types of work
 - Past performance
 - Experience in the execution of fast-track projects
 - Experience with formal partnering activities
 - Scheduling and control systems to track and manage project
 - Specialized design capability for the key project elements
 - Specialized construction capability for the key project elements
 - Experience with complex construction staging, traffic control, and site conditions
 - Quality assurance organization
 - Quality assurance approach
 - Quality performance
 - Specialized expertise that reduces risk and assures quality of work
 - Safety record
 - Approach and understanding of the project
 - Understanding of local environment
- Financial qualifications and capacity of the firm/team
 - Financial capacity
 - Bonding record or proof of bonding ability
 - Past performance on awarded contracts (completion, liquidated damages, quality, claims, fines, schedule)
 - History of performance (unsubstantiated claims, fines, suits, quality, accuracy, schedule)
 - Legal and financial disclosures

To develop and maintain a level and uniform playing field the RFQ should rigidly define the SOQ submittal format. It should specify at a minimum: the maximum number of single-sided pages, font size and type, allowable paper size(s), and labeling and pagination requirements.

The SOQ evaluation methods are disclosed in the RFQ. It is important to structure the RFQ to request information about a respondent's experience that can be evaluated in an objective manner. The SOQ should allow the respondents to demonstrate their firm/team's strengths, and permit HPTE to determine which of the respondents are the most highly qualified. Cost or price related factors are prohibited from use in the RFQ and consideration in the SOQs.

ii. Issuing the RFQ

The HPTE, in consultation with CDOT and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The HPTE will issue a public notice on the project website and will email those who have signed up on [HPTE's Bidder's List](#) to announce the issuance of the RFQ documents. The public notice may also be issued by publication in a newspaper or newspapers of general circulation in the area in which the project is to be performed, so as to provide reasonable notice to the maximum number of respondents that can be reasonably anticipated to submit responses to the RFQ.

The RFQ documents will be posted on the project website. These documents should provide for a minimum 60-day competition period and include information regarding the scope, nature, and timing of development and/or operation of the project.

The procurement documents, including required forms, addenda, and other related information, will be made available electronically on the project website. The HPTE may arrange for a pre-proposal conference or webinar, as deemed appropriate, to present and clarify information about the project and procurement process, as well as respond to any questions that prospective respondents may have about the RFQ. A notice for such event will be made known within the RFQ documents and on the project website.

At any time during the procurement process, the need to issue one or more addenda to the procurement documents may arise following interaction with the industry, or in the event the underlying conditions of a particular project change or more information becomes available. Respondents are encouraged to check the project website frequently and before submitting their responses.

iii. Submission of SOQS

In response to the issuance of an RFQ, interested respondents will be required to submit an SOQ. The SOQ should be prepared in accordance with the timelines and requirements of the RFQ.

As a part of the SOQ, respondents may be required to provide information related to the structure of the respondent team, qualification and experience of the respondent, individual team members, and key personnel with developing, designing, constructing, financing, operating and/or maintaining comparable projects. The specific nature of experience, key personnel, and background sought will depend on the project as well as the delivery structure used.

Additionally, the RFQ may require submittal of certain financial information from the respondent and its affiliates. The intent of financial qualification submittal requirements is to determine whether the private entity submitting a response has sufficient financial capacity

to assume the responsibilities and obligations required to deliver the project on schedule. The HPTE, in coordination with CDOT, may require the submission of financial statements (including audited financial statements), letters of support from providers of payment, and performance security and/or disclosure of material changes in the respondent's financial position during a specified period of time or reporting period identified in the RFQ.

Prior to submitting their responses, respondents are encouraged to become familiar with the Colorado Open Records Act (CORA), C.R.S. §§ 24-72-201, et seq. provisions to ensure that documents identified as confidential financial or commercial information will not be subject to disclosure pursuant to CORA and to otherwise understand which documents may be subject to disclosure pursuant to CORA.

iv. Evaluation of SOQs

The RFQ documents specify the evaluation criteria and methodology used to evaluate such criteria so that proposers will know how their submissions will be evaluated. The HPTE Director and P3 Project Manager, in coordination with the P3 Project Team, will establish an RFQ review process to:

- Evaluate the SOQs submitted
- Determine and shortlist the most highly qualified respondents in accordance with the RFQ
- Shortlist the most highly qualified respondents no later than 60 days after the deadline for submission of the SOQs

A method and evaluation process for SOQs shall be developed for each project. A formal shortlist process and ranking document must be developed. The evaluation process shall be approved by the HPTE Director in coordination with the OMPD Director. A defensible SOQ evaluation process requires the approach be developed, documented, and in place before the release of the RFQ.

The evaluation of SOQs begins immediately after the submittal date identified in the RFQ. The evaluation process has two steps. The initial step determines responsiveness according to the requirements of the RFQ as a pass or fail evaluation. All SOQs receiving a "pass" proceed to the next step. All SOQs receiving a "fail" are rejected and returned. The failing respondents' only means to cure is through the protest procedure described in more detail below.

The second step of the SOQ evaluation process is a scoring or ranking step where the information in the SOQs for all responsive (pass) proposers is measured against the evaluation criteria set forth in the RFQ.

The evaluations are completed by an SOQ Evaluation Committee. This committee must contain individuals experienced in a broad array of areas of project delivery. The evaluation process should be completed with the entire committee present. This approach will provide the best opportunity for sharing of expertise and reducing the required time for outside research.

There are two established standard methods for scoring the evaluations of the SOQs. The numeric SOQ evaluation process is where proposals are given a numeric score used for

ranking and the adjectival SOQ evaluation process is where categories of acceptance are described and different adjectives are used to score the proposal. The adjectives will carry a numeric score that will be applied after the adjectival grade is given and ultimately will result in a numeric ranking of proposals. Regardless of the approach used, the entire Evaluation Committee must be brought together for training in the evaluation process.

v. Shortlisting of Qualified Respondents

The HPTE is responsible for reviewing, scoring, and ranking all responsive SOQs. The maximum number of proposers to be shortlisted and invited to submit a proposal in response to the RFP shall be specified in the RFQ. The minimum number shall be two firms, but is not recommended. Federal guidelines state three to five firms should be shortlisted. While the HPTE will make the final decision, it is expected that no more than four proposers will be shortlisted to advance to the RFP stage.

Upon completion of the SOQ evaluation process, the HPTE Director in coordination with the OMPD Director and the P3 Project Team will brief the HPTE Board regarding which proposers will advance to the RFP stage. Scoring of qualifications and any ranking of the SOQs will not be carried over to the evaluation of the final RFP responses. Only firms that have been shortlisted during the RFQ process will be allowed to submit a proposal in response to the RFP.

After the Board is briefed, the short-list will be posted on the HPTE internet site. The Director, or designee, will notify all respondents in writing of the short-list and invite those shortlisted proposers to submit a proposal in accordance with the RFP. Additionally, the HPTE in coordination with the Department will inform other state and federal agencies, affected localities, affected elected officials, MPOs, and stakeholders.

After HPTE announces the shortlist, the losing proposers may request a debriefing meeting with HPTE. These debriefing meetings should give the proposers and HPTE an informal setting in which to discuss the RFQ and the shortlisting process.

If after the competitive response period, the HPTE receives a single responsive submittal to its RFQ, then the HPTE will conduct an evaluation on whether to start negotiations with the proposer for the project or if the proposed procurement should be terminated. If the procurement is terminated, the HPTE will make a determination if modifications are required to the timing, scope, and nature of the project to promote greater competition. The HPTE will make a presentation of its determination to the HPTE Board and seek a resolution from the Board to advance a modified procurement. The HPTE's presentation will be at a scheduled meeting open to the public.

If there is only one shortlisted proposer, or none, HPTE may decide to meet with private industry to determine why they were not more responsive to the RFQ. From those discussions, the scope may be modified taking into account the feedback from the private sector. The HPTE may reissue the modified RFQ or re-procure the project at a later date.

The HPTE reserves the right, in its sole discretion, to cancel the RFQ, issue a new RFQ, reject any or all SOQs, seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the RFQ, seek and receive clarifications to an SOQ, and waive any deficiencies, irregularities, or technicalities in considering and

evaluating the SOQs. The RFQ does not commit HPTE to enter into a contract or proceed with the procurement of the project. The HPTE assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred by the parties responding to any RFQ. All such costs shall be borne solely by each proposer.

vi. Developing the RFP

Upon making the determination of shortlisted proposers, the HPTE will complete its development of the draft RFP to begin the second phase of the P3 procurement process. It will be important to keep the project team informed and clear responsibilities for the team members so each aspect of the RFP has a responsible person. Since there is a tremendous amount of overlap between the technical, legal and finance teams, each person responsible for a given section shall coordinate input from the other P3 Project Teams as necessary to complete their section of responsibility. This communication and coordination to develop the internal draft documents will allow for more efficient quality control and page turn process of the documents since all parties have had input into the internal draft. The purpose of the RFP process is to create competition among a shortlist of the most qualified proposers to create value for the public. The RFP solicits proposals from the shortlisted proposers. This process, like the RFQ process, must follow federal regulations, state statute, and the Colorado Code of Regulations. The HPTE must receive approval from FHWA to release the Final RFP.

The draft RFP should be issued as soon as practicable after the shortlisting process has been completed to assist development and definition, the RFP process may be undertaken in two steps. First, the issuance of a draft RFP to solicit formal questions from the shortlisted proposers followed by one-on-one meetings. Depending on the schedule and the amount of discussion and potential for changes in the RFP, the procurement manager can decide whether to issue subsequent drafts of the RFP or issue the final RFP. After the final RFP is issued, all changes to the RFP will need to be addressed through an addendum. The issuance of subsequent versions of the RFP should be contemplated in the original schedule and coincide with the one-on-one meetings with proposers and comment periods.

a. Major Components of the RFP

The RFP documents include specific requirements for the detailed proposals, as well as the selection criteria to be met. Depending on the project, the RFP documents usually include:

- Instructions to Proposers (ITP)
- P3 project agreement
- P3 project agreement schedules including technical requirements

b. Industry Review of the RFP

It is important to note that the RFP is developed as a draft and there is input received from industry through various mechanisms throughout the RFP phase. The interaction with Industry will allow for the exchange of information that should provide HPTE with sufficient information to finalize the RFP. It is expected that feedback from industry will lead to an RFP that will continue to maximize the competition while providing value to the state.

Formalized processes will be identified in the ITP, including dates and times, for this interaction may include:

- Pre-proposal conference – Pre-proposal conferences may be mandatory or optional as stated in the ITP and RFP. The draft ITP will identify the date, time, and location of the meeting, and state whether the meeting is mandatory. The pre-proposal conference is undertaken after the release of the draft RFP and draft ITP. It is an informal conference intended to provide information and clarity where all proposers are invited in a single setting.
- One-on-one and ATC meetings with proposers – One-on-one meetings are confidential meetings with proposers to discuss their observations and recommendations on the RFP (primarily the commercial terms of the agreement) while ATC meetings are set aside to specifically discuss ATCs. The one on one will typically be with the core groups from the project team and the proposer team that have good knowledge of the entire RFP. The goal of these meetings will be to hear out concerns from all proposers to help gauge the need to modify the documents in any way. Decisions on questions should not be made during these meetings, but rather after all proposers have been heard. If the meeting or questions result in material changes to the P3 project agreement or technical requirements an update or revision will be released to all proposers. Proposers will be afforded a reasonable amount of time to review these materials, contemplate any consequences, and consider the content for inclusion in their proposals.
- Pre-proposal submittals – The pre-proposal submittals can be used to submit specific items that warrant approval or feedback prior to the proposals being submitted. The most common pre-proposal submission is an ATC submission that will require a response of approval or rejection by HPTE in order for a proposer to submit it with their proposal. The pre-proposal submission can also be discussed in specific meetings set aside with proposers.
- Comments/questions – The HPTE will request written comments on the draft RFP at various dates specified in the ITP and may provide a specific form for questions to be submitted on. It is desirable to receive these questions at least one week in advance of any meetings where the questions will be discussed to allow the project team to prepare internally to identify the initial reaction and any clarifications that are needed. These questions can form the agenda and priorities during the one-on-one meetings.

When any of these processes are used, the ITP and RFP shall list appropriate dates, times, and locations for each.

c. Developing an ATC Process (including Alternative Configuration Concepts (ACC) and Alternative Requested Elements (ARE))

The HPTE encourages proposers to recommend ATCs that are equal or better in quality or effect (as determined by Department in coordination with the HPTE, in their sole discretion) than the technical requirements in the RFP. The purpose of the ATC process is to allow the proposers to incorporate innovation, flexibility, and time and cost savings into the design,

construction, operation, and maintenance of the P3 project, and ultimately to obtain the best value for public.

The HPTE may invite each proposer to confidential 'ATC to discuss the proposer's ATCs in further detail. In addition, the proposers may request an ATC Meeting with HPTE. The HPTE reserves the right to limit the frequency of ATC Meetings.

The purposes of the ATC Meetings are as follows:

- Give the proposers the opportunity to present and explain each ATC to the HPTE/Department and to ensure that HPTE/Department fully understands such ATC.
- Discuss the proposed deviations from the basic configuration, design criteria, construction criteria, operation, and maintenance criteria, or other technical requirements of the RFP.
- Discuss alternative approaches to the tasks included within the definition of non-separable tasks.
- Answer questions and address other issues related to ATCs.

The submission of an ATC will include a description and conceptual drawings of the configuration of the ATC or other appropriate descriptive information and an explanation of where and how the proposer would use the ATC on the project. The ATC submission will present deviations, or references to the RFP requirements with which the ATC is inconsistent, including an explanation of the nature of the deviations from the RFP requirements and a request for HPTE approval of such deviations or a determination that the ATC is already consistent with this RFP requirements. The ATC submission may also include:

- An analysis justifying the proposer's use of the ATC and why HPTE/Department should allow the deviations, if any, from the RFP requirements as well as a preliminary analysis of potential environmental impacts (including NEPA re-evaluations), community impacts (including additional public involvement), safety impacts, and maintenance and operation impacts.
- A cost and benefit analysis including a detailed breakdown of any savings that would accrue to HPTE/Department as a result of the ATC or a statement to the effect that there are no such cost savings.
- An estimate of any impact to the design and construction schedule resulting from implementing the ATC, including a description of the methods the proposer would use, as well as a schedule graphically showing how the ATC will impact the time period, or a statement to the effect that there are no such impacts. A description of any additional risks to HPTE/Department or third parties associated with implementation of the ATC.
- A description of how the ATC is, in terms of quality and performance, equal to or better than an RFP requirement.
- Any changes in operational and maintenance requirements associated with the ATC, including ease of operations or maintenance.
- Any changes in handback procedures or anticipated life an element of the project associated with the ATC.

In the event that implementation of an ATC will require governmental approvals, the proposer will have full responsibility for obtaining such approvals. If any required approval is

not subsequently granted, with the result that the proposer must change its approach to meet the original requirements of the P3 project agreement and technical requirements, the proposer will not be eligible for an HPTE/Department approval for such ATC that extends the project schedule, nor will it be entitled to any other adjustment of its obligations or any form of compensation.

The RFP will spell out specific conditions that may warrant HPTE issuing an addendum to the technical requirements as a result of an ATC submission. These conditions should be made clear to proposers prior to their ATC submissions. Typical items that would dictate an addendum include:

- Uncovering an error, omission or ambiguity in the RFP
- Acceptance of significant design changes such as typical sections, number of lanes, design speed
- Incorporation of changes previously contemplated by HPTE/CDOT

If HPTE elects to issue an addendum as a result of the ATC submission they will need to evaluate the timing of the RFP addendum with the response to the specific ATC accordingly.

The HPTE/Department intends to review the ATCs and provide verbal comments, as determined in HPTE/Department's sole discretion, to each proposer during the ATC Meetings. Verbal comments will not be considered HPTE/Department approval or denial of the proposed ATC.

The HPTE will respond to ATC submissions by a date specified and listed in the RFP. The HPTE's written response with respect to ATCs will be limited to one of the following statements:

- HPTE approval is granted for the ATC
- HPTE approval is denied for the ATC
- Identification of any conditions that must be met to approve the ATC
- The ATC is already allowed within the terms of the contract, and is therefore not applicable as an ATC

The proposer may incorporate zero, one, or more approved ATCs as part of its proposal. If HPTE responded to an ATC stating that certain conditions must be met for HPTE approval, the proposer may incorporate such ATC conditions into the proposal at its own risk. If the proposer incorporates an ATC with conditions into its proposal, the proposer will be responsible to comply with these ATC conditions if awarded the P3 project agreement. Copies of HPTE approval letters for each ATC incorporated in the proposal must be included in the proposal.

d. Final RFP

The release of the final RFP, for risk purposes, is based on prior receipt of the signed environmental/NEPA decision document. The final RFP is created by compiling the information and input gathered during all previous phases. It will reflect scope of work changes and clarification resulting from the one-on-one meeting process and comments received subsequent to the draft RFP and draft ITP release. Refinements in scope and price of the project do not invalidate the process. It should be noted that FHWA approval is

typically required prior to release of the final RFP and any subsequent amendments to the RFP. It will be important to keep FHWA informed throughout the development of the RFP so approvals will be known ahead of time and there is no impact to schedules waiting for approvals or issues with obtaining approvals.

Once consideration has been given to feedback from the shortlisted proposers and other appropriate parties, the HPTPE will issue the final RFP documents to shortlisted proposers. The final ITP accompanies the final RFP, and also reflects scope of work changes and clarification resulting from the draft RFP release. The final ITP will identify the anticipated notice to proceed date and a procurement schedule by which proposers shall prepare and submit their proposals.

If after the competitive response period, HPTPE receives a single responsive submittal to its RFP, HPTPE will conduct a full value assessment of the proposal received to determine if the responsive submittal brings value to the public. Once the value assessment has been completed, the HPTPE Director, in coordination with the OMPD Director and P3 Project Team, will present the proposal and value assessment to the HPTPE Board, which will determine whether to accept the responsive proposal or terminate the procurement. The HPTPE Director's presentation to the Board will be at a scheduled meeting open to the public.

Decisions related award of a stipend for the development and submittal of a proposal by shortlisted proposers will be approved by the HPTPE Director in coordination with the Department on a project-specific basis. The requirements for and amount of the stipend will be included in the final RFP.

1) Proposal Submissions

In response to the issuance of the final RFP documents, shortlisted proposers will be invited to submit a detailed proposal containing at least two basic components, a technical proposal and a financial proposal, in accordance with the requirements stated in the RFP documents. The RFP may require proposers to submit information different from or in addition to such information referenced in this P3 Manual.

Additionally, the extent and type of information requested may vary depending upon the complexity of the P3 project; however, the information and supporting documents provided should be sufficient to allow the HPTPE to determine the most suitable proposer for delivering the P3 project.

2) Technical Proposal

The HPTPE requires the proposer to provide a technical proposal addressing the project's scope of work and the RFP technical requirements. Required information may include design elements and approach, construction approach, operations approach, maintenance approach, approach for maintenance of traffic during construction, project management approach, schedule, phasing, quality control and assurance approach, environmental requirements, communication and public involvement approach, and other information as appropriate for the project's implementation.

The intent of the technical proposal is to provide assurance of the following:

- That the selected proposer has a sufficient understanding of the project and/or desired service

- An approach that fosters innovation and creativity
- An approach that meets technical and contractual requirements
- The ability to deliver the project and/or desired service in accordance with technical and contractual requirements stated in the RFP documents in a timely and efficient manner

If compliance with NEPA is required, the technical proposal must be consistent with any existing NEPA approvals or additional NEPA documentation may be required.

a. Financial Proposal

The content requirements of the financial proposal will vary with the type of P3 delivery structure and the nature of a particular P3 project. If the RFP and project scope requires the proposer to finance any part of the project, the RFP will require that the financial proposal include a financial plan and financial model. Depending upon the nature of the project, the project delivery method, and current market conditions, the requirements for the contents and level of detail of the financial plan could be substantially different. The financial proposal may require that the proposer update the financial qualification information provided with the SOQ. The RFP documents will include the financial plan requirements.

The HPTE will seek, where financially feasible and the best value for the state, proposals that minimize the use of public funds. If a proposal including public or private debt is submitted, then the RFP will require that the proposal identify the amount of public funds required and a plan for complying with any requirements associated with using public funds.

The proposal will also include a requirement for “bid or proposal security” that is generally for between five-percent and ten-percent of the total value of the capital cost of the proposal, and can generally be provided in the form of a bond or letter of credit. In addition, the proposer must generally hold their proposal pricing for a minimum period of 180 days or longer depending on the requirements of the RFP. The bid/proposal security is generally subject to forfeit if the proposer is selected and fails to reach commercial and financial close on the project within the time period established in the RFP.

3) Proposal Evaluation Criteria

The evaluation methodology for proposals will depend largely on the nature of the project, the scope of work, and details set forth in the RFP documents. The HPTE generally uses best value as the basis for award. However, the HPTE reserves the right to utilize other basis for award, including low bid, lowest lifecycle cost, lowest public subsidy, and any other basis that is appropriate and deemed by the HPTE in coordination with CDOT to be in the best interests of the project and the state of Colorado.

The specific criteria and methodology for evaluating proposals will be included in the RFP documents of the specific P3 procurement and will vary depending on the scope and complexity of the project and project delivery approach. The RFP evaluation criteria will allow the HPTE to clearly communicate the project objectives and priorities to the private sector.

4) *Evaluation of Proposals*

Selection of the preferred proposer is an important decision, and many factors must be evaluated in determining the most appropriate and qualified proposer for the P3 project. Prior to receiving proposals, the HPTe will establish a technical and financial review process for each project. The HPTe Director, in coordination with the OMPD Director and P3 Project Team, will form a proposal evaluation team (which may operate through sub-teams, and will be subject to appropriate governance and oversight) to review the proposals and provide a selection recommendation to HPTe's Board. The nature of the elements being evaluated, and the evaluator's qualifications shall be considered when selecting members of the proposal evaluation team.

Upon receipt of proposals, the HPTe will commence the evaluation and selection process. The evaluation process will include an initial review of each part of a proposal to verify responsiveness and a "pass-fail" evaluation in accordance with requirements of the RFP. Each proposal that has (a) been deemed responsive and (b) achieved a "pass" for the "pass-fail" evaluation will then be ranked based on the technical and financial evaluation criteria and weightings set out in the RFP. Typically the project team will complete the evaluation of the technical portion of the proposal prior to opening and evaluating the financial portion of the proposal. The determination of apparent best value proposal shall be based on the highest total proposal score considering the weighing of the technical and financial portion of the proposal.

The HPTe may ask written questions of the proposers, seek written clarifications, and conduct discussions on the proposals during the evaluation and selection process. The HPTe may request proposers to attend an oral interview to explore any matter in its proposal that HPTe considers to be more conveniently clarified through an oral interview than through written requests for clarification.

Evaluations and rankings of proposals are subject to the sole discretion of HPTe and it may reject all proposals or advertise for new proposals if, in its judgment, such action is in the best interests of the public.

There are two established standard methods for evaluating proposals:

- The Numeric Proposal Evaluation process where proposals are given a numeric score used for ranking
- The Adjectival Proposal Evaluation process where categories of acceptance are described and used for rank.

Regardless of the approach used, the entire Evaluation Board must be brought together for training in the evaluation process.

5) *Formal Discussions*

Usually HPTe intends to evaluate proposals and award P3 contracts without the use such formal discussions, unless the HPTe determines that formal discussions and BAFOs are needed to provide the best value. When used, formal discussions will be held after all proposals have been received and the evaluation process is underway.

Formal meetings are undertaken with complete confidentiality. The HPTe shall not disclose information or details of competing proposals, or furnish information about another

proposer's technical or financial approach to the project. The HPTE shall not engage in auction techniques during such formal discussions. "Auction techniques" include: (a) indicating to a proposer a cost or price it must meet to obtain further consideration; (b) advising a proposer of its price standing relative to another proposer; or (c) otherwise furnishing information about another proposer's prices.

Formal discussions may be considered for any of the following reasons:

- Promote understanding of the HPTE's RFP requirements and of the proposers proposal
- Clarify initial proposals, identify deficiencies in initial proposals, or resolve ambiguities or mistakes in initial proposals
- Ensure conformance of proposals with the RFP requirements
- Facilitate the development of a P3 agreement that will be most advantageous to HPTE taking into consideration price and the other evaluation factors set forth in the RFP

If the meetings or responses to inquiries result in material changes to the scope of work or otherwise affect the manner or form of the response, all proposers known to be participating will be notified in writing of any such change. When such written notice is given, proposers will be afforded a reasonable amount of time to review these materials, contemplate any consequences, and consider the content for inclusion in their proposals.

6) *Best and Final Offer*

After evaluation of the proposals and if formal discussions are held, HPTE reserves the right to request that proposers submit proposal revisions – also known as a BAFO. Typically, only those proposers that are responsive and/or fall within a competitive range will be permitted to submit BAFOs. The RFP revision or BAFO is intended to provide proposers an opportunity to revise their proposals (both technical and financial) in light of the formal discussions and the BAFO request issued by the HPTE.

The BAFO request shall include:

- Notice that formal discussions are concluded
- Notice that the BAFO is the opportunity to submit a best and final offer
- Notice of a common cut-off date and time that allows a reasonable opportunity for submission of written best and final offers
- Notice that if any modification is submitted, it shall be received by the date and time specified and is subject to the late submissions, modifications, and withdrawals of proposals provision of the solicitation

Proposers will be given a reasonable opportunity to submit, in writing, revised technical or price proposals that may result from the formal discussions.

After receipt of the BAFOs the HPTE will not reopen formal discussions and the BAFO will be the basis for any award. The BAFOs will be evaluated as stated in the RFP, based on the consideration of the revised technical and financial proposals. The proposal evaluation process will be repeated by the HPTE for the proposal revisions/BAFOs.

It is important to note that BAFOs are not mandatory and may not be useful or appropriate for a given project. If BAFO is to be used, it will be specifically stated in the RFP

7) *Value for Money Update*

Prior to selection, the HPTE Director and P3 Project Manager will provide an update of the initial Value for Money analysis based on the proposal ranked as the “best value proposal”. The best value proposal will form the P3 approach values for the Value for Money model update. The Value for Money will also be updated for key changes in the project scope, cost estimates and related information for the Public Comparator. The updated Value for Money report will be included as part of the evaluation report to the HPTE Board. For the selection to move forward, the Value for Money analysis must support that the proposal ranked as the best value represent the overall best value for the State in comparison to the Public Comparator.

vii. Selection and Award

The HPTE may initiate limited negotiations or recommend execution of the P3 agreement without negotiations. Negotiations (if any) are limited to those issues that HPTE determines are appropriate to include in the negotiations. The HPTE will identify and set out in writing the issues to be negotiated to the preferred proposer. The preferred proposer will be deemed not to have negotiated in good faith if it fails to attend and actively participate in reasonably scheduled negotiation meetings with HPTE or insists upon terms or conditions that are (a) materially inconsistent with the preferred proposer's proposal or (b) outside the scope of the issues identified in writing by HPTE as included in the negotiation. In addition, the proposers may be required to forfeit their bid/proposal security.

If HPTE fails to reach an agreement with the proposer initially determined to have provided the apparent best value proposal, HPTE will formally end negotiations with that proposer and take action as HPTE determines appropriate. Such action may include:

- Rejection of all proposals
- Re-calculation of the best value proposal based on the remaining proposers (excluding the proposer initially determined to have provided the apparent best value proposal) and, based on this re-calculation, proceed to negotiations with the proposer that submitted the most highly ranked proposal to finalize a P3 agreement with that proposer

If the second option is selected, the next most highly ranked proposal will then be considered the apparent best value proposal and the proposer that submitted such proposal will be considered the preferred proposer provided this option is supported by a revised updated Value for Money analysis. If negotiations fail with the second ranked proposer, HPTE may formally terminate negotiations with that proposer and proceed with negotiations with the third ranked proposer.

Upon completion of the evaluations and successful negotiations (if any), the evaluation team will recommend to the HPTE's Board that HPTE enter into a P3 project agreement with the preferred proposer. The HPTE Board will take into account the evaluation criteria and selection recommendation of the HPTE Director when selecting a preferred proposer. Once approved by the Board, HPTE will notify all proposers of the selection. The HPTE will inform

the preferred proposer that it has been selected by written notice and initiate the finalization of the terms of the P3 agreement. At the same time, the HPTe will send a written notice to all other unsuccessful proposers to award the project to the preferred proposer.

The HPTe will deliver notice to the preferred proposer and the preferred proposer will proceed to execute and deliver the P3 agreement.

viii. Changes Prior to Execution of the P3 Project Agreement

If HPTe becomes aware any material adverse change in the financial condition of any member of a proposer's team whose financial statements were provided with the proposal, or of the proposed lender(s), HPTe will consider whether such change would have resulted in the preferred proposer receiving a "fail." Should the preferred proposer fail to take action within a time specified by HPTe to remedy this adverse change, HPTe may declare the proposer in breach and select an alternative preferred proposer to proceed with the project.

The selected proposer is required to seek HPTe approval if it seeks to change the composition of its team or the percentage of equity participation of one or more equity members. The HPTe will consider requests by the selected proposer to make such changes, based only on unusual circumstances beyond the proposer's control, and will approve or reject them as it deems appropriate in its sole discretion. If any unapproved change is implemented after the approval date for such changes, HPTe will have the right to declare the proposer in breach and select an alternative preferred proposer for the project.

ix. Stipend Payment

The HPTe may offer to pay a stipend payment to each shortlisted proposer that provides a responsive and "pass" but unsuccessful proposal, but is not selected as the preferred proposer. A stipend payment is conditioned upon the proposer providing an executed stipend agreement and being fully compliant with the conditions established in such agreement for payment of the stipend payment. Acceptance of the stipend payment entitles HPTe to use any and all concepts, ideas, ATCs, and information contained in the proposals or in connection with a subsequent procurement for the project or any other project, without any obligation to pay any additional compensation, consideration, or value to the unsuccessful proposers.

Under no circumstances will HPTe be liable for or reimburse any costs incurred by any proposer or any member of a proposer's team.

x. Protest Procedures

In the competitive environment of the procurement, and in accordance with the requirements of the RFQ or RFP, one or more of the proposers may formally protest the HPTe's selection of the shortlisted proposers, approval of changes in a proposer's organization, or decisions regarding responsiveness, best value evaluation rankings, selection of the preferred proposer, or award of the contract. These protests must be hand delivered to the HPTe's contact person no later than 14 calendar days after the public announcement by HPTe. The RFP may also specify other contacts and CDOT or HPTe who are to receive the formal protest. The protesting proposer is responsible for obtaining proof

of delivery. The protester shall concurrently file a notice of protest with the other proposers whose addresses may be obtained from the HPTE's contact person. The notice of protest shall state the grounds of the protest.

Unless the Protest Review Committee decides otherwise in its discretion, no hearing will be held on the protest and the Protest Review Committee or its designees shall decide it on the basis of the written submissions received from the protesting parties. The Protest Review Committee or its designees may, in its discretion, discuss the protest with the protesting parties, other proposers, procuring authorities' advisors, and other state entities or their representatives.

Any additional information regarding the protest requested from the protesting parties by the Protest Review Committee or its designees shall be submitted within the time period requested in order to expedite resolution of the protest. If any party fails to expeditiously comply with any request for information, the protest may be resolved without such information.

E. Commercial Close

Upon award and the protest period expiring, HPTE and the preferred proposer will finalize the P3 project agreement. Typically there is a designated time period to accomplish commercial close after project award. The draft P3 project agreement is normally updated to reconcile any minor issues in the draft P3 project agreement and documents and the final proposal. Once all parties are in agreement, the HPTE Director will recommend the P3 project agreement for approval by the HPTE Board. Upon approval, the P3 project agreement will be provided to the awarded proposer for execution and returned to the HPTE. The P3 project agreement will be executed by the HPTE and the State Controller after verification to ensure there were no material changes. At this point the awarded proposer becomes the private partner and moves to the financial close process.

F. Financial Close

The private partner has a financial team as part of their proposal. The private partner and their financial team take the executed P3 project agreement and, working with the financial markets, finalize the finance plan that fully finances the delivery of the P3 project. The RFP includes a time period for the private partner to reach financial close. The private partner keeps HPTE "up-to-date" on their progress during this time. The investors and lenders for the private partner may request additional information and also that certain documents such as the P3 project agreement and/or supporting documents be updated or amended to meet their financial requirements. The private partner will review the suggested changes with HPTE and the P3 Project Team. Minor changes can generally be accommodated and will be incorporated into an amendment to the P3 project agreement and/or supporting documents.

i. Requests for Material Changes

In select cases the investors or lenders may request a material change to the P3 project agreement or supporting documents. HPTE will evaluate the requested material change in three steps as shown below.

- Would the material change result in the private partner's proposal being judged as "fail" under the pass/fail criterion of the RFP. If so, the HPTE will reject the material change.
- Would the material change result in the private partner's proposal being ranked lower than another proposer's ranking? If so, the HPTE will reject the material change.
- If the material change passes the two prior evaluations then HPTE in its sole discretion will evaluate and make a decision about whether the material change is in the State's best interest and based on this assessment make a final decision on accepting or rejecting the material changes to the documents and notify the private partner of the final decision. In select cases, the material change may be of such import that subsequent HPTE Board approval is required for the change.

ii. Failure to Reach Financial Close

It is within the HPTE's sole discretion to allow extensions of time for the private partner to reach financial close provided the HPTE has evidence that significant progress is being made by the private partner to reach financial close and the additional time would result in financial close in the best interest of the State. If time has expired and the private partner cannot reach financial close within the time period set in the RFP, HPTE may require that the private partner forfeit their bid/proposal security.

iii. HPTE Acting as Conduit Bond Issuer

As discussed in Chapter 2 in some cases the private partner may request that HPTE serve as a conduit bond issuer on behalf of the P3 Project. It is in the sole discretion of the HPTE Board to agree to serve as a conduit bond issuer. If the Board agrees to do so the requirements of Chapter 2, Section P shall be met in serving as conduit bond issuer.

iv. Final Value for Money

After all documents are agreed to, including any amendments to the P3 project agreement and supporting documents, and the financial model has been updated for financial close, HPTE will provide a final Value for Money analysis based on the financial model as of financial close to ensure that the P3 Project is the best value for the State prior to financial close. The final Value for Money report will form part of the due diligence documents provided to the HPTE Board supporting moving to financial close on the P3 Project.

v. Execution of Financial Close

After completion of appropriate due diligence the private partner will reach financial close. HPTE will have a role in this to the extent the P3 project agreement and supporting documents must be amended or HPTE serves as a conduit bond issuer. Otherwise the

process is the responsibility of the private partner. Once financial close is completed the private partner will provide HPTE a complete transcript of the closing documents.

At this point the P3 Project moves to the Implementation stage as discussed in Chapter 5.

V. Project Implementation and Operations Phases

A. Organizational Chart/Decision-Making Authority

As the project moves through implementation and into operations, the project team needs to have clear roles and responsibilities. Although much of the project will be relatively similar to a typical major design-build project and follow very similar processes, the project team needs to understand how decisions and directions affect the long-term P3 project agreement. Therefore, the decision making and communications will require CDOT to be the day-to-day lead on the project for both the implementation and operations phases of the project, and communicate with HPTE on a regular basis. HPTE will act as the contract manager. Figure 9 on the following page illustrates the organization of the offices with the general responsibilities that will need to be assigned for the project. As mentioned previously the decision making process should include an assessment/consideration of how all decisions impact the long-term P3 project agreement. Both HPTE and CDOT will jointly develop the management plan for a specific project and include the following sections to help ensure the appropriate personnel are involved in decision-making during implementation:

- Defined regular meetings/teleconferences with the HPTE/CDOT to cover:
 - Project status
 - Project issues
 - Public outreach
 - Claims and intent to claim/change orders/supplemental agreements
 - Non-compliance status
 - Project look-ahead
 - Potential issues/decisions needed
 - Opportunities for incorporation of lessons learned/best practices from other projects/states
- Defined decision-making matrix to categorize decisions, including the following approval/concurrence options:
 - CDOT approval/HPTE concurrence
 - CDOT approval
 - HPTE approval/CDOT concurrence
 - HPTE approval
- Contract Status
 - Payment to/from private partner to date
 - Pending Payments to/from the private partner
 - Non-compliance status
 - Contract performance measures
- Owner Obligations
 - Review of upcoming owner deliverables/reporting
 - Owner performance and resources

Each entity will determine at what level within their organization they need to escalate a specific decision or concurrence. The intent of this section is to recognize the need for a joint effort on some decisions, while allowing the flexibility for each entity to make decisions that are solely their responsibility in a timely fashion. Although not every needed decision will have a clear path for decision making, developing a process allows for all decisions and issues to get identified early that will allow for proper and sound decision making by the team. This section will discuss and provide examples of decision-making considerations to help illustrate and prepare the team to establish a clear process during implementation and operations.

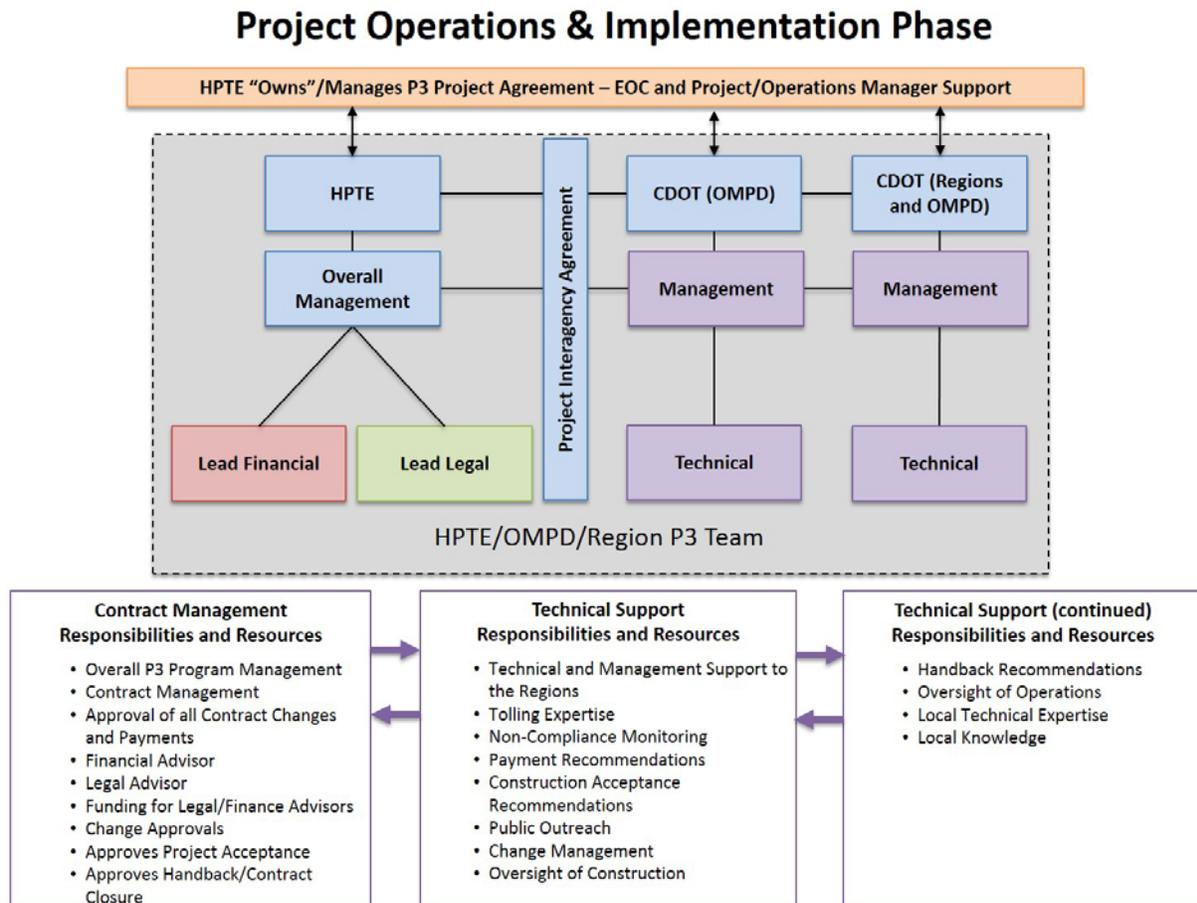


Figure 9 - Team Structure, Roles, and Responsibilities – Project Implementation and Operations Phase

B. Program Organization, Roles, and Responsibilities

An Executive Oversight Committee (EOC) will be established, similar the committee established during procurement, for the project that provides overall policy direction, dispute resolution, and guidance to the project delivery team. The primary functions of the EOC are to:

- Make policy decisions for the project

- Ensure adequate resources are provide from each respective organization to support the project
- Provide support to the project team in relation to regional and national stakeholders
- Monitor the progress of the project

The member organizations of the EOC will have the following roles and responsibilities on the project:

- HPTE – Serve as the lead contract manager for the P3 project agreement, assisting the CDOT Region on any P3 project agreement questions and interactions with the private partner. HPTE also holds final approval authority over the contract and will typically provide the legal and financial interpretations of the contract and proposed contract changes.
- CDOT Region – Deliver and manage the design and construction work, right-of-way acquisition, intergovernmental agreements, and other project- related agreements with utilities and other agencies. CDOT will also be responsible for the day to day management during the Operations Phase of the contract.
- OMPD – Serve as consultant to HPTE and the CDOT Region on technical provisions in the P3 project agreement. OMPD will provide major project management expertise as well as tolling expertise.
- FHWA Colorado Division Office – Oversee the project, consistent with the Project Stewardship and Oversight Agreement, quality assurance reviews, and process claims and P3 project agreement modification orders per the Project Stewardship and oversight Agreement
- Other key funding partners – HPTE will coordinate with other funding partners in accordance with intergovernmental agreements for the project.

C. Project Management Team, Roles and Responsibilities

The below roles and responsibilities cover both the implementation and the operations period. The general structure and reporting of the team will be similar in both periods but some positions will only exist during implementation like the design and construction mangers. These positions can be re-established in the future during major project renewals depending on how the concessionaire plans their work. It should also be noted that the personnel that fill all positions should be re-evaluated as the project transitions from implementation to operations and the efforts and risks are reduced.

The **project manager** reports to the EOC, is the senior point of contact for the project, and is responsible for:

- Overall responsibility and day to day decisions making for implementation period and most likely full-time in the project office, ensuring the project is on time and on budget
- Overall responsibility for the oversight of the Concessionaire’s Operations during the operating period and planned renewal work working at a remote location and available as needed by the Operations Manager.
- Serving as the senior point of contact for the project

- Ensuring terms and conditions of the P3 project agreement are met by HPTE and the private partner
- Managing the contractual and financial matters
- Overseeing administration of the federal funding

It is anticipated that the P3 Project Manager will transition to become the **contract manager** and will have ultimate responsibility for interpretation of the contract utilizing legal and finance advisors as necessary. They will provide regular guidance and direction for all contract matters to the day to day managers in the field for both implementation and operations. They will decide what direction and decisions must be escalated to the Project Director and will, along with the day to day managers brief the Project Director on the project issues and status.

The project manager is responsible for assuring all Equal Employment Opportunity requirements of the P3 project agreement are fulfilled.

The **design managers** report directly to the project manager. Design Managers from both CDOT and other project partners are charged with the overall administration of the design portion of the project and ensuring the design conforms to the terms of the P3 project agreement. They are responsible for ensuring a smooth cooperative relationship between the private partner, CDOT, and other project partners, and impacted local jurisdictions in review and approvals necessary as stipulated in the P3 project agreement. They also coordinate with the Construction Manager to resolve design-related issues that are brought up during construction.

The **construction managers** report directly to the project director. Construction managers from both CDOT and other project partners are charged with the overall administration of the construction portion of the project. They evaluate, process, and approve change orders, disputes, and claims. The Construction Managers also coordinate with the Design Managers before and during construction so that the project is built per the P3 project agreement and to the highest quality possible.

The project manager for the **operations stage** will be termed the operations manager to oversee the contractual obligations during the operating period. They will assign resources for any independent inspections or assessments of the private partner's performance and make recommendations to the contract manager for any non-compliance assessments as well as recommendations on any contract changes whether if they will be owner directed changes, private partner requested or potential claim oriented changes. The Operations Manager will be responsible for regular reporting on the project as well as briefings to the Contract Manager to keep them updated and informed on the status and issues on the project. The Operations Manager will also be responsible to have an Operations Management Plan developed, as describe in the Operations Transition section of this manual, in place that will complement the Concessionaire's Maintenance and Operations Management Plan and will provide the necessary guidance and information to manage the project on a day to day basis.

The **Project Public Information (PI) Liaison** coordinates with the project manager during the implementation and operations stage and is responsible for coordinating all public

outreach efforts by CDOT, funding partners and the private partner during the life of the project.

Other project partners provide staff to support CDOT in the management of the project per the terms of Intergovernmental agreements.

D. Technical Support

Throughout design, construction and operations, the project will receive technical support from experienced CDOT engineers and construction managers and their consultants, experts from other agencies, experts from CDOT's specialty units such as environmental, traffic, right-of-way, and from FHWA. The management of technical support will be handled through the day to day managers during the given phase of the project.

E. Project and Document Controls

The private partner will use data systems, standards, and procedures compatible with those employed by the HPTE/CDOT and implement any new operating practices required as a result of HPTE/CDOT's amendments to any such systems, standards, and procedures. Any software interface must be secure so that only authorized users have access.

The private partner will:

- Provide a secure location for any interface as may be provided by HPTE/CDOT, such that only authorized users have access and that it is protected from loss, theft, damage, unauthorized, or malicious use.
- Use appropriate standards and procedures, and train private partner personnel to operate any HPTE/CDOT data management system the HPTE/CDOT may require in connection with the project.
- Provide a mechanism for the electronic transfer of meta data along with the associated portable document format (PDF) images for uploading into an Electronic Document Management System (EDMS) employed by HPTE/CDOT.
- To allow for disaster recovery and additional security, the private partner will back-up all project-related documents on a nightly basis and store all project-related documents in a secure off-site area on a weekly basis. The private partner will provide HPTE/CDOT access to their document control database as deemed necessary by HPTE.

The HPTE has successfully used the EDMS system Aconex on other projects.

HPTE/CDOT will:

- Assess how project files will be stored and organized, and will further consider:
 - Typical Project Development information that would have started ahead of the project being designated as a P3.
 - Organization and tracking of information being provided to proposers during procurement
 - Organization and location of information that is submitted by proposers including the team's evaluation of proposals, recommendations and selection of best value proposals.

- Location and responsibilities for housing any confidential information
 - During procurement
 - During construction
 - During operations
- Access protocols for project information
- Retention protocols for project information
- Archiving protocols for project information
- Responsibilities for project and document controls

F. Document Retention

The private partner will establish and maintain an EDMS to store, catalog, and retrieve all documents. Unless otherwise directed by HPTE, record retention will comply with the requirements of the CDOT and be provided to HPTE at the time of expiration or earlier termination of the agreement.

G. Correspondence and Delivery

The private partner must use the EDMS web-based collaboration system to communicate all formal matters with the HPTE/CDOT and other consultants and subconsultants in relation to the project and its execution. The private partner will register and transmit all drawings and documents and all amendment to drawings and documents for the project on the EDMS web-based collaboration system.

H. Serving Notices

A notice, consent, information, or request that must or may be given or made to a party under the agreement must be delivered to that party using both the web-based collaboration system and electronic mail.

I. Project Handoff Meetings

It is recommended that an official hand off meeting occur to recognize the transfer of day to day responsibilities from the procurement team to the implementation team, and from the implementation team to the operations team. These meetings can serve as a platform to confirm the communication and documentation protocols and establish regular meeting and reporting schedules and responsibilities required for the particular phase of the project. The meetings can also serve as an opportunity to educate any members of the implementation or operations team on any specific contract requirements/obligations that management would like to highlight. It is recommended to get the implementation as well as the operations team members involved prior to the start of their respective phases to help ensure a smooth handoff/transition and overall acceptance of the work and responsibilities at these meetings.

J. HPTE/CDOT Monitoring, Payments and Reporting

There will be several aspects of the project that require monitoring and reporting for different reasons and purposes. The monitoring and reporting of certain items will most likely

be needed to satisfy many stakeholders including, FHWA, project supporters (including funding sources), the general public, other projects looking for lessons learned, and third parties including permitting agencies.

The HPTE and CDOT will work closely to incorporate these items into the project's implementation and operations management plan clearly stating the deliverables and the responsible party for each item. Each project will be unique and HPTE and CDOT may consider utilizing facilitated workshops to help develop a monitoring and reporting plan that will address everyone's needs in an efficient and logical manner. These workshops could be part of a risk analysis mentioned earlier in the manual that will allow the team to have a risk-based approach to their management structure and activities.

It is important to extract all of the owner obligations from the P3 project agreement and incorporate into the appropriate management plan, as well as other agreements for the project, and assign the appropriate personnel/office/position that will be responsible for each obligation. In some cases the team may develop a specific process to address specific obligations that may include both HPTE and CDOT participation. The team can also summarize the private partner obligations and assess and develop specific processes of how and who will monitor these obligations and the actions and responsibilities if these obligations are not met.

This process will identify many of the items that should be considered for the management plan as well as provide some guidance to help the team develop the roles and responsibilities for these items. A critical item that will require both HPTE and CDOT to work closely on will be all items requiring some form of payment or receipt of payment.

i. Milestone/Progress Payments to Private Partner

The HPTE/CDOT may utilize milestone or progress payments to the private partner for various reasons including:

- A public subsidy (payment(s) to the private partner) may be required to make the project financially feasible. These payments to the private partner will offset debt and reduce the overall finance costs of the project.
- Incentivize or prioritize certain project obligations.
- Incentivize meeting certain schedule commitments.
- Potentially pay for specific project feature(s) that the funding (payment) was intended for. An example could be a municipality that requested a pedestrian bridge be constructed with the project with set aside funding.
- Also, availability type payments during the operations phase.

During the Procurement Phase HPTE and CDOT will have worked closely to develop the sizing of payments as well as the timing of the payments, and what will be required of the concession team to receive or authorize these payments. The sizing/timing of the payments will need to be clear in the P3 project agreement and achieve both the goal of injecting the public subsidy but also assuring HPTE/CDOT that they are receiving value that is equal to or greater than these payments prior to authorizing.

Since CDOT will be responsible for the overall implementation of the project, they will need to be the lead in tracking and reporting of any payments that will be due to the private

partner. They will work closely with HPTE to incorporate the specific requirements and expectations for all activities leading up to milestone achievement. CDOT will have an obligation to HPTE to provide updates and status of these milestones as well as recommendations for approval or rejection regarding private partner invoices for such payments.

The requirements (obligations) and expectations that are developed should be shared early with the private partner. Reviewing the expectations in conjunction with the P3 project agreement language will help confirm clear understanding of these requirements between all parties and help avoid untimely disagreements regarding milestone achievements and appropriate payments. The example below helps illustrate the need for defining expectations as part of the development of clear milestone/payment requirements, and the benefits of following up on these items as part of the development of the team's implementation management plan.

Example:

An owner has incentivized an opening a new ramp (traffic movement) in an accelerated fashion and incorporated a milestone payment for "Completion of the new ramp with it opened to traffic in its final configuration."

Although this may sound like a straight forward requirement, the below items are left unclear in the contract:

- Will the ramp be required to remain open without closures for the duration of the P3 project agreement?
- Does the final surface course need to be in place?
- Does the final striping need to be in place?
- Does the lighting need to be installed and functional?
- Do the full shoulders need to be available?

By developing a set of requirements and expectations needed to accomplish the milestone, any disagreements can be identified early and worked out in advance and can be tracked, reported on, and discussed by the team without any misunderstandings. This will allow the project team to have a clear focus on the tasks needed to achieve any milestones as well as provide the public information on milestones that will set the appropriate expectations when achieved. It is suggested that this exercise be done in the development of the procurement documents to the greatest extent possible and to confirm the information as part of the implementation management planning.

If HPTE/CDOT elect to make progress payments during construction they will clearly define what will be required to review and process these progress payments for payment.

Considerations shall be made for:

- What percent of work must be accomplished prior to allowing a progress payment?
- Will the progress payment cover activities that are not 'in the ground' work? Will they cover mobilization, design, planning, management, financial advisors?
- What percentage of effort versus progress payments is desirable?
- What effort will it take to monitor the progress for payments?
- What are the potential public perceptions when making progress payments?

ii. HPTE/CDOT Monitoring Requirements

HPTE and CDOT will work together to develop the monitoring requirements as part of the implementation and operations management plans. There will be specific monitoring and reporting requirements as part of any agreements that either CDOT or HPTE has made as part of the development of the project. In addition both CDOT and HPTE may want to monitor other items that may not be a specific requirement as part of the executed agreements for the project. These could be items that will help manage HPTE/CDOT's risks on the project or help provide insight to the performance and lessons learned that can be gained on the project. It is suggested that CDOT/HPTE utilize a risk-based approach to help develop and prioritize their monitoring plan so resources can be planned in the most efficient way to meet the goals of the project and protect HPTE/CDOT. The below items are meant to be a starting point for consideration of items that could be included in the project's monitoring portion of both the applicable implantation and operations management plans:

- FHWA reporting requirements (financial, traffic, or other)
- Traffic performance
- Customer service
- Milestone status/payments
- Submittals and review times
- Utility relocations
- Right-of-way acquisitions
- Permitting status
- Long-term asset construction (elements being constructed that will outlive the term)
- Operations and/or maintenance performance during implementation
- Operations and maintenance performance during operations
- Material or other testing audits
- Certifications
- DBE goals
- Private partner performance (non-compliance, payment adjustments)
- Owner performance(owner obligations)
- Availability of the roadway(s) as applicable
- Any relief or compensation events
- Other

It is recommended that regular meetings are scheduled (potentially quarterly) to reassess the monitoring aspects of the implementation and operations plans during the respective periods. This will allow both CDOT and HPTE to ensure priorities and staffing are still appropriate from the previous update and if not, have the flexibility to adjust the monitoring to best suit the project and meet both HPTE and CDOT goals.

iii. Non-Compliance Monitoring Requirements and Payment Adjustments

When the Project Team identifies non-compliance events in the field, they shall notify the HPTE of the event by summarizing:

- Description of the event
- How the event was identified (private partner reported – self-reported – or other)
- The specific P3 project agreement reference that the private partner failed to comply with
- The number of non-compliance points and/or financial adjustment(s) that can be assessed per P3 project agreement for the specific event
- Recommendation of the project office with supporting information
- Timing requirements for owner action/decision on the non-compliance event (may coincide with private partner, notice, or invoice approvals)

HPTE, upon notification and receipt of the non-compliance information/package, will assess the need for a meeting/teleconference with the project office or if they are able to provide concurrence of the recommendation. The HPTE shall track and document both the non-compliance points and financial adjustments that could have been assessed as well as what actually gets assessed, and look for trends and potentially lessons learned that should be captured and applied to future projects or adjustments to the current project. This tracking document should be incorporated and updated as necessary into the lessons learned information described in section M).

iv. Claims Assessment and Processing

As with the non-compliance reporting, the project office shall provide the HPTE and FHWA early notice of any potential for claims as well as any claims that have been submitted, and provide a summary that would include:

- Description of the claim or potential claim
- Any supporting documentation if submitted by the private partner
- Schedule impacts on any decision making that will be needed
- Recommended actions from the project office (this will vary depending on how far any evaluations have progressed)

The HPTE will utilize their advisors as necessary to evaluate claims and provide direction and decisions to the project office to follow through on. HPTE will be responsible to process claims for payment (with assistance from the project office (CDOT)) and if disputed, follow the necessary dispute procedures called for in the P3 project agreement. The project office will be responsible for developing any supporting documentation necessary for either disputing claims or approving/paying claims. This will include any presentation material that may be necessary for a dispute review board. The HPTE will have approval authority over the any information presented or provided in support of a claims dispute. Coordination with FHWA will be required to maintain consideration for federal eligibility.

Through the coordination with the HPTE, payment sources will be identified as well as any third-party approvals that may be necessary from any funding partners or other stakeholders that could be required to approve or accept the financial impacts of a claim. The HPTE will make the determination per project as to whom, whether CDOT or HPTE, shall coordinate claim matters with third parties. This designation can be on a project basis or claim by claim as determined by HPTE.

The HPTE will summarize and track the claims on a project for applicability for future and current projects. The summary and relevant information should be incorporated and updated as necessary into the lessons learned information described in section M. (As the database of information grows, the HPTE will be able to identify the best way to organize the information for easy access to the project teams developing and implementing projects.)

v. Third-Party Coordination

The CDOT and HPTE shall review the list of third parties and identify who will be the main point of contact during the project's implementation period and whether that needs to vary at different levels as it pertains to:

- General Information (project status/updates)
- Any reviews or feedback on project submittals or decisions
- Contractual issues that may affect an agreement or require approval/acceptance of the third party (claim or unforeseen condition)

It will be project office's responsibility to identify any third party communications and coordination that will be necessary of HPTE. Both CDOT and HPTE shall keep each other informed of any developments and contacts made with third parties. Depending on the expected involvement as well as risks with third parties, they should be discussed as part of the regular project status/update meetings that the project office will have with HPTE on. As the project progresses, some third parties may not be as relevant and will not need to be reported on while others may increase in priority.

vi. Public Outreach

As the project moves into implementation, it is critical that the project office take the lead in public outreach. The project office will be in the best position to provide the latest and most accurate information. As part of the development of the project's implementation management plan, the roles of the private partner and CDOT will be clearly defined. The project office will update HPTE regularly on any outreach activities and issues that may have developed, including particular public complaints. The HPTE shall have approval authority over any outreach literature or marketing-type materials generated by the project office for public consumption. The HPTE and CDOT will work collaboratively on any specific messages that they want to convey to the public that will enhance the public's understanding of alternative project delivery (P3) and any project-specific benefits that have been realized. This project-level public outreach can be used to help support the more program-level messages both CDOT and HPTE want to convey.

As the project moves into operations HPTE and CDOT must evaluate how best to handle public outreach. Each project will be unique and the Project Team may decide on different approaches. Items that should be considered for a P3 project in the operations phase include:

- How are the operations and maintenance responsibility divided between a private partner, CDOT, and HPTE? Will private partner have responsibilities Right-of-Way to Right-of-Way or potentially only for the tolled lanes?

- Who is collecting tolls?
- What are any third party obligations for the project?
- Who has snow removal responsibilities?
- Is this a high profile or controversial project?

vii. Transition Plan Development for Operations

Prior to implementation completion, the CDOT office shall start the development of a CDOT/HPTE Operations Management Plan. It is important to start the development of this plan approximately a year in advance of project completion. The early start is necessary to work out the responsible parties for inspections, monitoring, and reporting during the operating period to ensure each agency confirms their responsibilities and can plan resources accordingly. The plan should address several items, including but not be limited to the following:

- Inspections
- Monitoring
- Specific asset discussion as necessary based on P3 project agreement (lighting, landscaping, structures, etc.)
- Incorporation of P3 project agreement requirements (DBE reporting, insurance, etc.)
- Emergency procedures
- Incident management
- Financial Reporting
- Communications (public relations)
- Tolling operations
- ITS and traffic management
- Snow/ice removal/treatments
- Project controls
- Document control
- Performance management and reporting
- Payment/revenue processing
- Annual budgets
- Non-compliance reporting
- P3 project agreement changes
- Permit work/lane closure requests
- Permit compliance
- Safety Compliance
- Fuel spills
- Renewal work
- Owner reports (annual finance plan, project management plan updates, other)
- Handback procedures and responsibilities, early asset condition reports, determination of appropriate hold-backs, and funding for reserve handback account.

The plan should describe the process and minimum requirements for HPTE/CDOT related to the transitioning into the operations phase including HPTE/CDOT roles and responsibilities, documentation responsibilities and decision-making. This can prove challenging to prioritize

but the development should be started approximately a year in advance of construction acceptance. . Once the plan is complete it should be updated on a regular basis and for significant changes to ensure that it is accurate and captures any lessons learned and best practices for continued success.

K. After Action Report for Implementation Phase

Because P3 projects are complex and new to states, it will be important to clearly identify best practices and lessons learned as they evolve. The performance management and reporting section identified in the Transition Plan above will be a good source of information in determining how well the performance criteria of the contract is working. The goal will be to set performance criteria at the appropriate level to yield the performance expected at the optimum value. It will be HPTE's responsibility to document and organize materials that are generated on projects for non-compliance, claims, and general clarifications that occur as projects get implemented. The HPTE will review these materials on a regular basis with project personnel to draw out any best practices or lessons learned that can be incorporated into procedures or modification of procedures and/or practices that will improve the state's P3 Program. The HPTE will decide what actions require HPTE Board approval and will be responsible for developing any materials for board consideration, as well as regular updates on actions the HPTE has or will be taking to improve their processes and the overall P3 Program.