



Guidelines and Procedures

For the Public-Private Partnerships Act of 2014

The Honorable Muriel Bowser
Mayor

Rashad M. Young
City Administrator

Seth W. Miller Gabriel
Director, Office of Public-Private Partnerships

Published October 21, 2016



District of Columbia Office of Public-Private Partnerships
John A. Wilson Building | 1350 Pennsylvania Avenue, NW, 533 | Washington, DC 20004
(202) 724-2128 | op3@dc.gov | [@TheDCOP3](https://twitter.com/TheDCOP3) | op3.dc.gov

Policy Statement

The District of Columbia has a long history with public-private partnerships (P3s) from the early days of the creation of the District to the community movement to rebuild the Oyster-Adams Bilingual School. With that history as a guide, the District government enacted the Public-Private Partnerships Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*) (P3 Act) to enhance the future of P3s in the nation's capital. The road map for this future - a future that will lead to improved government facilities, more effective delivery of government services, economic development, jobs for District residents, and more resources available for public purposes - is contained within these guidelines.

The first step toward this future was the creation of the District's Office of Public-Private Partnerships (the DC OP3 or Office) in November 2015. The DC OP3 serves as the clearinghouse and procurement advisor for all District agencies seeking to utilize the P3 procurement model. The DC OP3, located in the Office of the City Administrator, works closely with all District agencies, the Mayor's Office, the Council of the District of Columbia (Council), the public, and other stakeholders to identify projects that can be delivered through an innovative project delivery model for the benefit of the District residents.

These guidelines were written to implement the P3 Act and to provide for a procurement process that is open, competitive and encouraging of innovation, all while protecting the public interest. When and how the DC OP3 conducts public notification, outreach and meetings is included in the guidelines.

The P3 Act is implemented through regulations contained in Chapter 48 (Public-Private Partnerships), of Title 27 (Contracts and Procurement) of the D.C. Municipal Regulations (27 DCMR 48), which are being published subject to a formal notice and comment period under the Public-Private Partnership Act of 2014, approved March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-271.01 *et seq.*) ("P3 Act") and the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*). These Guidelines serve as a user-friendly presentation of those regulations and contain additional non-binding, guidance on the P3 procurements and the procedures of the DC OP3. Additional copies of both the Rules and Guidelines are available electronically, at no cost, on the Office's website at <http://op3.dc.gov/>.



Table of Contents

Executive Summary.....	1
1.0 Introduction	4
1.1 Purpose of these Guidelines	4
1.2 Modification of Guidelines.....	4
1.3 Organization of these Guidelines.....	4
1.4 Regulations.....	4
1.5 Defined Terms.....	5
1.6 Relationship between the DC OP3 and Other District Agencies.....	5
1.7 Public is Engaged in the P3 Process	5
1.8 Funding of Project Development	5
1.9 Application of Other Laws.....	5
1.10 Conflict of Interest, Open Meeting and FOIA Requirements.....	6
2.0 Project Identification	7
2.1 Outline of the Solicited Project Identification Process	7
2.2 Identified Solicited Projects	7
3.0 Project Screening for Solicited Proposals	8
3.1 Stage One: Initial Screening	8
3.2 Stage Two: Detailed Screening	9
3.3 Creation and Publication of P3 Project Pipeline	12
3.4 Project Prioritization	13
4.0 Project Development	14
4.1 Project Development Tasks	14
4.2 First-Level Project Value-for-Money Analysis.....	14
4.3 Draft Public Sector Comparator.....	14
4.4 Statement of Intent to Procure as a Public-Private Partnership	15
5.0 Project Procurement – Solicited Projects	16
5.1 Request for Information	18
5.1.1 Public Notice	18
5.1.2 Schedule.....	18
5.1.3 Industry Conference and One-on-One Meetings.....	18
5.1.4 Use of Responses to Request for Information.....	18



5.2	Pre-Qualification / Request for Qualification	18
5.2.1	Public Notice	18
5.2.2	Schedule	18
5.2.3	Minimum Required for Pre-qualification	18
5.2.4	Other Requirements and Criteria for Pre-qualification	19
5.2.5	Certification of Pre-qualification	19
5.2.6	Collaborative Review and Feedback	19
5.2.7	Application Fee	19
5.2.8	Modification and Cancellation of Request for Qualification	19
5.2.9	Use of Responses to Request for Qualification.....	20
5.3	Review of Draft Request for Proposals	20
5.3.1	Public Review of Draft Request for Proposals	20
5.3.2	Approval of Proposed Request for Proposals by the Council	20
5.4	Solicitation through Request for Proposals	21
5.4.1	Public Notice	21
5.4.2	Schedule	21
5.4.3	Requests for Proposals Requirements	22
5.4.4	Evaluation and Selection Criteria Requirements	22
5.4.5	Format for Responses and Executive Summaries	22
5.4.6	Evaluation of Responses to Request for Proposals.....	22
5.4.7	Selection of Preferred Bidder.....	23
5.4.8	Publication of Responsive Executive Summaries.....	23
5.4.9	Payment of Stipends	23
5.4.10	Use of Responses to Request for Proposals.....	24
5.4.11	Confidential Information Included as Part of a Solicited Proposal	24
6.0	Project Procurement – Unsolicited Projects	26
6.1	Time Periods for Acceptance of Unsolicited Proposals	26
6.2	Discussions with DC OP3 before Submission of Unsolicited Proposal.....	26
6.3	Structure and Format of Unsolicited Proposals.....	26
6.4	Preliminary Evaluation of Unsolicited Proposals	28
6.4.1	Preliminary Evaluation Criteria	28
6.4.2	Preliminary Evaluation Fee	28



6.4.3	Preliminary Evaluation Results.....	28
6.5	Comprehensive Evaluation of Unsolicited Proposal	28
6.5.1	Unsolicited Proposal Clarification	28
6.5.2	Notification of the Unsolicited Proposer	29
6.5.3	Public Notice and Alternative Proposals.....	29
6.5.4	Schedule.....	29
6.5.5	Requirements of Alternative Proposals	29
6.5.6	Updated Submittals by the Original Unsolicited Proposer	29
6.5.7	Comprehensive Evaluation	29
6.5.8	Comprehensive Evaluation Review Costs	31
6.5.9	Use of Unsolicited Proposals.....	31
6.5.10	Selection of a Preferred Bidder.....	31
6.5.11	OCFO Certification	32
6.5.12	OAG Certification	32
6.5.13	Notice of Selection of Preferred and Secondary Bidders	32
6.5.14	Communication during the Procurement Process.....	32
6.5.15	Confidential Information Included as Part of an Unsolicited Proposal.....	32
7.0	Rules to Ensure Ethical Conduct	34
7.1	Ethical Duty	34
7.2	Ethical Obligations under the Comprehensive Code of Conduct.....	34
7.2.1	Duty of Loyalty	34
7.2.2	Financial Conflicts	34
7.2.3	Private Gain.....	34
7.2.4	Nonpublic Information.....	34
7.2.5	Outside Employment	34
7.2.6	Gifts from Outside Sources	34
7.2.7	Post-Employment Conflicts of Interest.....	35
7.2.8	Government Property	35
7.2.9	Disclosure of Prior Employment	35
7.2.10	Additional Obligations.....	35
7.3	Reporting Conflicts and Violations.....	35
7.3.1	District Employees	35



7.3.2 Private Entity Employees	35
7.4 Mitigating Conflicts and Violations	35
8.0 The Public-Private Partnership Agreement	36
8.1 Requirements for the Public-Private Partnership Agreement.....	36
8.2 Negotiation	37
8.3 Engagement of Secondary Bidder.....	37
8.4 Facilities Plan Approval	37
8.5 Prohibition Regarding Non-Compete Provisions	37
8.6 Access and Right to Inspect	37
8.7 External Funding	38
8.8 Projects of Regional Scope.....	38
8.9 Sovereign Immunity.....	38
8.10 Remedies.....	38
8.11 Compliance with Federal and District Laws.....	38
8.12 Repayment of Fees Paid by the Original Unsolicited Proposer	39
8.13 Monitoring of P3 Agreement Performance	39
9.0 Final Approval of the Public-Private Partnership Agreement.....	40
9.1 Council Report Requirements.....	40
9.2 Council Approval of the Public-Private Partnership Agreement	40
APPENDICES TO THE DC OP3 GUIDELINES.....	41
A. Definitions.....	42
B. Reserved Rights.....	44
C. Disclaimers	45
D. The DC OP3’s Approach and Commercial Terms Guidance.....	46
E. Proposal Guidance for both Solicited and Unsolicited Proposals.....	47



Executive Summary

This first edition of the District of Columbia's Office of Public-Private Partnerships Guidelines and Procedures (Guidelines) is presented as a framework for the identification, screening, selection, development, and delivery of projects through the P3s procurement model as authorized by the P3 Act. This document provides guidelines for the DC OP3 to engage private entities, District agencies, the general public, and other key stakeholders for the advancement of projects as P3s. It is the responsibility of the DC OP3 to undertake these engagement activities while seeking the best value-for-money from the project and protecting the public's interest.

The process for achieving these objectives is outlined in **Figure 1** below. It should be noted that the DC OP3 will update the P3 procurement process on an ongoing basis to reflect the development of best practices and market conditions and to ensure that the P3 procurement process achieves the best value for the residents of the District.

These Guidelines are organized into sections that provide details regarding the P3 procurement process and the roles played by each party in that process. These guidelines also provide the framework for both the solicited and unsolicited procurement tracks as allowed under the P3 Act. More specifically, the Guidelines are organized as follows:

Section 1.0 is an introduction to the Guidelines, defining their purpose and providing an overview of the objectives of the DC OP3. This section discusses the relationship of the DC OP3 to other public agencies, the residents of the District, and the private entities seeking to partner with the District.

Section 2.0 outlines the P3 project identification process that will be undertaken by the DC OP3 in collaboration with District agencies and other key stakeholders. This process will include a review of existing agency capital improvement plans and other planning documents as well as identification of new projects based on innovative thinking and a top-to-bottom review of infrastructure needs.

Section 3.0 outlines the screening process that will be applied to all possible P3 projects. This two-step screening process will first utilize an initial screening to identify those infrastructure projects that can be delivered as a P3 and a second, detailed screening to find those projects that should be delivered as a P3.

Section 4.0 outlines the P3 project development process for both solicited and unsolicited proposed projects. This section also provides guidance on both the value-for-money analysis and development of the draft public sector comparator.

Section 5.0 provides the framework for the solicited proposal project procurement process; this is the process by which the DC OP3 will solicit private entity partners through a request for information, request for qualifications and request for proposals process. The process for the Council approval of the request for proposal documents is also detailed in this section.

Section 6.0 provides the framework for the unsolicited proposal project procurement process by which the DC OP3 will accept and review unsolicited proposals received by the Office. The structure for public notice, acceptance, and evaluation of alternative proposals is also provided in this section.



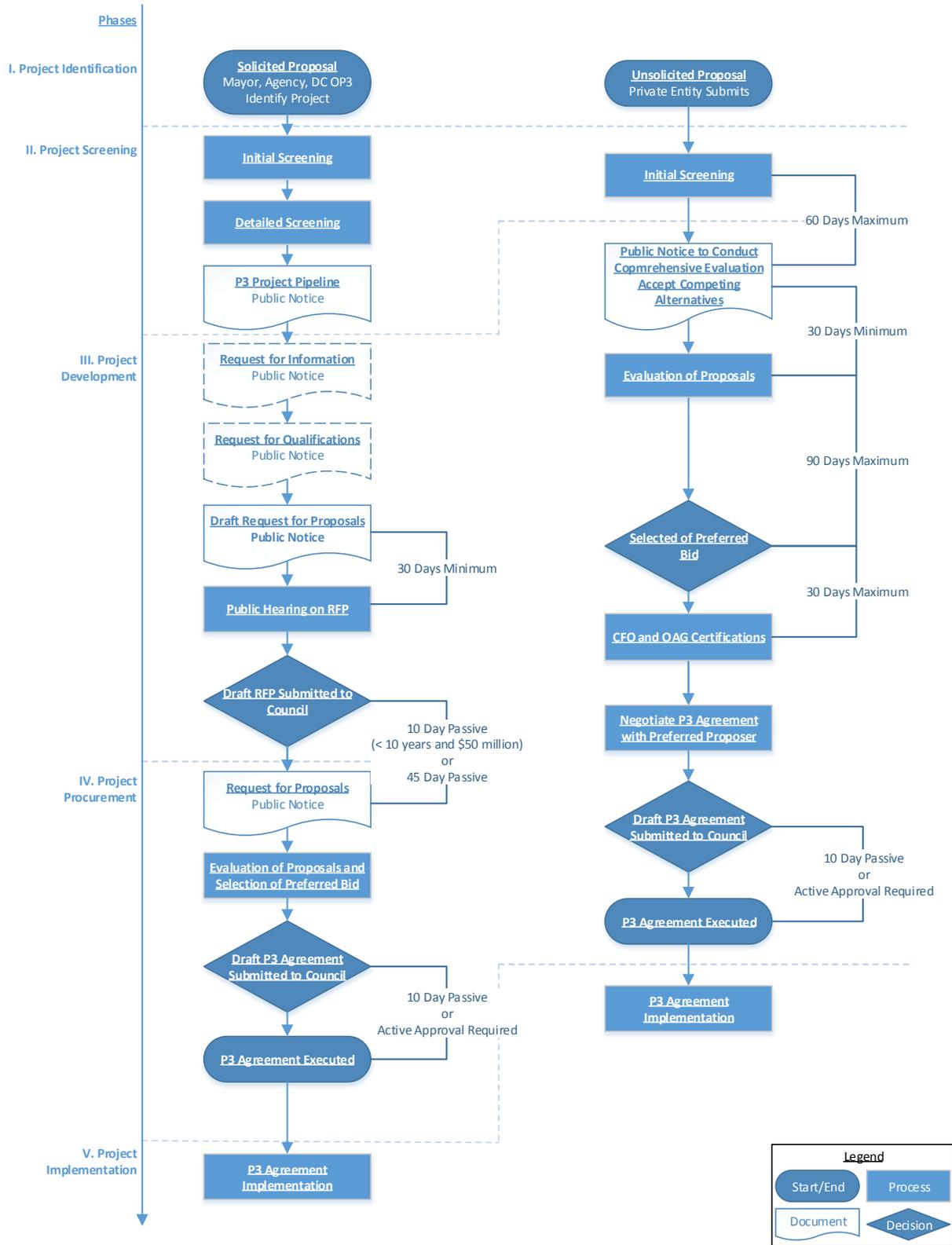
Section 7.0 provides details regarding the P3 agreement framework and what elements will be required in each agreement to ensure that the public interest is protected.

Section 8.0 highlights the DC OP3's commitment to transparency. The process for final approval of the P3 agreement by the Council is also detailed in this section.

The **Appendices** define terminology used in the Guidelines, describe the rights reserved by the District government and the DC OP3, provide an outline of the DC OP3's general approach to P3s, and provide guidance for the submission of solicited and unsolicited proposals.



Figure 1: The DC OP3 Project Procurement and Cycle Management Process



1.0 Introduction

The District government is authorized to enter into public-private partnerships (P3s) by the Public-Private Partnerships act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 et seq.) (P3 Act). The goal of the Office of the Public-Private Partnerships (DC OP3 or Office), which was established by the P3 Act, is to facilitate the successful delivery of P3 agreements for qualified projects in the areas of education, transportation, cultural attractions, recreation, public buildings, utilities, and real estate, among others.

This is first edition of the Office of Public-Private Partnerships Guidelines and Procedures (Guidelines). The Guidelines outline the process for the development, solicitation, evaluation, award, delivery, and oversight of solicited and unsolicited P3 projects. The relationship between the DC OP3 and the District government agency that will own the P3 project is also explained. The Guidelines will be updated periodically, at the discretion of the DC OP3, to reflect the development of best practices and market conditions, among other factors. Additional copies of this document, as well as other documents including procurements, will be made available on the DC OP3 website at <http://op3.dc.gov>.

1.1 Purpose of these Guidelines

The Guidelines provide direction to both the DC OP3 and the private sector bidders. These guidelines outline the process by which project criterion is developed and how project reviews will be conducted. These guidelines include a process for both solicited and unsolicited project proposals, provide the structure for the selection of a private sector partner, and finally, outline the structure of the P3 agreement.

1.2 Modification of Guidelines

The DC OP3, in coordination with the Owner Agency, retains the right to modify the procurement process set forth in the Guidelines to meet the specialized requirements of a particular P3 project procurement. Any modification to the procurement process set forth in these Guidelines shall not give recourse to any individual or entity for such modification. If a modification is made, it will be noted in all relevant procurement documents.

1.3 Organization of these Guidelines

The organization of these Guidelines follows the anticipated chronological steps that will be undertaken by the Office and the Owner Agency through the life cycle of a P3 project. The structure of both solicited and unsolicited project procurements is outlined within these Guidelines. Tables and figures are provided to illustrate key elements of the procurement process. Appendices are included at the end of these Guidelines to provide greater detail or clarification of more complex elements.

1.4 Regulations

The P3 Act is implemented through regulations contained in Chapter 48 (Public-Private Partnerships), of Title 27 (Contracts and Procurement) of the D.C. Municipal Regulations (27 DCMR 48). These Guidelines serve as a user-friendly presentation of those regulations and contain additional non-binding, guidance on the P3 procurements and the procedures of the DC OP3.



1.5 Defined Terms

The Definitions section (Appendix A) provides the definitions of a variety of terms used in the Guidelines. Defined terms are capitalized within the Guidelines. Any terms not defined in the Definitions section are used in the Guidelines under their industry standard meanings. If you have a question about a specific term, please contact the DC OP3 for additional clarification.

1.6 Relationship between the DC OP3 and Other District Agencies

The DC OP3 serves as the District government's "in-house" advisor regarding P3s. The DC OP3 will consult and coordinate with District government agencies, including the Office of the Attorney General (OAG) and the Office of the Chief Financial Officer (OCFO), in developing requests for proposals, evaluating responses, and negotiating and administering P3 agreements under the P3 Act. The DC OP3 will also act as the procurement office for all District P3s.

While the DC OP3 will serve as an advisor and procurement office for District agencies using the P3 model, the DC OP3 will only facilitate the process; the Office will not be the administratively responsible agency, or Owner Agency, of a P3 project. The Owner Agencies will possess the expertise and ability to manage a P3 agreement for the full life cycle of a project and will therefore be the public entity owners of an agreement. The DC OP3 will continue to serve as an advisor to the Owner Agency for the term of each P3 agreement.

1.7 Public is Engaged in the P3 Process

For any P3 to be successful the public must be engaged and informed at each step of the process. The DC OP3 is committed to protecting the public interest through a robust communications process. As prescribed by the P3 Act, and through these Guidelines, there are several opportunities for public engagement during the identification, development, procurement, and implementation of a P3 project. The DC OP3 will work with the Owner Agency, the Mayor's Office and the Council to identify those public stakeholders that should be involved in the P3 process and reach a diverse range of individuals and groups through as many methods as possible to maximize constructive feedback and improve P3 projects.

1.8 Funding of Project Development

The DC OP3 and Owner Agency will fund the work associated with the selection, development, and delivery of all solicited P3 procurements. The DC OP3 will coordinate with the Owner Agency to ensure that the Owner Agency has identified funds sufficient to complete the project development, delivery, and monitoring phases. Funding for all unsolicited proposal procurement activities are outlined in Section 6.0 of these Guidelines.

1.9 Application of Other Laws

Although the P3 Act established a P3-specific procurement process, and therefore exempted P3 procurements from the District's standard contracting process under the Procurement Practices Reform Act, all public and private entities involved in a P3 project shall be subject to all applicable District and federal laws unless otherwise stated in the P3 Act or Guidelines. Section 8.9 discusses the applicability of District and federal laws in more detail.



1.10 Conflict of Interest, Open Meeting and FOIA Requirements

All parties responsible for the proper administration of the P3 procurement process on behalf of the District, both public and private, shall maintain a position of strict impartiality and refrain from any activity that would imply support of or opposition to a particular private entity, proposer, or operator of a P3 agreement. Details of these requirements are outlined in section 7.0.

To provide the greatest level of transparency possible, the DC OP3 will comply with or exceed the requirements of the District Open Meetings Act (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*) and the District Freedom of Information Act (D.C. Law 1-96; D.C. Official Code § 2-531 *et seq.*). Although proprietary business information will be protected as described in sections 5.4.11 and 6.5.11, the DC OP3 will strive to publish as much material as possible on its website while maintaining the interest in fair, competitive procurements.



2.0 Project Identification

The DC OP3 is committed to identifying those projects that can be best delivered through the P3 procurement model achieving the best value-for-money for the residents of the District. P3 projects will be identified from two primary sources:

- **Solicited Projects:** The DC OP3 will review projects that have been included in the District's Capital Improvement Plan and other District planning documents in addition to meeting with District government agencies and other stakeholders who may recommend projects. These projects will be reviewed through the project screening process outlined in Section 3.0 to determine their viability to be delivered as P3s.
- **Unsolicited Projects:** Private entities may submit unsolicited project proposals to the DC OP3 for review. The unsolicited proposal process is outlined in Section 6.0.

2.1 Outline of the Solicited Project Identification Process

Capital project planning is performed by District government agencies through the capital planning and budgeting processes. The DC OP3 will begin the solicited project identification process by reviewing these documents. District government agencies and other stakeholders that are interested in exploring the possibility of using the P3 procurement model may also suggest individual project proposals to the DC OP3 for consideration as part of the project identification process for solicited projects.

2.2 Identified Solicited Projects

Based on its review of the planning documents and meeting with District government agencies and other stakeholders, the DC OP3 will develop a list of possible P3s (P3 Project Pipeline) on an annual basis at a minimum. That list will be available on the DC OP3 website. Projects included on the P3 Project Pipeline are those that have been deemed viable as P3s by the DC OP3, but are not guaranteed to be procured as a P3. Those projects that have been identified as possible P3 projects and have interest from the Owner Agency and other key stakeholders in the P3 procurement process may be advanced to the project screening process. It is possible that projects will be advanced as a P3 without first being added to the P3 Project Pipeline as situations demand.

3.0 Project Screening for Solicited Proposals

The screening of projects on the P3 Project Pipeline will allow the DC OP3 and Owner Agencies to determine which projects are most likely to achieve District policy goals, serve vital infrastructure needs, and deliver better value-for-money to the residents of the District compared to traditional procurements. A two-step methodology will be used to screen identified projects to determine their viability as P3s.

3.1 Stage One: Initial Screening

The first stage of the project screening process is the initial screening of projects on the P3 Project Pipeline. During this stage, high-level, preliminary criteria developed by the DC OP3 will be used to identify those projects that are most suitable for further review. The specific characteristics of each project will require some modification to the preliminary initial screening criteria, but those criteria will generally remain consistent on the basic aspects of revenue, risk management and social impact as described in Table 2 below.

Table 2: Stage One Initial Screening Criteria

Initial Project Screening Criteria	
Policy Priorities	<p>Does the project address a public infrastructure need of the District?</p> <p>Is the project consistent with the overall policies of the District government?</p> <p>Is the project consistent with priorities and agency performance goals identified by Owner Agencies or other public entities tasked with delivering infrastructure?</p> <p>Does the project enhance, strengthen or create pathways to the middle-class for District residents who might not have a pathway without this project (e.g., by providing local hiring, job training and apprenticeship programs)?</p> <p>Can significant aspects of the project be provided by the District’s small, disadvantaged and locally owned business community?</p>
Risk Transfer and Allocation of Risk	<p>Would the delivery of this project as a P3 allow for effective risk transfer to the private sector resulting in a positive risk profile for the project and the District government?</p> <p>Can risks be allocated appropriately to the party most able to mitigate that risk at an affordable cost for the District?</p> <p>Are there risks that cannot be transferred by the District if this project is developed?</p>
Funding Considerations	<p>Is there a clearly identifiable project revenue stream that could support the project through its entire life cycle, including:</p> <ul style="list-style-type: none"> • Does the project have the revenue generation potential to partially offset the public funding requirement over the full life cycle of the project and/or free up resources for other government needs? • Can any public funding requirement be structured so that it does not increase the District’s debt? • Are funding sources identifiable for any potential public funding or financial requirements? • Could external funding or financial sources be available for this project as a



	<p>P3 that would not be available under a traditional procurement model (i.e., TIFIA, PABs)?</p> <ul style="list-style-type: none"> • Could the application of a P3 process for a facility result in efficiencies that yield additional funding for other District programs and facilities.
Life Cycle Costs	<p>Would the P3 method create efficiencies that would lower the full life cycle cost of the project to the District?</p> <p>Would those efficiencies improve service delivery by the Owner Agency or any other District agency or partner organization?</p> <p>Will the delivery of this project as a P3 create an undue burden for the Owner Agency or the DC OP3 in terms of monitoring of the contract performance by the private partner?</p> <p>Does the Owner Agency have the capability to manage the P3 contract, or the ability to gain that ability and what would be the associated cost to the District for this management?</p> <p>Could project revenues support full life cycle life cycle costs?</p>
Social Equity Considerations	<p>Will the P3 delivery of this project result in negative impacts for one segment of District residents or create economic disparity?</p> <p>Conversely, will P3 delivery of this project benefit underserved populations and communities?</p>
Market Readiness	<p>Is the market ready for this project to be delivered as a P3?</p> <p>Is there precedent for this sort of project, as a P3, in this sector?</p> <p>What project permitting would be required, and what would the process for that permitting entail?</p>
Legal Impediment	<p>Are there any legal impediments to this project being developed as a P3?</p> <p>If so, can those legal impediments be overcome?</p>
Innovation Opportunity	<p>Is the project complex, in terms of technical and/or financial requirements, to the level that would allow for private sector innovation to deliver a great value-for-money than traditional procurement methods?</p>
Accelerating Delivery	<p>Could the P3 procurement method accelerate project delivery?</p> <p>Would this acceleration result in savings for the District?</p> <p>Would this acceleration result in increased revenue for the District?</p>

3.2 Stage Two: Detailed Screening

The second stage of the project screening process is a more detailed screening of those P3 Project Pipeline projects that were determined to be potentially viable after the first stage of screening. This detailed screening will use in-depth financial and technical criteria developed by the DC OP3, in conjunction with the Owner Agency, to select those projects that should be advanced to the P3 pipeline for future procurement as a P3. The detailed screening criteria outlined in Table 3 below are the minimum set of criteria by which each potential P3 project will be evaluated. Each project will also be evaluated based on criteria



to the project’s infrastructure sector. The criteria listed below are not inclusive of all possible criteria, but are provided here to give Owner Agencies, interested private entities, and the general public the guidelines for detailed review.

Table 3: Stage Two Detailed Screening Criteria

Stage Two Project Screening Criteria	
Improved Benefits to the Public	<p>Are there anticipated benefits to the residents of, and visitors to, the District, such as increased facilities access, better service delivery and/or lower life cycle costs?</p> <p>Will delivery of this project as a P3 allow public funds to be redirected to other projects of public value?</p> <p>Are there anticipated benefits to other facilities associated with, or connected to, the P3 facility?</p>
Economic Development	<p>Will the project help to improve the economic climate and attract or retain businesses in the District?</p> <p>Will the project increase jobs and economic opportunities for District residents?</p> <p>Will the project increase District tax revenues?</p>
Market Reality	<p>Is there a private sector market significant enough to generate a competitive environment for the P3 procurement of this project?</p>
Stakeholder Support and Engagement	<p>Has the location of the project been determined in detail and have the affected communities (including the ANCs) been identified?</p> <p>Is there public support for this project, or could public support be gained through public outreach?</p> <p>Is there business community support for the project, or could business community support be gained through public outreach?</p> <p>Is this a project of regional significances and, if so, have affected external jurisdictions been engaged and do they support the project?</p>
Legislative Considerations	<p>Would this project, if developed as a P3, comply with all District and federal law, including the DC Home Rule Act and P3 Act?</p> <p>Would legislative changes be needed to successfully procure this project as a P3?</p>
Technical / Engineering Feasibility	<p>Is the size and scope of the project fully understood by the Owner Agency in order to ensure full life cycle contract performance monitoring?</p> <p>Is the proposed schedule for project completion clearly outlined and feasible within the limits set by the P3 Act?</p> <p>Is the project’s technical approach based on proven technology and technology that can be measured for performance?</p> <p>Does the conceptual design, if such design exists, appear to be consistent with the appropriate government and industry standards?</p>

	<p>Does the project meet or exceed the environmental objectives of the District, even beyond current legal requirements?</p> <p>What project permitting would be required, and what would the process for that permitting entail?</p> <p>Does the District government own all property and rights-of-way necessary to complete this project?</p> <p>If not, what will the process and cost is to acquire such property and rights-of-way?</p> <p>Which utilities, if any, will require relocations and what cost will be associated with those relocations?</p> <p>Is there a need for any third party agreements for the project and what will the process be for entering into these agreements?</p>
Planning and Compatibility	<p>Is the project consistent with the District’s land use regulations and the District’s comprehensive plan?</p> <p>Does the project provide continuity with existing and planned facilities, both P3 and traditional?</p> <p>Does the permitting and entitlements process pose a substantial risk to the feasibility of procuring the project as a P3?</p>
Financial Feasibility for the Full Life Cycle of the Project	<p>Would the P3 procurement require public funds? If so, what is the likelihood that the Chief Financial Officer of the District will certify that such funds are available?</p> <p>Would the development, delivery and full contract term monitoring by the Owner Agency result in a fiscal obligation to the District, and if so, what is the likelihood that the Chief Financial Officer of the District would certify that such funds would be available throughout the term of the contract?</p> <p>Is the preliminary financial plan feasible and realistic in that the sources of funding and financing can reasonably be expected to be obtained in support of the project for the full life cycle of the project?</p> <p>Is the level of private financial investment expected within the preliminary financial plan reasonable for the project?</p>
Risks Register and Allocation Plan	<p>Has a Risk Register for the project been completed? If so, was the result a manageable risk profile for the Owner Agency and a possible private entity partner?</p> <p>Are there any particular risks unique to the project that could endanger the success of the project or create a significant financial risk for the District government?</p> <p>Is the preliminary risk allocation model one that is both acceptable to the District and fits into the District’s overall economic development plan?</p>
Concession Term	<p>What would possible capital expense costs be and how would these funds be allocated between public and private sources?</p>



	<p>How would that project financing impact the length of the concession term?</p> <p>Could a P3 concession agreement include the transfer of operation and maintenance obligations to a private sector concessionaire and would this transfer result in a better value-for-money for the residents of the District?</p> <p>Is the proposed term consistent with market conditions for P3s, financial market, and the infrastructure sector the project represents at the time of review?</p>
End of Term Arrangement	<p>What are possible hand back provisions?</p> <p>Would this project, delivered as a P3, be available for re-tendering after the hand-back and could that re-tendering result in financial benefits to the District?</p>

3.3 Creation and Publication of P3 Project Pipeline

A project that has been determined to be a viable P3 will be added to the DC OP3 Project Pipeline. Inclusion on this list does not guarantee that a project will be procured as a P3, or at all, but it does indicate that the project could feasibly be procured as a P3. Similarly, a P3 project does not need to be included on the Project Pipeline to be advanced as a P3 project if situations demand. The Project Pipeline will be posted on the DC OP3 website to solicit public feedback and will be updated as needed.

The Project Pipeline will include basic information about each project, including the scope and potential structure, a list of District agencies participating in the project, an estimate of the approximate value, a proposed procurement schedule, any relevant procurement documents, and the current status, which will be one of the following categories:

- **Under Consideration** – Projects “under consideration” are those that are currently being reviewed according to the initial and detailed screening phases outlined in Section 3 to determine if they meet the policy goals of the District and the standards of viability as P3 projects.
- **In Development** – Projects “in development” have been approved through the Section 3 screening process. During this phase, the DC OP3 and the relevant owner agencies will develop the project to a level required to engage the private sector through a procurement, including defining project scope, design and permitting requirements, funding sources and financing structures for the life-cycle of the project, development of a risk register, and initial engagement with public officials, impacted communities, and other stakeholders.
- **Procurement** – For projects in “procurement”, at least one solicitation document, usually a Request for Information (RFI) for solicited projects or a Notice to Accept Alternative Proposals for unsolicited projects as outlined in Sections 5 and 6 of the Guidelines will have been issued and made public to begin the procurement process.
- **Under Construction** – Projects “under construction” have completed the competition phase of the procurement and the District has entered into and begun execution of an agreement with a private sector partner to build the project.
- **Complete** – “Complete” projects have finished construction and are in the operational phase of the P3 agreement.
- **No Longer Under Consideration** – Projects “no longer under consideration” have been reviewed under the Section 3 screening process and have been determined by the



District to not sufficiently meet the policy goals and the standards of viability as a P3 project to be further developed and procured. A preliminary analysis explaining the reasoning of that determination may be published on the DC OP3's website as a Screening Report. The Office will not accept unsolicited proposals for a project determined to be "no longer under consideration" unless a private sector entity finds alternative solutions that address the concerns outlined in the Screening Report.

3.4 Project Prioritization

The DC OP3 will work closely with all Owner Agencies and the City Administrator to prioritize the projects included on the P3 Project Pipeline. Project prioritization will involve a review of policy objectives, an analysis of infrastructure needs and the market conditions at the time of consideration. The DC OP3 will complete the project prioritization process and update the P3 Project Pipeline regularly.



4.0 Project Development

After a project is selected from the P3 Project Pipeline to be advanced to procurement, the DC OP3 and the Owner Agency will develop the project to a level required to engage the private sector.

4.1 Project Development Tasks

Each P3 is different, and the DC OP3 will therefore treat the project development phase of each project differently to address the specific characteristics of each project. However, a basic set of tasks will guide the development of each project. Additional tasks will be included in the project development process as needed.

Table Four: Project Development Tasks

Task	Activities
Define project scope and identify design requirements	Define the scope of the possible P3 project and identify the design requirements that will be needed to begin the project procurement.
Identify environmental, permitting and entitlement requirements	Identify the environmental impact of the possible P3 project and any environmental, land use, and permitting regulations that would need to be addressed as part of the entitlements process during the development of the project.
Identify funding/financing requirements for the full life cycle of the project	The project funding/financing requirements for the project, if delivered as a P3, will be determined based on the available data from the analysis conducted in section 3.0. This analysis will focus on the financial commitment that could be expected to be required from the District. This analysis will be based on the full life cycle of the project.
Begin stakeholder engagement	Engage all relevant stakeholders including the District's ANCs that will be impacted by the possible project.
Build-out of project Risk Register and allocation matrix	Create a Risk Register of all identified project risks. The Risk Register will include each relevant risk, the severity of the risk to the project, the likelihood of occurrence based on all available data, whether steps can be taken to mitigate risk and what steps those are. The Risk Register will be used as the start of a risk allocation matrix to determine the best risk transfer model.
Third party agreements required	If agreement is needed from federal agencies or other third parties, these agreements will be noted and an estimated timeline for approval will be created.

4.2 First-Level Project Value-for-Money Analysis

This analysis will determine if a possible P3 project provides benefits to the District over the delivery of the project under a more traditional procurement model. The first-level value-for-money analysis will be the primary tool in the decision making process of the DC OP3 and Owner Agency if the project should be advanced to the P3 procurement process.

4.3 Draft Public Sector Comparator

In most cases, the DC OP3 will develop a draft public sector comparator to evaluate the full life cycle cost of a project placed in the P3 Pipeline if that project were delivered under the traditional model. This draft public sector comparator will be the beginning of the required



public sector comparator and will serve as the starting point for the evaluation of whether to procure a project as a P3 rather than as a traditional project.

4.4 Statement of Intent to Procure as a Public-Private Partnership

The DC OP3 will periodically post on its website a statement of the District's intent to procure a project as a P3, when the DC OP3 has determined that a project, if delivered as a P3, would have a good value-for-money. Projects receiving this distinction will be advanced to the procurement process as timing and market conditions allow.

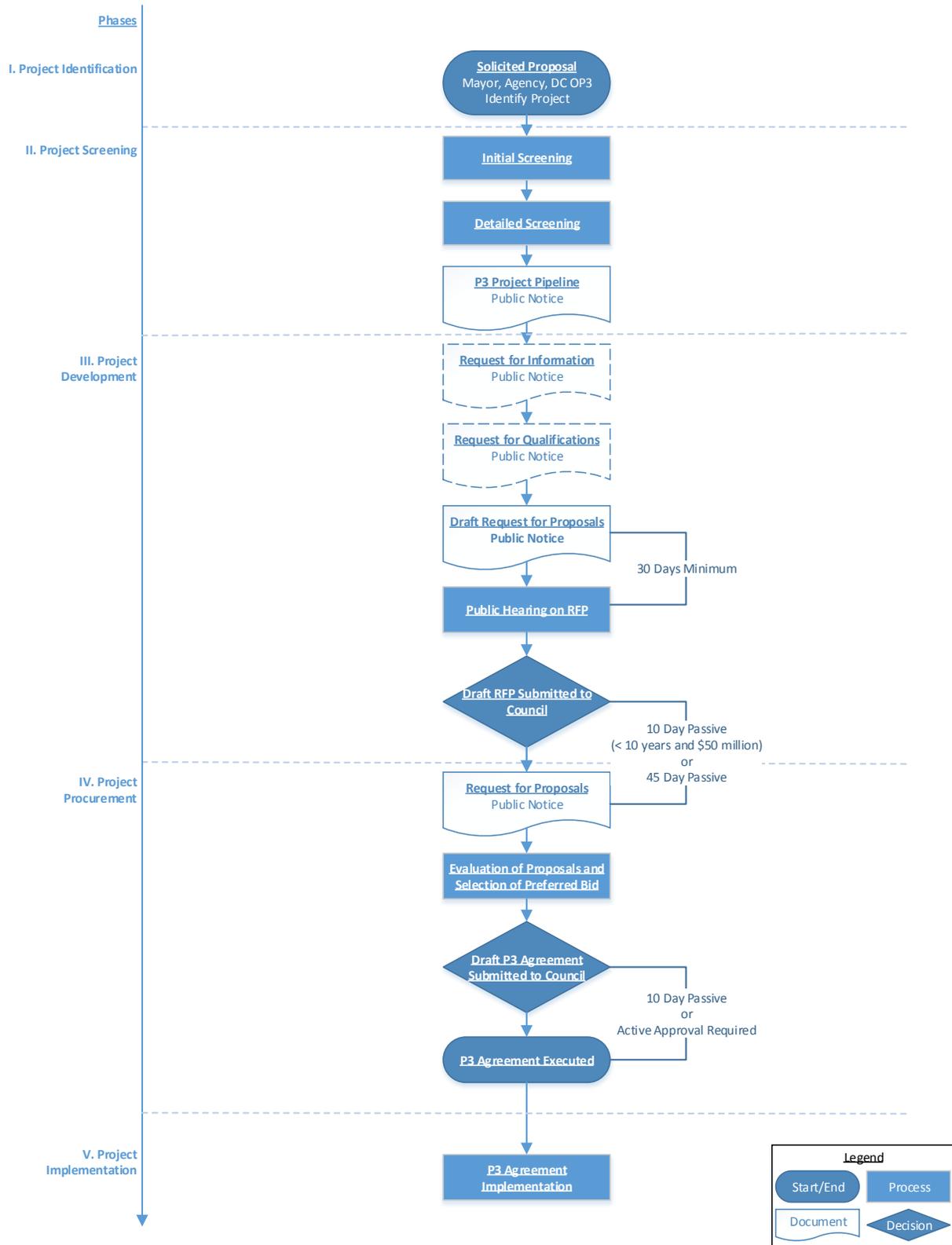


5.0 Project Procurement – Solicited Projects

The DC OP3 may conduct the solicited project procurement process in either a two- or three-step structure: step one being the Request for Information, step two the Request for Qualifications and step three the Request for Proposals. In most cases, and in order to create the most competitive procurement process possible, the DC OP3 will conduct three-step procurements. In some cases it may be of more benefit to undertake a two-step process, a process that will omit the RFQ step. The standard three-step process is outlined within this section.



Figure 2: The DC OP3 Project Solicited Procurement Process



5.1 Request for Information

The DC OP3 may issue a Request for Information (RFI) to obtain information and insight from the private sector regarding a potential P3 project. An RFI would be issued at the beginning of the P3 procurement process.

5.1.1 Public Notice

The DC OP3 will publish notice of RFIs in the DC Register, the DC OP3 website and any other publications deemed appropriate.

5.1.2 Schedule

Responses to an RFI will be accepted for a period of time to be determined by the DC OP3, and the deadline for responses will be included in the RFI.

5.1.3 Industry Conference and One-on-One Meetings

The DC OP3 will host an industry conference and offer the opportunity for one-on-one meetings after the RFI has been issued to answer questions and clarify matters before private entities submit responses.

5.1.4 Use of Responses to Request for Information

The DC OP3 and the District may use any information or concepts within the responses to an RFI where a stipend is paid according to section 5.4.9.

5.2 Pre-Qualification / Request for Qualification

As part of the solicited project procurement process, the DC OP3 may issue a request for qualifications (RFQ). The RFQ provides for a process of pre-qualification for private sector proposers to submit qualifications for a solicited project. The RFQ will be issued after the completion of the RFI process, if an RFI was issued. It should be noted that it is the intention of the DC OP3 to issue RFPs only to private organizations that have been qualified through the RFQ process.

5.2.1 Public Notice

A notice of an RFQ for a P3 project will be published in the DC Register, posted on the DC OP3 website, and mailed to affected Advisory Neighborhood Commissions (ANCs). In addition, the notice of a RFQ will be published in all publications deemed necessary by the DC OP3 to achieve the optimal level of private sector response and public awareness.

5.2.2 Schedule

The DC OP3 will determine the time limit for submittal of qualifications based on the complexity and specialization of the project. The deadline for responses will be included in the RFQ.

5.2.3 Minimum Required for Pre-qualification

The DC OP3 will determine requirements for the pre-qualification of a private entity. At a minimum, in order to be pre-qualified to submit a bid under a request for proposals, a private entity shall demonstrate:

- The availability of sufficient sources of funding, capital, securities or other financial resources necessary to carry out the P3 project if selected;
- The availability and identification of key personnel that possess, either through its staff, subcontractors, a consortium or joint venture agreement, the managerial, organizational, technical capacity and experience working

on projects of similar scope, scale and complexity as the type of project for which the proposer is submitting a bid;

- It is qualified to lawfully conduct business in the District or will be at the time of entering into a P3 agreement with the District; and
- No director, officer, partner, owner or other individual with direct and significant control over the policy or finances of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States.

5.2.4 Other Requirements and Criteria for Pre-qualification

The RFQ shall set forth any other requirements for pre-qualification and the criteria that the DC OP3 will use in determining which private entities qualify. In general, the DC OP3 will name a short-list of pre-qualified private entities that score best on the criteria and requirements of pre-qualification.

5.2.5 Certification of Pre-qualification

The DC OP3 will determine if the pre-qualification process is appropriate for the P3 project for the District in regards to the project in question and, if that determination is in the affirmative, the DC OP3 will only issue a solicitation or Request for Proposals (RFP) to pre-qualified private entities.

5.2.6 Collaborative Review and Feedback

The DC OP3 may utilize a collaborative review process, which will be outlined in the RFQ. This process entails the DC OP3 giving each pre-qualified private entity a copy of the draft RFP and P3 agreement to solicit their feedback on the documents. The DC OP3 will then hold a series of meetings with each pre-qualified private entity to discuss their feedback in greater detail. The DC OP3 will then refine the draft RFP and P3 agreement based on the feedback received from pre-qualified private entities. At the end of this optional process, the draft RFP and P3 agreement will be submitted to the Council, and if approved, the pre-qualified private entities will be given the final RFP and P3 agreement to which they will respond. While pre-qualified private entities will be able to respond with their proposals, including pricing, designs, and performance guarantees, they will not be able to change substantive terms of the P3 agreement after it has been approved by the Council unless the DC OP3 determines that extenuating circumstances justify changes and the relevant entities are notified. Re-approval by the Council according to section 5.3 may be required if substantive changes are made to the RFP.

5.2.7 Application Fee

The DC OP3 may, if deemed appropriate, collect an application fee for pre-qualification not to exceed the actual direct cost of evaluation. The specific amount of the fee will be stated in the RFQ. This fee, if collected, shall be deposited in the Public-Private Partnerships Administration Fund (the Fund) for the use by the DC OP3 for costs associated with the review of response to RFQs.

5.2.8 Modification and Cancellation of Request for Qualification

The DC OP3 will retain the ability to modify or cancel the RFQ process at any time for any reason.



5.2.9 Use of Responses to Request for Qualification

The DC OP3 and the District may use any information or concepts within the responses to an RFQ where a stipend is paid according to section 5.4.9.

5.3 Review of Draft Request for Proposals

The final step in the solicitation phase is the issuance of a Request for Proposals (RFP). Before issuing an RFP, the DC OP3 will develop a draft RFP for public comment. In addition, by law the draft RFP must be approved by the Council before it is formally issued. The draft RFP review process is as follows.

5.3.1 Public Review of Draft Request for Proposals

The first step in the RFP process is the development of a draft RFP by the DC OP3 for public comment. DC OP3 will publish the draft RFP on its website for public comment and will hold at least one public hearing on the proposed RFP. The hearing will be subject to the Open Meetings Act (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*) and will be held at an accessible evening or weekend time and in an accessible location near the proposed P3 project. The DC OP3 will provide at least 30 days' notice of the public hearing to affected ANCs and will publicize the hearing by placing a notice in the DC Register at least 15 days before the hearing.

5.3.2 Approval of Proposed Request for Proposals by the Council

By law, each RFP must be approved by the Council before the RFP is issued by the DC OP3. The Council approval process will follow one of two tracks depending on the value and duration of the project. Each approval process starts with the Mayor submitting a resolution to the Council to approve the RFP. The two review tracks are outlined below.

5.3.2.1 Proposals for Projects over \$50 million or 10 years

Proposals for possible P3 projects that the DC OP3 estimates will cost \$50 million or more (full life cycle cost) or extend for a contract term of 10 years or more will be deemed approved by the Council 45 calendar days after the Mayor submits the approval resolution, unless the Council votes to disapprove the resolution during that time period. The Council may also actively vote to approve the resolution at any time during the 45-day period. The 45-calendar day review period begins on the first day (excluding Saturdays, Sundays and holidays) following the receipt by the Office of the Secretary of the Council of the proposed resolution.

5.3.2.2 Proposals for Projects less than \$50 million and 10 years

Proposals for possible P3 projects that are anticipated by the DC OP3 to cost less than \$50 million (full life cycle cost) or extend for a contract term less than 10 years will be deemed approved by the Council 10 calendar days after the Mayor submits the approval resolution, unless during that 10-day period a Councilmember introduces a resolution to approve or disapprove the proposed RFP. If a Councilmember introduces such a resolution the 10-day Council review period is extended to 45 calendar days and the RFP will be deemed approved by

the Council at the end 45 calendar day period, unless the Council votes to disapprove the resolution during that time period. The Council may also actively vote to approve the resolution at any time during the 45-day period. The 10-day and 45-day time periods begin on the first day (excluding Saturdays, Sundays and holidays) following the receipt by the Office of the Secretary of the Council of the proposed resolution.

5.3.2.3 Expiration of Approval

The Council's approval of an RFP expires two years after the date of approval. That is, if the District and a private entity have not entered into a P3 agreement within two years after the date of the RFP's approval, the authority to enter into a P3 agreement expires.

However, if the DC OP3 determines that a P3 agreement cannot be entered into within the two-year period, the Mayor may submit to the Council a resolution requesting an extension of the time period. The resolution must be submitted at least 60 days before the end of the two-year period. If the Council does not approve or disapprove the proposed extension resolution within 30 days (excluding Saturdays, Sundays, legal holidays and days of Council recess) after receipt, the proposed resolution is deemed disapproved.

5.3.2.4 Substantive Changes Requiring Approval

Approved RFPs that require substantive change after approval will be resubmitted to the Council for re-approval. Those RFPs disapproved by the Council pursuant to section 110 of the P3 Act (D.C. Official Code § 2-273.05) may be resubmitted by the DC OP3 for approval with updates. Notice of non-substantive changes that are made to an RFP will be published in the DC Register and/or delivered to pre-qualified bidders if the RFQ process is utilized under section 5.2.

5.4 Solicitation through Request for Proposals

After the RFP has been approved by the Council, the DC OP3 will formally issue the RFP to solicit proposals from the private sector.

5.4.1 Public Notice

Each RFP will be posted on the DC OP3 website. A notice of the issuance of the RFP will also be published in the DC Register and mailed to all affected ANCs. Notice of the issuance may also be published on websites or in printed publications deemed appropriate by the DC OP3.

5.4.2 Schedule

The deadline to respond with a proposal will be stated in the RFP. Potential proposers will be given at least 30 days to respond, unless the DC OP3 determines that a shorter response period is appropriate. If the DC OP3 establishes a shorter response period, it shall describe the reason for the shorter response period in the RFP.



5.4.3 Requests for Proposals Requirements

Each RFP will contain, at a minimum, the following information regarding the proposed P3 project:

- A detailed description of the scope of the proposed P3 project;
- The technical requirements, material terms and conditions applicable to the procurement and any resulting contract; and
- The criteria for evaluation and selection of a proposal, which shall indicate the relative weight given to each criterion.

The DC OP3, working with the Owner Agency, may include more specific response requirements to address the unique aspects of the project.

5.4.4 Evaluation and Selection Criteria Requirements

Each RFP issued by the DC OP3 will include a set of evaluation criteria by which proposals submitted by the private sector will be scored. A relative scoring weight will be assigned in the RFP to each criterion.

At a minimum, the following elevation criteria will be included in each RFP:

- Cost;
- Delivery time;
- Financial commitment required of public entities;
- Capabilities, related experience, facilities or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
- Value-for-money and public sector comparator analysis of the proposal;
- Innovative methods, approaches, or concepts demonstrated by the proposal;
- Scientific, technical or socioeconomic merits of the proposal;
- Potential contribution of the proposal to the mission of the District;
- How the proposal benefits the public; and
- Other factors as the DC OP3 deems appropriate to obtain the best value for the District.

The DC OP3, working with the Owner Agency, will include more specific evaluation criteria to address the unique aspects of the project in question.

5.4.5 Format for Responses and Executive Summaries

All responses to an RFP must follow the guidance and format outlined in procurement documents, including that the proposal has an executive summary and identifies those aspects of the proposal that are confidential or proprietary according to section 5.4.11.

5.4.6 Evaluation of Responses to Request for Proposals

The DC OP3 will evaluate all responses to an RFP that are deemed to be responsive and meet the minimum requirements of the RFP. The evaluation of proposals will be based on the criteria stated in the RFP.



For most RFPs, the evaluation of responses to an RFP will be divided between two committees. The two review committees will consist of:

- **Technical Review Committee:** The technical review committee will review all technical aspects of the proposal including: proposed project scope, innovative use of technology, engineering and design, operation and maintenance of the project. Members of this committee will include technical staff from the Owner Agency and technical staff from associated District agencies.
- **Financial Review Committee:** The financial review committee will review all financial aspects of each proposal including financing to be provided by the private partner, federal sources, and external sources and any fiscal obligations of the District to the project as proposed. Members of this committee will include financial staff from the Owner Agency, financial staff from associated District agencies, and a representative from the Mayor's Office of Budget and Finance.

In some instances where the DC OP3 deems it appropriate, a single committee will review both technical and financial aspects of each proposal. This will be stated in the RFP and separate packets for technical and financial aspects of proposals will not be required. The Director and Deputy Director of the DC OP3, as well as the Director (or his or her designee) of the Owner Agency will serve on both committees.

5.4.7 Selection of Preferred Bidder

Based on the results of the evaluation committees, the DC OP3 will declare the proposer with the highest overall score the Preferred Bidder. The point of contact provided on the proposal will be notified by the DC OP3. The DC OP3 may also select a secondary bidder to be engaged in the event that an agreement is not reached between the District government and the preferred bidder. If it has been determined that a secondary bidder will also be selected, that secondary bidder will also be notified.

5.4.8 Publication of Responsive Executive Summaries

Upon the closing of the response period, the DC OP3 will publish executive summaries of all responsive proposals on the DC OP3 website. The executive summary of each proposal will include the information outlined in Appendix E and the following information:

- The scoring for each proposal; and
- The identity of the proposer including all listed members of the proposal team.

5.4.9 Payment of Stipends

The DC OP3 may pay a stipend to an unsuccessful proposer in the following situations:



- The DC OP3 cancels the procurement process fewer than 30 days before the date the bid or proposal is due; or
- An unsuccessful proposer submits a proposal that is responsive and meets all requirements established by the DC OP3 for the P3 project.

Each RFP will state whether the DC OP3 is offering a stipend as part of the procurement process. If a stipend is being offered, the RFP will also state the amount of the stipend and the specific terms and conditions under which the stipend will be paid.

Stipends will generally be used to generate meaningful competition and to compensate bidders for novel concepts or information that is utilized in a P3 agreement.

In consideration for paying the stipend fee, the District may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful proposers.

Notwithstanding the other provisions of this section, an unsuccessful proposer may elect to waive the stipend, and in such cases, the District shall not use ideas and information contained in the proposer's proposal; provided, that this restriction shall not prevent the District from using any idea or information if the idea or information is also included in a proposal of an proposer that accepts the stipend.

5.4.10 Use of Responses to Request for Proposals

The DC OP3 and the District may use any information or concepts within the responses to an RFP where a stipend is paid according to section 5.4.9.

5.4.11 Confidential Information Included as Part of a Solicited Proposal

The DC OP3 and Owner Agency understand the need for some information provided by private entities to remain confidential. In order to protect confidential or proprietary information, the proposer must identify those portions of its proposal, or other submitted materials, that it considers to be confidential or proprietary. For the confidential or proprietary information of a proposer to be exempt from public disclosure, the proposer must do all of the following when the proposal is submitted to the DC OP3:

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

The DC OP3 will review information that a proposer designates as confidential or proprietary to determine if that designation is proper under applicable law. Where the proposer cannot justify the protection of information, DC OP3 may ask the proposer to revise its proposal accordingly. If an agreement cannot be reached between the proposer and the DC OP3 regarding the designation of information as confidential or proprietary, the proposer may withdraw its proposal from the procurement and all unused fees paid by the proposer will be returned to the proposer.

The DC OP3 and Owner Agency will not release or disclose any part of the proposal other than the executive summary and information required to be disclosed under sections 108(f) and 114(a) of the P3 Act (D.C. Official Code § 2-273.03(f) and 2-273.09(a)) before the award of the P3 agreement and at the conclusion of any protest, appeal or other challenge to the award, absent an administrative or judicial order requiring such a disclosure. After the final award of the P3 agreement the Freedom of Information Act shall apply to the proposal except for statutory exclusions such as proprietary information.



6.0 Project Procurement – Unsolicited Projects

The DC OP3 may accept unsolicited proposals for P3s. This section outlines the unsolicited proposal review and procurement process. Private entities should review these guidelines and all relevant appendixes before developing an unsolicited proposal. The DC OP3 encourages private entities to be both innovative and thoughtful in any unsolicited proposal, as all unsolicited proposals will undergo a robust review to determine the benefit to the residents of the District before a procurement process is advanced.

6.1 Time Periods for Acceptance of Unsolicited Proposals

The DC OP3 will accept unsolicited proposals during limited time periods to ensure that the proposals can be fully reviewed within the time limits stated in the P3 Act. The time periods during which the DC OP3 will accept unsolicited proposals are as follows:

- An initial 60-day window following the adoption of these guidelines and the publication of a notice that DC OP3 will accept unsolicited proposals;
- Beginning in 2017, each calendar year during the month of September; and
- Beginning in 2017, each calendar year during the month of March.

The DC OP3 will accept unsolicited proposals under limited circumstances outside these time periods if the DC OP3 finds that an unsolicited proposal is time sensitive and therefore no longer feasible if submitted at the next regularly scheduled time period to accept unsolicited proposals.

6.2 Discussions with DC OP3 before Submission of Unsolicited Proposal

Private entities are encouraged to contact the DC OP3 to arrange a meeting to discuss their ideas and concepts for unsolicited proposals before developing or submitting an unsolicited proposal. These meetings will be useful for all parties to determine the viability and desirability of a P3 project well before a proposal is written. This informal discussion process will aid the DC OP3 and private entities to maintain an environment of open communication needed to achieve the goals of the District P3 program.

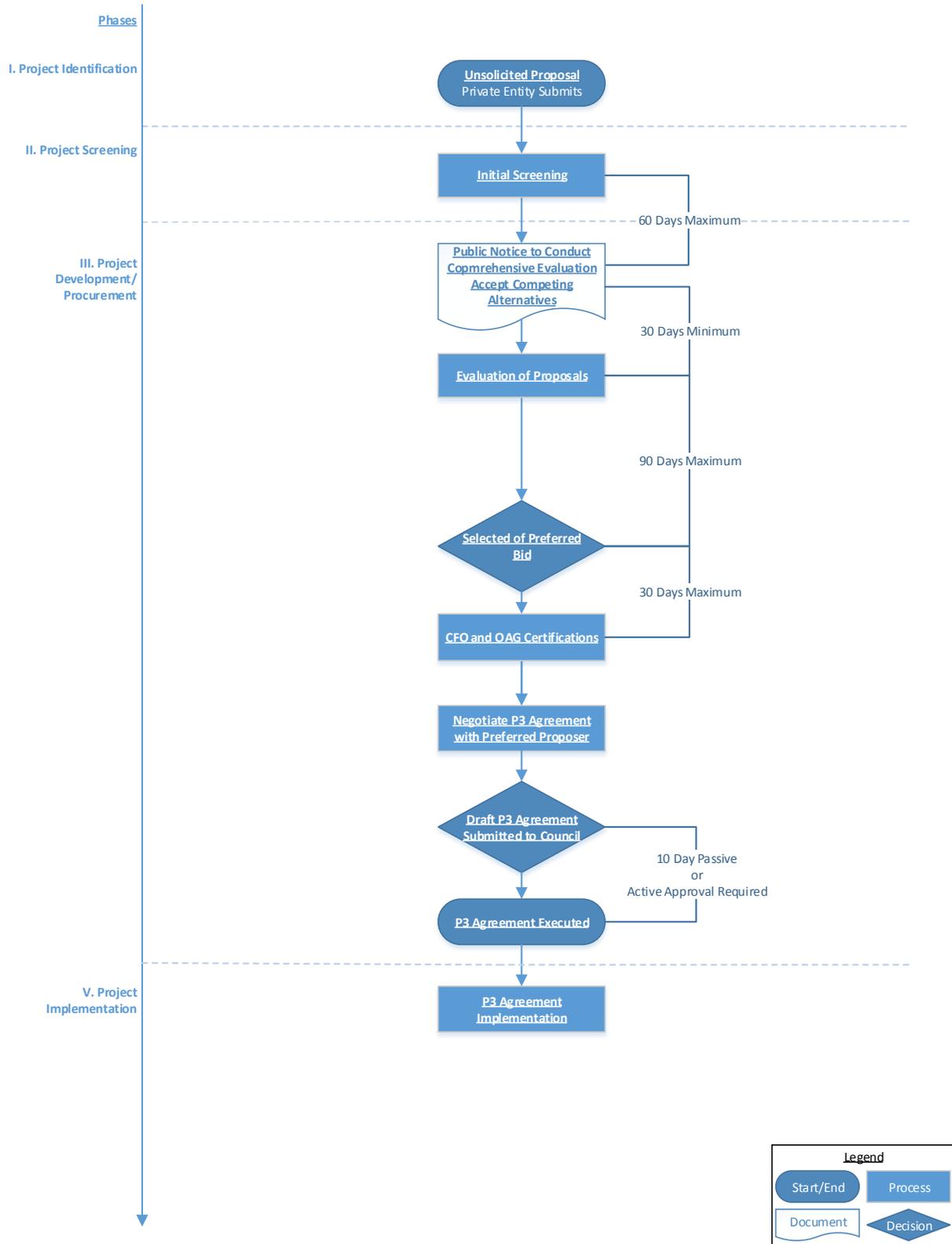
6.3 Structure and Format of Unsolicited Proposals

The DC OP3 will only accept an unsolicited proposal and undertake a preliminary evaluation of that unsolicited proposal according to section 6.4 if the proposal meets the following baseline requirements:

- Is independently developed and drafted by the proposer without District supervision;
- Includes sufficient detail and information for the DC OP3 to evaluate the proposal in an objective and timely manner under the comprehensive evaluation process outlined in section 6.5; and
- Adheres to the format outlined in Appendix E, including that the proposal has an executive summary and identifies those aspects of the proposal that are confidential or proprietary according to section 6.5.15, and must include a signature of an authorized corporate officer.



Figure 3: The DC OP3 Project Unsolicited Procurement Process



6.4 Preliminary Evaluation of Unsolicited Proposals

An unsolicited proposal will be screened in a two-step process that includes a preliminary evaluation and a comprehensive evaluation. The screening process is outlined below.

6.4.1 Preliminary Evaluation Criteria

The DC OP3 will only undertake a preliminary evaluation of a received unsolicited proposal if the proposal:

- Addresses a need identified in a District or regional planning document;
- Shows that the proposed project could benefit the District;
- Includes a financing plan to allow the project to move forward pursuant to all applicable District budget and finance requirements; and
- Includes sufficient detail and information for the DC OP3 to evaluate the proposal in an objective and timely manner under the comprehensive evaluation process outlined in section 6.5.

6.4.2 Preliminary Evaluation Fee

Private entities interested in submitting an unsolicited proposal are required to pay a non-negotiable Preliminary Evaluation Review Fee of \$5,000 at the time of submitting the proposal to the DC OP3 for review. This review fee will be deposited into the Fund to cover the costs of the preliminary evaluation only. Payment should be made in the manner described in Appendix E. If the fees paid to the DC OP3 exceed the DC OP3's total cost for the preliminary review, the DC OP3 will reimburse the remaining funds to the private entity at the end of the review period.

6.4.3 Preliminary Evaluation Results

Within 60 days after receiving an unsolicited proposal, the DC OP3 will complete its preliminary evaluation and report the result to the proposer. The result will be either "favorable" or "unfavorable". The DC OP3 will have the ability to extend this review period, as needed, to collect additional information from the unsolicited proposer in order to make an informed and fair evaluation. If the result is unfavorable, the DC OP3 will return the unsolicited proposal to the proposer without further action. A preliminary evaluation resulting in an unfavorable determination cannot be appealed by the proposer. If the result of the preliminary evaluation is favorable, the unsolicited proposal will proceed to the comprehensive evaluation stage, which is described in the next section.

6.5 Comprehensive Evaluation of Unsolicited Proposal

If the result of the preliminary evaluation is favorable, the unsolicited proposal will enter the comprehensive evaluation phase. The elements of comprehensive evaluation process are outlined below.

6.5.1 Unsolicited Proposal Clarification

During the Comprehensive Evaluation Review process the DC OP3 may communicate with the Original Unsolicited Proposer for clarification of the

proposal. This process will not be an opportunity for changes to the unsolicited proposal; only for clarification of proposal aspects to allow an evaluation by the DC OP3.

6.5.2 Notification of the Unsolicited Proposer

The DC OP3 will notify the Original Unsolicited Proposer that the unsolicited proposal has been deemed favorable. The DC OP3 will also notify the proposer of the alternative proposals process described in section 6.5.3 and of the proposer's ability to submit a modified proposal as part of that process outlined in section 6.5.6.

6.5.3 Public Notice and Alternative Proposals

The DC OP3 will publish the executive summary of Original Unsolicited Proposer's proposal and any non-proprietary aspects of the unsolicited proposal on the DC OP3 website. As part of its publication of the unsolicited proposal, the DC OP3 will also publish a request for alternative proposals (RFAP) soliciting other private parties to submit alternative unsolicited proposals. The DC OP3 will also publish notice in the DC Register and in any other publication or on any website that the DC OP3 deems appropriate.

6.5.4 Schedule

The DC OP3 will allow alternative proposals to be submitted in response to the RFAP for at least 30 days after the notice is published in the DC Register. In most cases, the response period will be longer than 30 days in order to increase the competitive environment for the project. The response period will be expressly stated in the RFAP.

6.5.5 Requirements of Alternative Proposals

An alternative proposal must meet all the requirements of the original unsolicited proposal. That includes the completion of the unsolicited proposal form and any other requirements included in the public notice issued under section 6.5.3.

Each alternative proposer will be required to pay the preliminary evaluation fee described in section 6.4.2 and the comprehensive evaluation fee described in section 6.5.8.

6.5.6 Updated Submittals by the Original Unsolicited Proposer

During the RFAP response period, the original unsolicited proposer may submit an amended proposal based upon the RFAP. The amended proposal may only update the original proposal and not constitute a completely new proposal. The original unsolicited proposer will not be required to pay an additional preliminary evaluation fee if it submits an amended proposal.

6.5.7 Comprehensive Evaluation

After the end of the RFAP response period, the DC OP3 will evaluate the original unsolicited proposal and any alternative proposals.

6.5.7.1 Comprehensive Evaluation Criteria

The DC OP3 will evaluate the original unsolicited proposal and any alternative proposals under the same criteria outlined in the RFAP, including the general criteria stated in section 6.5.10.

6.5.7.2 Comprehensive Evaluation Period

The DC OP3 will establish a time period for the comprehensive evaluation of the original unsolicited proposal and any alternative proposals that is no more than 90 days. The time period will be shared with all unsolicited proposers no more than 10 business days after the end of the RFAP response period.

6.5.7.3 Proposer Presentations

The DC OP3 and Owner Agencies may require unsolicited proposers to give one or more oral presentations to clarify their proposal and answer questions that will aid in the understanding and evaluation of the proposal.

6.5.7.4 Evaluation Committees

The DC OP3 will evaluate all responses to an RFAP that are deemed to be responsive and meet the minimum requirements of the RFAP. The evaluation of proposals will be based on the criteria stated in the RFAP, including the general criteria stated in section 6.5.10.

For most RFAPs, the evaluation of responses to an RFAP will be divided between two committees matching the two required packets outlined in Appendix E. The two review committees will consist of:

- **Technical Review Committee:** The technical review committee will review all technical aspects of the proposal including: proposed project scope, innovative use of technology, engineering and design, operation and maintenance of the project. Members of this committee will include technical staff from the Owner Agency and technical staff from associated District agencies.
- **Financial Review Committee:** The financial review committee will review all financial aspects of each proposal including financing to be provided by the private partner, federal sources, and external sources and any fiscal obligations of the District to the project as proposed. Members of this committee will include financial staff from the Owner Agency, financial staff from associated District agencies, and a representative from the Mayor's Office of Budget and Finance.

In some instances where the DC OP3 deems it appropriate, a single committee will review both technical and financial aspects of each proposal. This will be stated in the RFAP and separate packets for technical and financial aspects of proposals will not be required.

The Director and Deputy Director of the DC OP3, as well as the Director (or his or her designee) of the Owner Agency will serve on both committees.

6.5.8 Comprehensive Evaluation Review Costs

The original unsolicited proposer and any alternative proposers will be required to pay a comprehensive evaluation fee. The fee will be set by the DC OP3 based on all additional direct costs reasonably anticipated by the DC OP3 for the comprehensive evaluation. The amount of the fee will be set forth in the public notice described in section 6.5.3. The fee will not exceed \$100,000 per proposer. Each alternative unsolicited proposer will be required to submit the fee to the DC OP3 with its alternative proposal. The original unsolicited proposer must submit the fee to the DC OP3 by the end of the RFAP period (or with the submission of its amended proposal, if it submits an amended proposal). No Unsolicited Proposal will be reviewed without payment of the Comprehensive Evaluation Review fee.

These fees will be used to cover the costs of the comprehensive evaluation. If the fees paid to the DC OP3 exceed the DC OP3's total cost for the unsolicited review process, the DC OP3 will reimburse the remaining funds equally to all proposers at the end of the review period.

If any unsolicited proposer does not wish to pay the comprehensive evaluation fee, it may withdraw its proposal without penalty.

6.5.9 Use of Unsolicited Proposals

The DC OP3 and the District may use any information or concepts within unsolicited responses where a stipend is paid according to section 5.4.9.

6.5.10 Selection of a Preferred Bidder

Based on the results of the evaluation committees, the DC OP3 may declare the proposer with the highest overall score the Preferred Bidder. The DC OP3 will select a preferred bidder and potentially a secondary bidder, only if the unsolicited proposal meets the requirements stated in the RFAP, which will include at a minimum the following:

- Cost;
- Delivery time;
- Financial commitment required of public entities;
- Capabilities, related experience, facilities or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
- Value-for-money and public sector comparator analysis of the proposal;
- Innovative methods, approaches, or concepts demonstrated by the proposal;
- Scientific, technical or socioeconomic merits of the proposal;
- Potential contribution of the proposal to the mission of the District, including how the proposal benefits the public;

- The proposal must not duplicate an existing infrastructure project or services in a competitive way nor closely resemble a pending competitive proposal for a P3 or other procurement; and
- Other factors as the DC OP3 deems appropriate to obtain the best value for the District.

6.5.11 OCFO Certification

For negotiations with a preferred bidder to begin pursuant to Section 8.2, the Chief Financial Officer of the District of Columbia must certify:

- The availability of any funds, debts, or assets that the District will contribute to the project;
- That no provision of the proposal would violate the District Anti-Deficiency Act of 2002; and
- That the project is not likely to have a significant adverse impact on the District's bond ratings.

6.5.12 OAG Certification

For negotiations with a preferred bidder to begin pursuant to Section 8.2, the Attorney General of the District of Columbia must certify that:

- Proper indemnifications, including project insurance and bonding are included in the proposal; and
- There are no interstate compact issues if the project involves multiple jurisdictions.

6.5.13 Notice of Selection of Preferred and Secondary Bidders

When a Preferred Bidder has been selected, the point of contact provided on the proposal will be notified by the DC OP3. If it has been determined that a secondary bidder will also be selected, that secondary bidder will also be notified. The DC OP3 will provide public notice of this selection and intent to commence negotiations.

6.5.14 Communication during the Procurement Process

While the DC OP3 encourages communication during the procurement process, including informal conversations regarding possible P3 projects and clarifications about the process, the point of contact listed in the procurement documents will serve as the sole official coordinator of communication with the party making the inquiry. To be relied upon by all parties, all official communication must be written.

6.5.15 Confidential Information Included as Part of an Unsolicited Proposal

The DC OP3 and Owner Agency understand the need for some information provided by private entities to remain confidential. In order to protect confidential or proprietary information, the proposer must identify those portions of its proposal, or other submitted materials, that it considers to be confidential or proprietary. For the confidential or proprietary information of a proposer to be exempt from public disclosure, the proposer must do all of the following when the proposal is submitted to the DC OP3:

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

The DC OP3 will review information that a proposer designates as confidential or proprietary to determine if that designation is proper. Where the proposer cannot justify the protection of information, DC OP3 may ask the proposer to revise its proposal accordingly. If an agreement cannot be reached between the proposer and the DC OP3 regarding the designation of information as confidential or proprietary, the proposer may withdraw its proposal from the procurement and all unused fees paid by the proposer will be returned to the proposer.

The DC OP3 and Owner Agency will not release or disclose any part of the proposal other than the executive summary and information required to be disclosed under sections 109(b) and 114(a) of the P3 Act (D.C. Official Code § 2-273.04(b) and 2-273.09(a)) before the award of the P3 agreement and at the conclusion of any protest, appeal or other challenge to the award, absent an administrative or judicial order requiring such a disclosure. After the final award of the P3 agreement the Freedom of Information Act shall apply to the proposal except for statutory exclusions such as proprietary information.

6.5.16 Termination of the Process

The DC OP3 may terminate the unsolicited proposal procurement process at any time. In the event of such a termination, the DC OP3 will return the unused funds paid by unsolicited proposers for the comprehensive evaluation process equally to all proposers.

7.0 Rules to Ensure Ethical Conduct

The DC OP3 is committed to ensuring that all procurements for P3 projects are conducted in a fair, competitive and ethical manner without actual or apparent conflicts of interest.

7.1 Ethical Duty

All parties responsible for the proper administration of the P3 procurement process on behalf of the District, both public and private, shall maintain a position of strict impartiality and refrain from any activity that would imply support of or opposition to a particular private entity, proposer, or operator of a P3 agreement. This requirement extends to all consultants and contractors engaged by the District.

7.2 Ethical Obligations under the Comprehensive Code of Conduct

The DC OP3 will comply with and enforce all provisions of the District government's Code of Conduct, as defined in section 101 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01), and Chapter 18 of the District Personnel Manual (6B DCMR, Chapter 18) where applicable, including the following provisions:

7.2.1 Duty of Loyalty

District employees associated with any P3 procurement shall place loyalty to the law and ethical principles above any potential private gain.

7.2.2 Financial Conflicts

No District employees associated with any P3 procurement shall hold a financial interest that conflicts with the conscientious performance of the employee's duty.

7.2.3 Private Gain

No District employees associated with any P3 procurement shall use the employee's public office or position for private gain, whether for the employee's own personal gain, the gain of a family member or friend, or the gain of a private entity.

7.2.4 Nonpublic Information

No District employee associated with any P3 procurement shall engage in a financial transaction using nonpublic information acquired or allow the improper use of such information to further any private interest.

7.2.5 Outside Employment

No District employee associated with any P3 procurement shall engage in any outside employment or other activity, including seeking or negotiating for employment, incompatible with the responsibilities assigned to them under the P3 Act or that would capitalize on the employee's title or position.

7.2.6 Gifts from Outside Sources

No District employee associated with any P3 procurement shall solicit or accept any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in 6-B DCMR § 1803.



7.2.7 Post-Employment Conflicts of Interest

A former District employee associated with any P3 procurement shall not act on a particular matter that would create a conflict of interest if the employee participated personally and substantially in that matter as a government employee.

7.2.8 Government Property

No District employee associated with any P3 procurement shall use government property, or allow its use, for other than authorized purposes.

7.2.9 Disclosure of Prior Employment

As a means to evaluate real or potential conflicts of interest, each employee associated with any P3 procurement shall be required to disclose to the employee's employing agency upon appointment, such previous employment relationships, including full disclosure of any ongoing economic benefits to the employee from previous employment relationships.

7.2.10 Additional Obligations

The provisions in section 7.2 highlight several of the relevant obligations in the Comprehensive Code of Conduct. Reference to these particular obligations in no way limits the applicability of other District government ethics regulations, nor implies in any way that such other regulations will not be strictly enforced by the DC OP3.

7.3 Reporting Conflicts and Violations

The DC OP3 requires District government employees and the employees of private entities associated with any P3 procurement to report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and all other federal and District laws and regulations to the appropriate authorities.

7.3.1 District Employees

District employees associated with any P3 procurement shall report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and these guidelines immediately upon discovery to the employee's supervisor, the Board of Ethics and Government Accountability, or the appropriate authorities.

7.3.2 Private Entity Employees

Employees of private entities associated with any District P3 procurement shall report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and these guidelines immediately upon discovery to the DC OP3, the Board of Ethics and Government Accountability, or the appropriate authorities.

7.4 Mitigating Conflicts and Violations

Upon receiving the report of an actual or apparent conflict of interest or credible violation of the District Code of Conduct or these guidelines, the appropriate authority must take steps to avoid, mitigate or correct the issue, including having the affected employee recuse him or herself or resign; disqualifying a contractor at any point during a procurement; rescinding or terminating a contract subsequent to contract award; cancelling a pending solicitation and initiating a new procurement. The analysis of these issues and recommendations on steps taken to mitigate or correct an issue shall be in writing.

8.0 The Public-Private Partnership Agreement

After the DC OP3 selects a preferred proposer through either a solicited or unsolicited procurement process, the Owner Agency will negotiate with the preferred proposer to enter into a P3 agreement as the Owner Agency will be the designated public entity for all agreements. The DC OP3 will act as the advisor to the Owner Agency through this process, but will not be a signatory to the P3 agreement. The agreement will be negotiated with the ultimate goal of delivering a project that achieves the best value-for-money for the residents of the District. This section describes the requirements for a P3 agreement.

8.1 Requirements for the Public-Private Partnership Agreement

Each P3 agreement must include the following elements:

- An agreement term length clearly defined to include the estimated construction and operational period, as needed, not to exceed 99 years from the date of full execution of the agreement;
- A complete description of the P3 facility to be developed and the functions and responsibilities to be performed by the District and the private entity;
- Risk mitigation plans and responsibilities for facility operations and maintenance for both the private entity and the Owner Agency;
- Type of property interest, if any, that the private entity will have in the project facility during both the construction and operations phases;
- Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the P3 facility;
- The rights that the District and the private entity have, if any, in revenue generated as a result of the agreement;
- The minimum quality standards and key performance indicators applicable to the P3 project, including performance criteria, reporting requirements, incentives, cure periods, performance points systems, monitoring rights of the Owner Agency and the DC OP3 and penalties for failure to achieve these standards;
- A maintenance plan for the full life cycle of the P3 project;
- A hand-back plan that includes requirements regarding state of good repair of the facility;
- Any compensation and/or revenue structure of the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the P3 facility. Under the P3 Act, no new fees may be imposed nor may existing fees be amended unless authorized by a subsequent act of the Council;
- A schedule for an annual independent audit report to be furnished by the private entity to the DC OP3 and Owner Agency covering all aspects of the agreement and the financial condition of the private party;
- A requirement that the private entity maintain performance and payment bonds, or other security and risk-mitigation tools deemed suitable by the DC OP3 and Owner Agency;
- Insurance requirements for any facility to be operated by the private entity. The insurance must be in an amount that ensures coverage of tort liability for the District and the private entity, and its employees;

- Grounds for termination of the P3 agreement by the Owner Agency or the District government in general and the financial impact of that termination;
- Grounds for termination of the P3 agreement by the private entity and the financial impact of that termination;
- Procedures for amending the P3 agreement;
- Provisions for the termination of the P3 agreement and the disposition of the P3 facility upon termination;
- All rights and remedies available to the District government for material breach of the agreement by the private entity, up to and including material default;
- Identification of funding sources to be used to fully fund the capital, operation, maintenance and other expenses under the P3 agreement;
- Certification of compliance with applicable District and federal laws;
- A plan for the sharing of refinancing gains between the private entity and the District in the event that the private partner generates a large financial benefit from the refinancing or restructuring of the P3 project; and
- Any additional provisions determined to be appropriate by the DC OP3 and Owner Agency.

8.2 Negotiation

After the issuance of a notification that a preferred bidder and a secondary bidder have been selected as described in section 5.4.6 or 6.5.8, the DC OP3 and Owner Agency will commence negotiations with the preferred proposer.

8.3 Engagement of Secondary Bidder

If negotiations with the preferred bidder fail to result in a P3 agreement after a reasonable period of time and good faith efforts by all parties as determined by the DC OP3 and Owner Agency, the DC OP3 and Owner Agency, in joint agreement, may terminate the negotiation with the preferred bidder and choose to terminate the solicitation or begin negotiations with the secondary bidder.

8.4 Facilities Plan Approval

The DC OP3 and the Owner Agency will have the right to review and approve the private partner's plans for the development, operation, maintenance and financing of the P3 project facility before entering into any P3 agreement. Those plans, once approved, will become part of the P3 agreement. Any material change in any of these aspects of the facility during the term of the agreement will require approval by the DC OP3 or the Owner Agency.

8.5 Prohibition Regarding Non-Compete Provisions

The P3 agreement may not contain a non-compete provision that would prevent or inhibit any public entity from performing its government function.

8.6 Access and Right to Inspect

During the term of the P3 agreement, the DC OP3 and Owner Agency shall have the right to access and inspect the P3 project facility at any time upon reasonable notice.

8.7 External Funding

The DC OP3, with the Owner Agency, may apply for and accept funds from the District or federal government, as well as other sources of financial support to fund P3 projects or otherwise advance the cause of innovative project delivery in the District.

8.8 Projects of Regional Scope

The DC OP3 and the Owner Agency may enter into P3 agreements with other local and state government agencies that are regional in scope as long as that regional aspect of the project is expressed in the request for proposal submitted to the Council pursuant to section 5.3.

8.9 Sovereign Immunity

In no way shall a P3 agreement, or any element of a P3 agreement, be construed as a waiver of the sovereign immunity of the District government. Nor will a P3 agreement be viewed as a grant of sovereign immunity to any private entity.

8.10 Remedies

A provision may be included in a P3 agreement providing that, in addition to any remedy available to the District, and any cure provisions within the agreement, in the event of a material default by the private partners, the District may elect to assume the responsibility and duties of the operator in the P3 project in partial or full capacity, and in this instance, the District or a designated public entity shall succeed to all of the rights, titles and interests in the P3 project.

The District Government may terminate, with cause, the P3 agreement and exercise any other rights and remedies that may be available to it under the law or in equity. If the District or a designated public entity elects to assume the responsibility and duties of a P3 project pursuant to this section, the District may develop or operate the P3 project, impose previously approved user fees, impose and collect lease payments and comply with any service contracts as if it were the operator.

The assumption of the operation of the P3 project shall not obligate the DC OP3 or the District government to pay any obligation of the operator from sources other than revenue from the project.

8.11 Compliance with Federal and District Laws

Under any P3 agreement, the private sector partner will be required to comply, to the extent applicable, with all federal and District laws governing infrastructure projects. Some of these applicable laws include, but are not limited to, the following:

- The First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.*);
- Sections 202 (Council contract review) and 415 (anti-collusion) and titles VII (bonding) and X (appeals) of the Procurement Practices Reform Act of 2010, effective April 8, 2011, (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*);
- The Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*), or the rate established by the use of a project labor agreement,

notice of which must be provided by the DC OP3 and Owner Agency before soliciting bids or proposals for a P3;

- The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*);
- Subchapter II of Chapter 28 of Title 47 of the D.C. Official Code (Clean Hands Before Receiving a License or Permit);
- The Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.01 *et seq.*);
- The Anacostia Waterfront Environmental Standards Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code § 2-1226.31 *et seq.*);
- The Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 494; 40 U.S.C. § 3141 *et seq.*); and
- The Hotel Development Projects Labor Peace Agreement Act of 2002, effective April 2, 2003 (D.C. Law 14-266; D.C. Official Code § 32-851).

8.12 Repayment of Fees Paid by the Original Unsolicited Proposer

If a P3 agreement is entered into with a proposer who is not the original unsolicited proposer, the DC OP3 may require, as a condition of entering into the P3 agreement, that the “winning” proposer repay the preliminary evaluation and comprehensive evaluation Review Fees as well as any stipend authorized under section 5.4.9 to the original unsolicited proposer. The District will not pay, or provide for the payment of, any additional proposal costs of the original unsolicited bidder.

8.13 Monitoring of P3 Agreement Performance

The DC OP3 and Owner Agency will provide a performance monitoring plan for the agreement. The performance monitoring plan will provide detail on how the Owner Agency, with assistance from the DC OP3 as needed, will monitor the performance of the private entity for the full term of the agreement. This plan will include required skills for monitoring, monitoring schedules, performance schedules with possible performance-points systems anticipated changes in public budgeting due to this monitoring.

9.0 Final Approval of the Public-Private Partnership Agreement

Before executing a P3 agreement, the DC OP3 must submit a report to the Council and must also provide public notice of the report. In addition, the agreement itself must be submitted to the Council for its review and approval. This section describes these pre-execution requirements.

9.1 Council Report Requirements

The P3 Act requires that, before entering into a P3 agreement, the DC OP3 and Owner Agency submit to the Council a report containing details of the planned P3. The report must include the following information:

- The name of the private partner and the names of all members of the private partner;
- Significant terms of the P3 agreement;
- Overall project cost;
- Total estimated cost to the District for the full life cycle of the project;
- Results of the value-for-money analysis and public sector comparator;
- Estimated time for project construction;
- Method to be used to deliver the project;
- A list of the District agencies participating in the project;
- A list of the private entities that responded to the RFP or RFAP;
- A description of how the proposals were scored during the evaluation process; and
- A description of how the private entity was selected according to the criteria and methodology for evaluation of responses to the RFP or RFAP.

The DC OP3 will also post the summary on its website.

9.2 Council Approval of the Public-Private Partnership Agreement

The P3 agreement also must be approved by the Council pursuant to section 451 of the District's Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 2-104.51). The P3 Agreement will be submitted to the Council with the project report.

APPENDICES TO THE DC OP3 GUIDELINES



A. Definitions

For the purposes of these guidelines, the term:

- 1) “Alternative Proposer” means any proposers responding to the request for alternative proposals under the unsolicited proposal procurement method.
- 2) “Capital Improvement Plans” means the approved capital construction plans of a public entity.
- 3) “Confidential or Proprietary Information” means trade secrets and commercial or financial information where disclosure would impair the competitive position of a proposer, including cost breakdowns, profit, indirect cost rates, intellectual property, and similar information.
- 4) “DC OP3, or Office” means the Office of Public-Private Partnerships established by section 102 of the P3 Act (D.C. Official Code § 2-272.01).
- 5) “Original Unsolicited Proposer” means the proposer who is the first to submit an unsolicited proposal to the DC OP3 regarding a particular P3 project.
- 6) “Owner Agency” means the agency within the District government that will be the qualified public entity of the P3 agreement and project.
- 7) “P3 Act” means the Public-Private Partnerships Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*)”
- 8) “Private Entity” means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity.
- 9) “Proposer” means a private entity submitting a proposal in response to a request for proposals or request for alternative proposals issued by the Office or an unsolicited proposal for a P3.
- 10) “Public Entity” means a District government agency, department, board, commission, or instrumentality; or a similar governmental organization of a different government jurisdiction.
- 11) “Public Sector Comparator” means a risk-adjusted estimate of the total cost for the lifetime of a project, including all capital, operating, financing, and ancillary costs, if a P3 project were to be financed, built, and operated through a traditional government procurement method.
- 12) “Public-Private Partnership” means the method in the District for delivering a qualified project using a long-term, performance-based contractual agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which:
 - a. A private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function; and
 - b. The District may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.
- 13) “Qualified Project” means the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, or ownership of:
 - a. Education facilities;

- b. Transportation facilities, including streets, roads, highways, bridges, tunnels, parking lots or garages, public transit systems, and airports;
 - c. Cultural or recreational facilities, including parks, libraries, theaters, museums, convention centers, community centers, stadia, athletic facilities, golf courses, or similar facilities;
 - d. A building or other facility that is beneficial to the public interest and is developed or operated by or for a public entity;
 - e. Utility facilities, including sewer, water treatment, storm water management, energy producing or transmission, telecommunications, information technology, recycling, and solid waste management facilities;
 - f. Improvements necessary or desirable to any District-owned real estate;
 - g. Any other facility, the construction of which shall be beneficial to the public interest as determined by the Office.
- 14) “Risk Register” means the full accounting of all reasonable projects risks that will require a mitigation plan or structure within the P3 agreement.
- 15) “Proposer Certification Form” means the signed statement by a proposer that they understand and agree to the requirements of the P3 Act, P3 Rules and Guidelines.
- 16) “Value-for-Money Analysis” means a comparison of the risk-adjusted cost estimates over the lifetime of a proposed P3 project, including all capital, operating, financing, and ancillary costs, with a public cost comparator.

B. Reserved Rights

The DC OP3 reserves the following rights as allowed by law:

- To reject any and all proposals, at any stage of the procurement process and under either the solicited or unsolicited procurement processes for any reason at any time;
- To terminate the review of any and all proposals, at any stage of the procurement process and under either the solicited or unsolicited procurement processes for any reason at any time;
- To negotiate with a proposer, either solicited or unsolicited, at any time during the procurement process, without being bound to any provision in the proposal;
- To request additional information or clarification regarding any proposal at any time;
- To waive minor errors, omissions, or irregularities in a response to any requests and the right to determine if such occurrence is minor in nature;
- To issue addenda to and/or cancel any procurement;
- To revise, supplement, or withdraw all or any part of these guidelines as needed; and
- To modify the process and submission requirements for reviewing any proposal in connection with a re-lease, re-tendering, transfer or other disposition of a project pursuant to the provisions of an existing P3 agreement.



C. Disclaimers

Neither the District of Columbia government, nor any agency, officer, employee, or agent of the District of Columbia government, shall be liable for, or reimburse, the costs that may be incurred by proposers either solicited or unsolicited, whether selected or not as the private sector partner, for negotiations, in developing and submitting proposals or in negotiating the P3 agreement.

Any and all information made available to proposers is made for convenience purposes only and is without representation or warranty of any kind.

Neither the District of Columbia government, nor any agency, officer, employee, or agent of the District of Columbia government, shall be liable to any proposer for the disclosure of all or a portion of a response to a request, nor unsolicited proposal submitted pursuant to these guidelines.



D. The DC OP3's Approach and Commercial Terms Guidance

The DC OP3 will approach each P3 as the unique project that it is. However, there are certain principles that will guide the DC OP3's procurement process for all P3 projects. Those guiding principles are the following:

- **Delivering the Best Value of Money:** The DC OP3 and Owner Agencies will strive to achieve the best value for public funds spent in support of a P3 project, not the lowest cost for the project.
- **Transparency:** The DC OP3 and Owner Agencies will work to ensure that the P3 agreement process is as transparent as possible and that all commercial terms are understandable.
- **Solution and Innovation Driven:** The DC OP3 and Owner Agencies will negotiate P3 agreements that produce innovative solutions to the infrastructure challenges facing the District.
- **Maximize Competition:** The DC OP3 and Owner Agencies will work to deliver the best value-for-money through a highly competitive process for each project.
- **Expanding Economic Opportunities:** The DC OP3 and Owner Agencies will strive to reach P3 agreements with commercial terms that will create jobs and expand opportunities for all residents and businesses of the District.
- **Becoming the P3 Capital of the United States:** The DC OP3 will work toward the goal of developing the District of Columbia as the capital of P3 in the United States.

E. Proposal Guidance for both Solicited and Unsolicited Proposals

The DC OP3 encourages innovative thinking for all P3 procurements. However, each proposal must follow a standardized format and include certain specific information, including a comprehensive project description and detail regarding both the technical and financial aspects of the project proposal. Unless otherwise stated in a solicitation document issued by the DC OP3, to ensure the fair evaluation of each proposal and to create a standard procedure for review, a private entity must organize the contents of either a solicited or unsolicited proposal as follows:

- Executive Summary Form (provided below);
- Table of contents (including appendices);
- Statements addressing all evaluation and selection criteria set forth in the request for qualifications (subject to Section 5.2), request for proposals (subject to Section 5.4), or unsolicited procurement process (subject to Section 6.0), as applicable;
- Two separate packets of proposal information clearly labeled as the following:
 - Technical Response: The technical response packet should include all technical aspects of the project as a P3; and
 - Financial Response: The financial response packet should include all financial aspects of the project as a P3. The financial response packet must also include a good-faith estimate of all financial requirements of the District for the full term of the P3 agreement;
- Appendices (if applicable);
- Proposer Certification Form signed by an authorized representative of the private entity; and
- Proposal Receipt Form signed by an authorized representative of the private entity.

All aspects of the proposal that are confidential or proprietary must be identified as such according to section 6.5.15.

Unless otherwise directed within a solicitation document, deliver five (5) hard copies and one (1) electronic copy in Portable Document Format (PDF) must be delivered to the DC OP3.

Each hard copy of the proposal must be sealed in two separate envelopes or packages – one containing the technical proposal and the other containing the Financial Proposal– that are placed within one envelope or package. Each envelope or package must have the Proposer's name and address and the words "Public-Private Partnership Proposal" written clearly on the outside. If the proposal is an unsolicited proposal the words "Unsolicited Proposal" must also be written clearly on the outside of each envelope or package. If the proposal is submitted in response to a request for proposals (RFP) or request for alternative proposals (RFAP), the RFP or RFAP number must also be written clearly on the outside of each envelope or package. All proposals must be delivered to the following address:



**District of Columbia Office of Public-Private Partnerships
Attn: Director
John A. Wilson Building
1350 Pennsylvania Ave, NW, Suite 533
Washington, DC 20004**

Payment of Review Fees: Payment of the \$5,000.00 non-negotiable Preliminary Evaluation Review Fees should be made by check or money order payable to the “DC Treasurer”.



Unsolicited Proposal Executive Summary Form

Instructions: This form must be completed as part of any unsolicited proposal submitted to DC Office of Public-Private Partnerships (DC OP3). It will be made public along with all other non-confidential aspects of an unsolicited proposal as part of a fair, open and competitive procurement process if the proposal is determined to be favorable.

Required Information	Proposer Submittal
Date Submitted	
Proposal Team Name	
Address Line 1	
Address Line 2	
City	
State	
Postal Code	
Primary Point of Contact	
Phone Number	
Email Address	
Name(s) of All Proposal Team Member Organizations	
Address(es) of All Proposal Team Member Organizations	
Proposed Role(s) of All Proposal Team Member Organizations	



Project Description (Including scope, location, and estimated timing)	
Description of the Purpose of this Project and Why it is Needed (Including references to the impacted DC government agencies and DC government documents that identify this need)	
Impacted Ward(s)	
Proposed Benefit to the Residents of the District	
Justification for Using the P3 Method	
How Long is this Proposal Valid? (Provide a date certain)	
Comparable P3 Projects (if any) Inside or Outside the District	

Unsolicited Proposal Proposer Certification Form

Instructions: Please sign and date this form and include it when submitting an unsolicited proposal to certify that:

- I am authorized to make this proposal as an individual or legally authorized representative of the proposal team;
- The information and documentation in this proposal are accurate and include sufficient detail and information for the DC OP3 to evaluate the proposal in an objective and timely manner under the comprehensive evaluation process outlined in section 6.5 of the P3 Guidelines;
- This proposal is independently developed and drafted by the proposer without District supervision;
- This proposal adheres to the format outlined in the P3 Guidelines, including that the proposal has an executive summary and identifies those aspects of the proposal that are confidential or proprietary;
- I have reviewed and will adhere to the applicable laws, regulations and policies that will determine how this proposal will be evaluated and handled for procurement if the proposal is determined to be favorable, including the Public-Private Partnerships Act of 2014, effective March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-271.01 *et seq.*) (“P3 Act”), Chapter 48 of Title 27 of the District of Columbia Municipal Regulations (“P3 Rules”), and the DC OP3 Guidelines and Procedures (“P3 Guidelines”); and
- I understand that this proposal may be rejected at any stage of the procurement process for any reason at any time and neither the District of Columbia government, nor any agency, officer, employee, or agent of the District of Columbia government, shall be liable for, or reimburse, the costs that may be incurred by the proposing team in developing and submitting this proposal or any procurement process that may result if the proposal is determined to be favorable.

Signature of Authorized Representative

Date

Printed Name of Authorized Representative

Proposal Team Name



Unsolicited Proposal Receipt Form

Instructions: This form must be completed as part of any unsolicited proposal submitted to the DC Office of Public-Private Partnerships (DC OP3). It will be used to confirm that a proposal includes the necessary components described in Appendix E of the P3 Guidelines and serves as proof that DC OP3 received the proposal in full. If a proposal is mailed, OP3 will return a signed copy of the form to the proposer by mail. Following an initial review of the proposal, a separate letter will be sent to the proposer confirming the proposal meets baseline requirements for review and the preliminary evaluation process can begin.

Required Information		Proposer Submittal	
Date Submitted			
Proposal Team Name			
Proposal Requirements Submitted (Must Check All Three to be Accepted)			
1. Five (5) hard copies of the proposal			
2. One (1) electronic copy of the proposal in Portable Document Format (PDF)			
3. Check or money order for payment of the Preliminary Evaluation Review Fee			
Method of Delivery (Must be by Mail or Hand Delivery; Check One)			
Mail:		Hand Delivered:	
Signature of Person Submitting Proposal			
Name of Person Submitting Proposal			
All fields below to be completed by DC OP3			
Date and Time Received			
Signature of Person Receiving Proposal			
Name of Person Receiving Proposal			

