

**Executive Order No. 144**

**TO: All Departments and Agencies Under the Mayor**

**FROM: Michael B. Hancock, Mayor**

**DATE: January 4, 2019**

**SUBJECT: Office of Performance-Based Infrastructure**

**PURPOSE:** This Executive Order creates the Office of Performance-Based Infrastructure (the “PBI Office”) and establishes it to implement the policy of the City and County of Denver (“City”) with respect to performance-based infrastructure (“PBI”) projects.

- 1.0 Applicable Authority:** The applicable authority relevant to the provisions and requirements of this Executive Order No. 144, are found in Sections 2.2.1 and 2.2.6 of the Charter of the City and County of Denver (“Charter”), 2002 revised.
- 2.0 Mission:** Provide the City with the capacity to effectively evaluate and execute partnerships with private entities to deliver PBI projects.
- 3.0 Executive Director:** The PBI Office shall be headed by an Executive Director appointed by and serving at the pleasure of the Mayor pursuant to the Mayor’s authority under the Charter Section 9.1.1(E)(iv).
- 4.0 Responsibilities:** The PBI Office shall coordinate on behalf of the Mayor the efforts of agencies pursuing PBI projects in consultation with the Department of Finance, the Department of Public Works and the City Attorney’s Office as set forth in the PBI Program and Policy. The PBI Office shall oversee:
  - 4.1 Policies and Procedures.** Implement the PBI Program and Policy and propose changes as necessary.
  - 4.2 Planning.** Assist sponsoring agencies with development of potential PBI projects.
  - 4.3 Screening.** Define PBI project components and procurement strategy.
  - 4.4 Structuring.** Assist sponsoring agencies with development of technical feasibility, risk register, financial model, and business case evaluation.
  - 4.5 Procurement.** Oversee procurement of PBI projects with Public Works’ assistance.

- 4.6 Implementation.** Assist sponsoring agencies with meeting the City's owner obligations. Monitor contract execution, collect performance data over PBI project life, and manage contract modifications.
- 4.7 Unsolicited Proposal Process.** Oversee PBI unsolicited proposal process.
- 5.0 Oversight:** The PBI Office will be overseen by Performance Infrastructure Committee (PIC). The PIC will consist of the Mayor's Chief Projects Officer (or equivalent position), the Manager of Finance, the City Attorney, the Executive Director of Public Works and the Executive Director of the PBI Office. The Executive Director of the PBI Office is a non-voting member of the PIC.
- 6.0 Assignment:** The Mayor may assign the planning, construction, reconstruction of specific PBI projects to the PBI Office pursuant to Charter Section 2.3.3.
- 7.0 Cooperation:** All City departments and agencies under the Mayor shall cooperate with the PBI Office in accomplishing the goals and responsibilities outlined in this Executive Order.
- 8.0 Memorandum Attachments:** The procedures for implementing this Executive Order may be defined by Memorandum Attachments to the Executive Order which shall become part of this Executive Order.

Approved for Legality:



Kristin M. Bronson  
City Attorney for the City and County  
Of Denver

Approved:

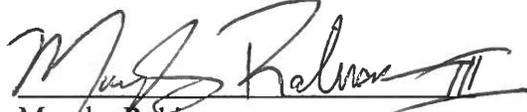


Michael B. Hancock  
MAYOR

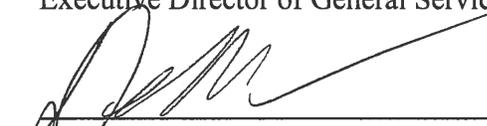
  
Eulois Cleckley  
Executive Director of Public Works  
Allegra "Happy" Haynes  
Executive Director of Parks & Recreation  
Brendan Hanlon  
Chief Financial Officer



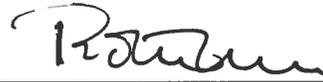
D. Troy Riggs  
Executive Director of Safety



Murphy Robinson  
Executive Director of General Services



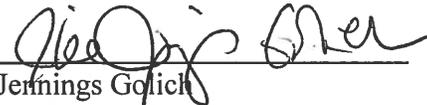
Don Mares  
Executive Director of Human Services



Bob McDonald  
Executive Director of Public Health  
and Environment



Kim Day  
Chief Executive Officer of Aviation



Jill Jennings Golich  
Interim Executive Director of Community  
Planning & Development

**MEMORANDUM NO. 144A**

**TO: All Departments and Agencies Under the Mayor**

**FROM: Michael B. Hancock, Mayor**

**DATE: January 4, 2019**

**SUBJECT: PBI Office Transparency Measures**

This Memorandum shall be attached and become part of Executive Order No. 144 date January 4, 2019, subject Office of Performance-Based Infrastructure (“PBI Office”).

The City and County of Denver (“City”) is committed to maximizing transparency for projects in a manner that achieves the best value for Denver’s citizens, aligns with best practices in the performance-based infrastructure (“PBI”) industry, and complies with Colorado law. The purpose of this memo is to set forth specific transparency requirements for projects under consideration by the PBI Office including requirements for public notice, public engagement, public meetings and City Council involvement.

**Public Information and Outreach**

To assist in evaluating the effectiveness of PBI education and outreach efforts, the PBI Office shall maintain records of public and stakeholder engagement activities, including: meeting dates, the names of meeting attendees if provided, records of meeting notifications including groups, entities, and individuals notified, copies of handouts or presentations consistent with public relations best practices and established by the City of Denver’s PBI program. All stakeholder feedback should be recorded, catalogued, and preserved. Not only is this useful in identifying and prioritizing issues, but can be used to demonstrate that the appropriate amount of stakeholder outreach was conducted and feedback solicited.

The PBI Office will submit an Annual Report to City Council.

The PBI Office will post the following to the PBI Office website:

1. Public Notices, as defined below;
2. Public Meeting materials;
3. Requests for Information;
4. Requests for Qualifications;
5. Requests for Proposals; and
6. Executed Project Agreements subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

**Public Meetings**

To provide the public with a meaningful opportunity for input on a proposed PBI project the PBI office, in coordination with the Sponsoring Agency and City Council, shall hold a minimum of three public meetings on any Public Private Partnership under consideration.

At least one public meeting must be held during each of the following periods of the PBI project development process:

1. During Screening Stage (Visioning, including Project Identification and Screening);
2. Following Structuring Stage (Project Development), after completion of a Business Case, information includes prior to issuance of the Request for Qualifications;

3. During Procurement Stage, following selection of short-listed proposers, prior to issuance of a Request for Proposals;

The public meetings shall:

1. Provide the public and stakeholders with sufficient detail to understand the proposed PBI project including: project objectives, perceived advantages and disadvantages of the proposed PBI structure, essential terms being considered, long-term obligations of the financing arrangement under consideration, and potential alternative funding options (including options that rely exclusively on public funding);
2. Be held at appropriate locations including, but not limited to, those close to the communities that will benefit from and be affected by the project and/or other appropriate locations that provide access to affected Denver residents;
3. Allow for meaningful comment, input, and questions from the public and responses from the PBI Office and Sponsoring Agency

Public meeting notices will be posted on the PBI Office website at least one (1) week in advance and will include the location, date, and time of any public meeting along with sufficient information to provide interested parties with notice of the contemplated project that will be discussed. Interested parties will be provided with an opportunity to provide feedback regarding the proposed PBI project.

### **Public Input**

At a minimum, stakeholder feedback should be integrated into the project planning process at each appropriate Program stage. Public input will be solicited and recorded and considered during project development.

Stakeholders may provide input through public meetings or on the PBI Office website.

### **Public Notice**

The PBI Office will provide notice to the public and to City Council members of significant steps in the consideration of PBI projects. The PBI Office shall, at a minimum: post notices on the PBI Office website, provide notice to City Council members, and provide notices by mail and email to Registered Neighborhood Organizations within a mile radius where the project will be located

The Office shall provide public notice and will post the following to the PBI Office website:

1. Public Meetings;
2. Requests for Information;
3. Requests for Qualifications;
4. Requests for Proposals;
5. Reports summarizing key terms of the selected proposal; and
6. Executed Project Agreements subject to reasonable safeguards to protect confidential information pursuant to the Colorado Open Records Act.

### **Council Involvement**

City Council members will be offered individual and Council committee briefings throughout the PBI project development process on non-confidential information. Council will be briefed on results of project screening, structuring, procurement and implementation. In addition to briefings, City Council members

will be offered an active role in stakeholder engagement activities for projects within their respective districts. At-large members will be offered an active role in stakeholder outreach as well.

Before entering into a public-private partnership agreement, the Office shall submit to the Council and provide to the public through a public notice, a report summarizing key terms of the selected proposal, including:

- a. Participating private entities;
- b. Terms of the PBI agreement;
- c. Total cost;
- d. Cost to the City;
- e. Value-for-money analysis and public-sector comparator analysis;
- f. Proposed term;
- g. Delivery method;
- h. Participating public entities;
- i. The selection process including selection criteria and methodology for evaluating proposals.

### **Confidential Business Information**

The City and the PBI Office are subject to and comply with the Colorado Open Records Act C.R.S. §§ 24-72-201, et. seq. (“CORA”). As such, public documents such as project RFQs and RFPS will be available to the public. To ensure a fair and competitive process an executive summary and other non-confidential information will be the only items released by the PBI Office before execution of a PBI agreement and the conclusion of any challenge to the award, absent an administrative or judicial order requiring release or disclosure.

After execution of a PBI agreement and the conclusion of challenge to the award, the PBI Office will, upon appropriate request pursuant to CORA, disclose non-confidential portions of proposals or other information submitted by Proposers.

Proposers shall identify any portions of their proposal or other submissions that it considers to be confidential business information, contain trade secret or otherwise confidential commercial, financial, or proprietary information not subject to disclosure pursuant to CORA”). If the City receives a request for information clearly identified as confidential it will attempt to notify the Proposer of the request and provide an opportunity for the Proposer to confirm what information is confidential. The City will make the final determination regarding what information shall be released pursuant to CORA. In the event that a lawsuit is filed to compel disclosure of information, the Proposer is responsible to take appropriate action to defend its claim that the information at issue is protected under CORA.

### **Auditor’s Access to Records**

The Auditor shall have access to records maintained by the PBI Office as necessary to conduct financial or performance audits in accordance with generally accepted governmental auditing standards promulgated by the United States Comptroller General and City confidentiality requirements.