City and County of Denver

Performance-Based Infrastructure Program

Program Overview
# Contents

<table>
<thead>
<tr>
<th></th>
<th>Introduction</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.1</td>
<td>Goal</td>
<td>2</td>
</tr>
<tr>
<td>1.2</td>
<td>Objectives</td>
<td>2</td>
</tr>
<tr>
<td>1.3</td>
<td>What Is Performance-Based Infrastructure?</td>
<td>3</td>
</tr>
<tr>
<td>2</td>
<td>The Performance-Based Infrastructure Program</td>
<td>4</td>
</tr>
<tr>
<td>2.1</td>
<td>Governmental Participants</td>
<td>7</td>
</tr>
<tr>
<td>2.2</td>
<td>Private Parties / Proposers</td>
<td>11</td>
</tr>
<tr>
<td>2.3</td>
<td>Other Stakeholders</td>
<td>12</td>
</tr>
<tr>
<td>2.4</td>
<td>Timeline</td>
<td>12</td>
</tr>
<tr>
<td>3</td>
<td>Stage 1: Planning</td>
<td>13</td>
</tr>
<tr>
<td>3.1</td>
<td>Objectives</td>
<td>15</td>
</tr>
<tr>
<td>3.2</td>
<td>Process</td>
<td>15</td>
</tr>
<tr>
<td>4</td>
<td>Stage 2: Screening</td>
<td>16</td>
</tr>
<tr>
<td>4.1</td>
<td>Objectives</td>
<td>18</td>
</tr>
<tr>
<td>4.2</td>
<td>Process</td>
<td>18</td>
</tr>
<tr>
<td>5</td>
<td>Stage 3: Structuring</td>
<td>20</td>
</tr>
<tr>
<td>5.1</td>
<td>Objectives</td>
<td>22</td>
</tr>
<tr>
<td>5.2</td>
<td>Process</td>
<td>22</td>
</tr>
<tr>
<td>6</td>
<td>Stage 4: Procurement</td>
<td>25</td>
</tr>
<tr>
<td>6.1</td>
<td>Objectives</td>
<td>27</td>
</tr>
<tr>
<td>6.2</td>
<td>Process</td>
<td>27</td>
</tr>
<tr>
<td>7</td>
<td>Stage 5: Implementation</td>
<td>30</td>
</tr>
<tr>
<td>7.1</td>
<td>Objectives</td>
<td>32</td>
</tr>
<tr>
<td>7.2</td>
<td>Process</td>
<td>32</td>
</tr>
<tr>
<td>8</td>
<td>Unsolicited Proposal Process</td>
<td>34</td>
</tr>
</tbody>
</table>
Tables
Table 1: Approximate project timeframes for the Solicited Proposal Process

Figures
Figure 1: PBI Program framework
Figure 2: Program approvals process
Figure 3: Planning Stage of PBI Program
Figure 4: Screening Stage of PBI Program
Figure 5: Process flow diagram for Stage 2: Screening
Figure 6: Structuring Stage of PBI Program
Figure 7: Process flow diagram for Stage 3: Structuring
Figure 8: Procurement Stage of PBI Program
Figure 9: Process flow diagram for Stage 4: Procurement
Figure 10. Implementation Stage of PBI Program

Appendices

Appendix A
Glossary and Abbreviations
Reserved Rights

The Performance-Based Infrastructure (PBI) Program serves as a framework to guide the city in screening, structuring and evaluating, and executing PBI projects. The PBI Office reserves the right to modify/follow aspects of the program on a project-by-project basis, as each PBI project has different merits/objectives. The PBI Office may recommend annual revisions to the PBI Program. The PBI Office works with the City Attorney’s Office to draft revisions to the Program and implement those revisions the PBI Office determines would benefit the Program. Proposed changes to the Program become effective upon approval by the Performance Infrastructure Committee.
1 Introduction

The City and County of Denver (the City) is experiencing unprecedented growth and increased pressure on City infrastructure. The City is committed to ensuring that Denver thrives by investing in people, developing and cultivating a strong workforce, and maintaining existing and delivering new public infrastructure that enables the economy to prosper.

Building on existing infrastructure delivery programs that have protected the City’s strong credit, such as the Capital Improvement Plan and general obligation bond program, the City is exploring innovative methods to meet infrastructure demands. One such tool involves partnering with the private sector to provide municipal infrastructure via public-private partnerships.

This guide introduces the City and County of Denver’s Performance-Based Infrastructure (PBI) Program, which provides a process by which potential projects can be screened, vetted, structured, procured, and implemented as public-private partnerships. It systematically considers each element of the Program and defines key procedures and approvals, and who is responsible for each. It also provides an overview of additional guidelines and documents within the Program.

PBI projects are to comply with the City’s workforce program and applicable social ordinances.

1.1 Goal

The goal of the Program is to establish institutional capability and capacity within the City to effectively and efficiently evaluate and execute partnerships with private parties to deliver performance-based public infrastructure.

1.2 Objectives

The Program has the following objectives:

- Define public infrastructure and performance-based infrastructure
- Develop a transparent, neutral, effective, and efficient process to evaluate project delivery methods for major capital and renewal projects
- Provide clear and objective criteria for screening projects for inclusion in the Program
- Establish guidelines for a City procurement option that can do the following:
  - Harness private-party innovation and financing
  - Have a net-positive socioeconomic impact for the City and its residents
  - Minimize risk for the taxpayer measured over time
Effectively capture value for the City
Leverage public funds (if required)

- Create a PBI Office to oversee the screening, evaluation, and procurement of public-private partnerships; support in the management and enforcement of PBI contracts; and retain, evolve, and disseminate best practices to municipal departments and agencies
- Measure performance of infrastructure over time
- Centralize project information and status on a PBI Pipeline
- Leverage existing City processes and resources

1.3 What Is Performance-Based Infrastructure?

Public infrastructure is defined as assets that provide public services to the taxpayers and residents of the city. It is infrastructure that is owned by the public or is for public use.

In the context of this Program, performance-based infrastructure relates to how design, construction, financing, operations, and long-term maintenance services are procured to deliver public infrastructure by means of a partnership between the public and private parties.

Performance-based infrastructure is any project with all of the following attributes:

- Long-term agreement between the government and private party, where a project is financed partially or fully by the private party
- Risk sharing between the government and private party
- Provision of public infrastructure / essential public services
- Long-term ownership of the asset retained by the public sector
- Value for money to the taxpayer over the life of the asset
- Public payments subject to the private party meeting contractually defined performance requirements
2 The Performance-Based Infrastructure Program

The PBI Program documents are structured as follows:

- Program Overview (this document)
- Solicited Proposal Process
  - Process guidelines
    - **PBI Eligibility and Screening Guidelines**: Guidance on how the City evaluates whether projects are appropriate for PBI procurement, including evaluation criteria
    - **Business Case Development Guidelines**: Guidance on how to develop an effective business case, outlining key considerations in each chapter
    - **Procurement Guidelines**: Guidance on the procurement process
    - **Implementation Guidelines**: Guidance on the ongoing monitoring of a project, once it passes City Council approval and achieves Commercial Close, as it goes through stages of construction, commissioning, and operations
  - Methodology guidelines
    - **Market Sounding Guidelines**: Guidance on conducting market sounding activities, which facilitate the dialogue between the City and PBI market participants
    - **Project Risk Assessment Guidelines**: Guidance and industry best practices for conducting risk analysis
    - **Value for Money Guidelines**: Guidance and industry best practices for conducting value-for-money analysis
    - **Stakeholder Communications Guidelines**: Guidance and best practices for engaging with the public, City Council, and other stakeholders throughout the development of a project
- Unsolicited Proposal Process
  - **Unsolicited Proposal Guidelines**: Guidance on receiving, evaluating, competing, and selecting unsolicited proposals

The PBI Program is illustrated in Figure 1. The Solicited Proposal Process begins with the planning of projects; progresses to the Screening Stage, in which projects unsuitable for alternative project delivery are eliminated (Gateway 1); and continues through the Structuring Stage, in which the case for the preferred type of project delivery model must be made. Those projects that pass Gateway 2 are approved for procurement under the Program and consequently enter the
Procurement Stage, in which a private partner may be selected. Once the Project Agreement is signed (Gateway 3), the project enters the final stage: Implementation.

This process is shown in blue, along with the supporting guidelines that agencies should use to inform their deliverables and reviews as they progress projects through the Program stages.

Of the nine supporting documents, four are considered process guidelines (in gray) and relevant to their respective stages, while the four methodology guidelines (in orange) are relevant to multiple stages of the Solicited Proposal Process. The final guideline addresses the Unsolicited Proposal Process (in red).

Sections 3 through 7 of this document provide an overview of the five stages of the Solicited Proposal Process, outlining key procedures and approvals. Section 8 summarizes the Unsolicited Proposal Process.
## Figure 1: PBI Program framework
2.1 Governmental Participants

Several governmental participants are involved in executing and delivering the Program. The roles and responsibilities of these participants are generally described below and are highlighted throughout the Program documents. Figure 2 illustrates the Program approval process, highlighting the touchpoints that overlap with the Capital Planning and Programming (CPP) approval process.

![Diagram illustrating the Program approval process]

Figure 2: Program approvals process

2.1.1 Sponsoring Agency

The Sponsoring Agency (e.g., Public Works, Arts and Venues, Parks and Recreation, or the Mayor’s Office of National Western Center) is responsible for developing a portfolio of projects it wishes to develop, as explained in Stage 1.

During Stage 2, the Sponsoring Agency is responsible for submitting the Capital Project Request Form (CPR) to the CPP and for supporting the PBI Office with additional information as requested to complete the PBI Screening Application (PSA).

In Stage 3, the Sponsoring Agency is responsible for providing the PBI Office with desired project outcomes, important project assumptions, and other key inputs to the business case.
During the Gateway 2 approval process the Sponsoring Agency may be required to participate in meetings with the Performance Infrastructure Committee (PIC) and PBI Office, as well as in presentations by the PBI Office or PIC to elected officials and the public.

During Stage 4, individuals from the Sponsoring Agency may join the Procurement Team, as described below.

During Stage 5, the Sponsoring Agency may lead construction (through the Implementation Team), if applicable under the Denver City Charter; otherwise, they have a review and comment role for design, operations, and maintenance changes during construction. The Sponsoring Agency leads operations.

### 2.1.2 PBI Office

The PBI Office is responsible for the oversight of all projects in the Program. This office should be staffed by a team of professionals with expertise in design-build construction, project finance, public finance, risk analysis, deal structuring, real estate development, and procurement design and management.

The PBI Office is supported by the Department of Finance (DoF), the City Attorney’s Office (CAO), the Sponsoring Agency, Public Works, and others as appropriate. The PBI Office’s expertise should be augmented as needed by external advisors with relevant experience.

The PBI Office is the City’s center for expertise and knowledge in the evaluation, structuring, and execution of public-private partnerships, providing guidance to Sponsoring Agencies and the PIC throughout the Program. The PBI Office is responsible for moving the project all the way through the process until approval is obtained from the City Council.

The PBI Office leads the process in Stages 2, 3, and 4 — maintaining the PBI Pipeline, developing the business case and financial risk assessment, managing procurement and negotiations (through the project-specific Procurement Team), preparing briefing materials as required, and making recommendations to the PIC at the appropriate times.

The PBI Office is available to provide consultation and guidance to Sponsoring Agencies during Stage 1 and continues to monitor and collect data from projects during Stage 5.

The PBI Office is responsible for ensuring that potential PBI projects are evaluated in an appropriate and consistent way. The office’s responsibilities also include but are not limited to the following:

- Determine whether a PBI approach is appropriate for a project
- Ensure consistency in screening and evaluation of project candidates
- Provide oversight of financial and legal discussion related to PBI projects
• Evaluate and advise on risk issues at all project stages for any PBI Pipeline project
• Assist with PBI policy updates
• Support Sponsoring Agencies as they progress through the Program
• Serve as a center of excellence for major capital project delivery
• Lead stakeholder engagement during procurements
• Act as a focal point for engagement with the PBI industry
• Promote the Program by soliciting projects, attracting potential partners and investors, and maintaining a published PBI Pipeline, educating and engaging stakeholders and the public on process and projects
• Provide technical assistance and training on PBI project development and procurement

2.1.3 Performance Infrastructure Committee
The PIC consists of the Chief Projects Officer, the Chief Financial Officer, the City Attorney, and the Executive Director of Public Works. The Executive Director of the PBI Office participates as a non-voting member. The PIC has executive oversight of the Program, including overseeing the PBI Office, reviewing information presented to it by the PBI Office, and determining whether to recommend approvals to the Mayor.

All members of the PIC, in their duties as heads of executive departments, need to formally approve projects for PBI consideration and sign off on the aspects of the business case relevant to their department at the end of Stage 3 and on the final Project Agreement before it goes to the Mayor and City Council at the end of Stage 4.

2.1.4 Department of Finance
Given the large and long-term financial commitment of PBI projects, the Department of Finance (DoF) has several key roles in all stages of the PBI process. These functions range from serving as the initial screener of project opportunities via the department’s CPP Division; supporting the PBI Office on various financial analyses and review, including third-party validation of the value-for-money analysis to be provided by independent DoF financial advisor; and financial monitoring and reporting during the implementation stage. The City’s Chief Financial Officer also serves as a decision-maker on the PIC.

In addition to its PBI functions, the DoF also evaluates projects from a citywide financial lens, ensuring the City’s financial sustainability, credit quality, and compliance with City financial rules, regulations, and policy.
2.1.5 **City Attorney’s Office**

The roles of the CAO include reviewing proposed projects for consistency with laws/regulations; drafting the Term Sheet; preparing the Project Agreement; assisting the PBI Office with drafting, reviewing, and finalizing the request for proposals (RFP) and other procurement documents; and assisting in proposer negotiations. The CAO retains special counsel to assist as necessary.

The role of the CAO during Stage 5 is in alignment with its typical role on City projects and includes assisting the Sponsoring Agency by interpreting and pursuing any legal action necessary to enforce the Project Agreement, and executing changes to the Project Agreement.

The City Attorney serves as a decision-maker on the PIC, signing off on legal components of the business case and the final Project Agreement. Additionally, the CAO is responsible for approving any PBI policy changes, as recommended by the PBI Office.

2.1.6 **Public Works**

Public Works may assist or represent the Sponsoring Agency as applicable under normal division of roles according to the City Charter. Additionally, given Public Works’ role in procurement and construction under the City Charter, the department may play a role in supporting the PBI Office throughout the Program for certain projects.

Several decision points in the program allow the Mayor to determine involvement of other agencies on a project-by-project basis. The Mayor’s determination is informed by a recommendation from the PBI Office, which is approved by the PIC.

The decision points are as follows:

- At the end of Stage 2, once a project is cleared to proceed to PBI Structuring, a decision is made as to whether Public Works assists the PBI Office with the development of the Business Case in Stage 3 and/or the Procurement in Stage 4. Additionally, if Public Works is not the Sponsoring Agency, the Sponsoring Agency may engage them or a private party during Stage 3 to develop the base-case cost estimate.

- At the end of Stage 3, the decision regarding the involvement of Public Works in the Procurement Team for Stage 4 can be reassessed.

Public Works leads Stage 5 during construction (through the Implementation Team), if appropriate under the City Charter.
2.1.7 Mayor’s Office

The Mayor’s Office is responsible for, among other things, the formation of and participation in the PIC, and oversight of the PBI Office.

2.1.8 City Council

The City Council action required for the PBI Program is consistent with the existing contracting approval processes. Prior to council action on the recommended PBI Project Agreement, the PBI Office provides information updates on individual projects.

2.1.9 Procurement Team

A Procurement Team is formed for each procurement. Each Procurement Team is led by the PBI Office and includes members of the Sponsoring Agency and may include members of the Mayor’s Office, DoF, CAO, and other relevant departments (e.g., Public Works). Each Procurement Team provides guidance on the development of procurement documents and procurement activities, such as leading proposer one-on-ones, reviewing and evaluating proposals, and drafting recommendations.

2.1.10 Implementation Team

An experienced and committed Implementation Team is crucial to ensure efficient execution, avoiding delays that could both increase project costs and service to the public. A specific team should be dedicated to managing the project according to the Project Agreement.

The Implementation Team members, roles, and member authority are recommended by the PBI Office at the end of Stage 3, with an option to make alterations at the end of Stage 4.

The team may be led by the Sponsoring Agency, Public Works, or another entity as appropriate. It may also include representatives from the PBI Office and the Procurement Team, and as deemed necessary, the team should be complemented with external advisors and specialized consultants.

2.2 Private Parties / Proposers

Interested private parties are private firms and consortia interested in partnering with the City on a PBI project. They are encouraged to engage with the PBI Office about all matters related the Program and the status of projects.

Private parties play an important role in the market sounding process, providing feedback on technical, commercial, and financial aspects of projects as they move
through the PBI project-development process (see the Market Sounding Guidelines for more information).

Private parties engaged in a procurement process are referred to as proposers. Proposers also play an important role, providing feedback during the Procurement Stage prior to release of the RFP.

Fundamentally, the role of the private parties / proposers is to provide the intellectual and financial capital as well as resources necessary to help ensure (1) the procurement process is robust, competitive, and transparent, and (2) projects are implemented on time and on budget, and are well maintained.

2.3 Other Stakeholders

The Stakeholder Communications Guidelines provide recommended best practices and strategies for ensuring project-specific stakeholder outreach, engagement, and input throughout the PBI process.

2.4 Timeline

Table 1 describes approximate project timeframes for the Solicited Proposal Process. A typical process could take 18 to 30 months, depending on many factors, including but not limited to the complexity of project, how prepared the Sponsoring Agency is, the approvals process, the time required to prepare procurement documentation, and the time needed for proposers to thoughtfully respond.

Table 1: Approximate project timeframes for the Solicited Proposal Process

<table>
<thead>
<tr>
<th>Project Stage</th>
<th>Duration (range)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Planning</td>
<td>As determined by the Sponsoring Agency</td>
</tr>
<tr>
<td>Screening</td>
<td>90 days</td>
</tr>
<tr>
<td>Structuring</td>
<td>6–12 months</td>
</tr>
<tr>
<td>Procurement</td>
<td>6–12 months</td>
</tr>
<tr>
<td>Implementation</td>
<td>For the life of the project</td>
</tr>
</tbody>
</table>
3 Stage 1: Planning

The first stage of the PBI project-development process is the Planning Stage, highlighted in Figure 3.
Figure 3: Planning Stage of PBI Program
3.1 Objectives

The objective of the Planning Stage is for Sponsoring Agencies to develop and prioritize portfolios of potential projects.

3.2 Process

The Sponsoring Agency is primarily responsible for developing proposed projects, verifying the need for the project and documenting how the project furthers the City’s goals. Sponsoring Agencies should develop a clear decision-making process. The Sponsoring Agency’s mission, strategic plans, work program, and citywide goals and priorities should be considered.

The qualifying features and eligibility criteria for all potential projects are outlined in the PBI Eligibility and Screening Guidelines. The PBI Office is available to provide guidance upon request. Initial market soundings may assist with making early determinations about the potential for projects to be developed as PBIs, coordinated with the PBI Office (see Market Sounding Guidelines).

Sponsoring Agencies must consult with DoF and PBI Office before moving into Stage 2: Screening.
4 Stage 2: Screening

The guidance and procedures for the Screening Stage are most relevant to Sponsoring Agencies preparing to submit applications to the DoF for specific project capital allocations. Figure 4 highlights this stage along with its relevant process and methodology guidelines.
### Figure 4: Screening Stage of PBI Program
### 4.1 Objectives

The objective of the Screening Stage is to identify and evaluate preliminary project information to determine the potential viability of procuring a project as a PBI without expending a significant amount of time and budget resources. This may include developing pre-feasibility studies for the project. This stage is led by the PBI Office.

The culmination of the Screening Stage (Gateway 1) is an approval by the PIC to place the project in the PBI Pipeline.

### 4.2 Process

The Sponsoring Agency is responsible for preparing and submitting various documents and analyses along with the Capital Project Request Form (CPR) to CPP, in line with the City’s Capital Improvement Plan (CIP) development process for projects. As the CPP reviews the CPR and works with Sponsoring Agencies on assessing their proposed projects, they consider the qualification criteria as well as PBI Screening criteria: project size, potential advantages of PBI over traditional procurement and/or financing, City capacity and appetite, potential to bundle, and self-financing potential.

The CPP’s evaluation of these criteria is based on the standard information submitted with the CPR and supporting documents. The CPP notifies the PBI Office of projects that meet any of these criteria for further PBI Office review and evaluation of additional criteria.

If a project is preliminarily deemed suitable for PBI, the PBI Office reviews the project and make a recommendation to the PIC regarding whether to make the project a formal candidate for PBI procurement. If a project is approved by the PIC, it passes through Gateway 1. When a project becomes a formal candidate for a PBI procurement, it is listed on the PBI Pipeline on the PBI Office website and City Council is briefed. Figure 5 illustrates this process in a flow diagram.

The screening criteria and evaluation process is explained in greater detail in the PBI Screening and Eligibility Guidelines. The Project Risk Assessment Guidelines assist Sponsoring Agencies submitting project-risk information. Sponsoring Agencies and the PBI Office should consult the Market Sounding Guidelines for methods of seeking market feedback early in the project development process.

If a project does not meet the criteria for being considered a candidate for PBI procurement, the Sponsoring Agency may resubmit with new project information to be reevaluated and/or moved forward to be considered as part of the traditional CIP process.
Figure 5: Process flow diagram for Stage 2: Screening
5 Stage 3: Structuring

The guidance and procedures for the Structuring Stage are most relevant to Sponsoring Agencies with projects that have been placed in the PBI Pipeline and that are intending to develop and submit a business case.

Figure 6 highlights this stage along with its relevant process and methodology guidelines.
## Program Overview

### Stage 1: Planning
- **Level of Design:** N/A
- **Summary of Activities:** Development of project pipeline by Sponsoring Agencies
- **Process Guidelines:** N/A
- **Methodology Guidelines:** PBI Eligibility and Screening Guidelines

### Stage 2: Screening
- **Level of Design:** Conceptual design 5%
- **Summary of Activities:** High-level definition of project components and procurement strategy
- **Process Guidelines:** PBI Eligibility and Screening Guidelines
- **Methodology Guidelines:** Market Sounding Guidelines

### Stage 3: Structuring
- **Level of Design:** Schematic design 5%-40%
- **Summary of Activities:** Development of full project technical feasibility, risk register and financial model, and business case evaluation
- **Process Guidelines:** Business Case Development Guidelines
- **Methodology Guidelines:** Project Risk Assessment Guidelines

### Stage 4: Procurement
- **Level of Design:** Schematic design 5%-40%
- **Summary of Activities:** Development of contractual documentation, solicitation, selection of bidders, and negotiations
- **Process Guidelines:** Procurement Guidelines
- **Methodology Guidelines:** Value for Money Guidelines

### Stage 5: Implementation
- **Level of Design:** DD+CD+RfC 40%-100%
- **Summary of Activities:** Construction and post-construction monitoring and management of the contract execution, modifications, and associated risks
- **Process Guidelines:** Implementation Guidelines
- **Methodology Guidelines:** Project Stakeholder Communications Guidelines

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**Figure 6:** Structuring Stage of PBI Program
5.1 Objectives

The objectives of the Structuring Stage are as follows:

- Identify and evaluate all major project risks and allocate them to the party best suited to manage them
- Develop a business case that qualitatively and quantitatively evaluates procurement options for a project and makes a recommendation based on the option that provides best value to the City

5.2 Process

The PBI Office is responsible for leading the development of the business case in close coordination with the Sponsoring Agency for guidance and assistance. The Sponsoring Agency must first submit an Intent to Submit Form to notify the PBI Office of potential resource needs.

A Project Liaison is then assigned from the PBI Office to help guide and support the risk assessment and business case development, and support liaisons among the Sponsoring Agency, the PIC, the CAO, and the DoF, including any relevant DoF functional units.

The Sponsoring Agency should work with the PBI Office Project Liaison to identify its needs for business case preparation and consider hiring specialized external advisors for pre-feasibility/feasibility studies and business case preparations.

Relevant City departments should be engaged as applicable under traditional project development, for example, Real Estate to assist with assessing site availability, Public Works to help with designs and constructability, and the CAO to develop the draft Term Sheet.

Given the significant effort required to develop a business case and submit it for evaluation, it is highly recommended that a preliminary business case be developed and shared with the PIC for feedback and direction. These preliminary findings can be used to determine whether to continue developing the business case.

For projects that do not show promise delivering value for money if pursued as a PBI, the Sponsoring Agency may elect to further develop the business case with new project information and move forward through the traditional CIP process.

Once the business case is complete, the PBI Office submits it along with a summary recommendation to the PIC for review and comment. If the PIC accepts the PBI Office’s recommendation, then the PBI Office prepares a Notice of Intent to Procure PBI Services, which should include the following:
1. Business case executive summary and findings
2. Staff report and recommendation
3. Draft Term Sheet
4. Form signed by each member of the PIC and the head of the Sponsoring Agency validating their review and approval of the materials contained in the Notice of Intent to Procure PBI Services package

The PBI Office shall also recommend the proposed members of the Procurement Team and the entities that see the project through implementation, as well as the authorities of these members and entities.

These documents shall be submitted to the Mayor for approval to proceed to Stage 4: Procurement. The PBI Office briefs the City Council on the decision. Projects pass through Gateway 2 by way of the Mayor’s approval of the aforementioned documents.

Figure 7 illustrates the basic structuring process in a flow diagram, with optional steps surrounded by a dotted line.
**Figure 7: Process flow diagram for Stage 3: Structuring**
6 Stage 4: Procurement

The guidance and procedures for the Procurement Stage guides the Procurement Team, which takes responsibility for the procurement process. Each Procurement Team is led by the assigned PBI Office Project Liaison, with contributions from the Sponsoring Agency, DoF, Public Works, and CAO staff.

Depending on the project and the team composition determined at the end of Stage 3, Public Works may play a key role in the Procurement Stage.

Figure 8 highlights this stage along with its relevant process and methodology guidelines.
Figure 8: Procurement Stage of PBI Program
6.1 Objectives

The objectives of this stage are as follows:

- Develop and issue procurement documents, such as the procurement plan / request for information (RFI), request for qualifications (RFQ), and request for proposals (RFP)
- Continue engagement with the market to collect and incorporate feedback throughout the Program
- Develop the project Term Sheet and refine into a Project Agreement
- Select and negotiate with the Preferred Proposer
- Submit a finalized Project Agreement to the City Council for final approval
- Achieve Commercial Close and provide support to Financial Close

6.2 Process

The Procurement Team is responsible for leading the procurement efforts, beginning with determining the procurement strategy and schedule. A procurement plan with a draft Term Sheet, based on the business case, as well as an RFI may be prepared and discussed with the PIC.

If an RFI is used, the Procurement Team shares it with the market, engages in market sounding, and incorporates findings/feedback into the development of subsequent procurement documents, such as the RFQ, if one is developed.

After issue of the RFQ, the Procurement Team accepts questions from proposers and publishes responses. The Procurement Team selects a short list of two to four proposers.

The Procurement Team and the CAO may incorporate RFQ comments. The CAO reviews the final RFP and accompanying Project Agreement.

The Procurement Team then issues the RFP to the short-listed proposers and engages with the proposers in a group workshop and in one-on-one meetings during the response period. Proposers shall prepare both a technical and a financial proposal. A draft Project Agreement is typically shared with the short-listed proposers during the RFP process.

The Procurement Team assembles a panel to review technical and financial aspects of the proposal. The Procurement Team may seek further clarifications from the proposers prior to selecting the Preferred Proposer based on best value.

The CAO reviews any proposed edits to the Project Agreement by the proposers. Once clarifications are completed, the Procurement Team completes its evaluation and selects the Preferred Proposer. The Procurement Team, with the involvement
of the PIC as necessary, may then engage in negotiations with the Preferred Proposer.

When negotiations are complete, the Procurement Team makes its final recommendation of a Preferred Proposer to the PIC. An updated value-for-money analysis (if applicable), to confirm that the proposal, as negotiated, provides better value for money than the public-sector comparator, is required with the Procurement Team’s recommendation.

The PIC, in consultation with the Procurement Team members, makes the final recommendation on the Preferred Proposer and notifies the Mayor before the PBI Office seeks contract approval from the City Council.

Contract approval and execution shall follow existing City procedures. For each project seeking contract execution, the PBI Office shall provide the Mayor and City Council a summary of the evaluation and the proposed contract for execution.

Projects pass through Gateway 3 when the Project Agreement is executed by the Preferred Proposer and the City (referred to as Commercial Close).

Once Commercial Close occurs, the private partner assumes responsibility for executing the financing in most instances (referred to as Financial Close).

Prior to the start of work, the Procurement Team has the opportunity to recommend changes to the Implementation Team, named in Stage 3, to the Mayor.

The procurement process is further detailed in the Procurement Guidelines, which should be consulted throughout this stage. The Market Sounding Guidelines should also be consulted for best practices during the RFI, RFQ, and RFP periods of the procurement.

Figure 9 illustrates the basic structuring process in a flow diagram, with optional steps surrounded by a dotted line.
Figure 9: Process flow diagram for Stage 4: Procurement
7 Stage 5: Implementation

The guidance and procedures at this stage are most relevant to Sponsoring Agencies (or those that stand in for them) overseeing projects being constructed and operated as PBIs. Figure 10 shows how this stage relates to the rest of the overall Program stages and the relevant guidelines.
## Stage 1

<table>
<thead>
<tr>
<th>Planning</th>
<th>Screening</th>
<th>Structuring</th>
<th>Procurement</th>
<th>Implementation</th>
</tr>
</thead>
<tbody>
<tr>
<td>N/A</td>
<td>Conceptual design 5%</td>
<td>Schematic design 5%-40%</td>
<td>Schematic design 5%-40%</td>
<td>DD-CD-RfC 40%-100%</td>
</tr>
</tbody>
</table>

### Level of Design

- Development of project pipeline by Sponsoring Agencies
- High-level definition of project components and procurement strategy
- Development of full project technical feasibility, risk register and financial model, and business case evaluation
- Development of contractual documentation, solicitation, selection of bidders, and negotiations

### Led by: Supported by:

- Sponsoring Agency
- PBI Office
- PBI Office
- PBI Office
- [Public Works]
- PBI Office / Sponsoring Agency

### Process Guidelines

- PBI Eligibility and Screening Guidelines
- Business Case Development Guidelines
- Procurement Guidelines
- Implementation Guidelines

### Methodology Guidelines

- Market Sounding Guidelines
- Project Risk Assessment Guidelines
- Value for Money Guidelines
- Project Stakeholder Communications Guidelines
- Unsolicited Proposal Guidelines

---

**Figure 10. Implementation Stage of PBI Program**
7.1 Objectives

The objectives of this stage are as follows:

- Monitor compliance with Project Agreement terms to ensure they are correctly interpreted and implemented, and the risks are adequately managed in the best interest of the public
- Collect and make public data on the performance of the PBI project over its life
- Manage Project Agreement modifications to ensure the project continues to provide the best value to the public
- Process and administer financial obligations and payments, including budget management, disclosure, accounting, and financial reporting

The Implementation Stage ends at the end of the term of the Project Agreement.

7.2 Process

The Implementation Stage is primarily led by the Sponsoring Agency, as part of the Implementation Team. Public Works leads the construction unless otherwise assigned by the Mayor.

The Implementation Team is responsible for meeting all owner obligations in the Project Agreement in a timely manner, which include but are not limited to meeting any financial close obligations, approving design decisions and change orders during the design-build process, overseeing the private partner’s construction schedule, making performance-based payments during the operating period, and addressing facilities issues with the private partner when they arise.

Active contract management is essential for a successful partnership and to achieve best value from the Project Agreement over time.

As part of the contract management function, the Implementation Team (during construction) and the Sponsoring Agency (during operations) are responsible for leading the process and gathering performance data provided by the private partner and providing it to the PBI Office.

To track success of implemented projects and to inform future PBI project decisions, the PBI Office should use this data to compile a database of information from all projects delivered under the Program.

The private partner is responsible for providing periodic updates on budget and schedule during and at the end of construction, and for providing operational and financial data throughout the term of the Project Agreement.
The CAO is responsible for assisting each Sponsoring Agency in this stage of the Program by interpreting and pursuing any legal action necessary to enforce the Project Agreement and implementing changes to the Project Agreement.
8 Unsolicited Proposal Process

A USP is a project proposal submitted by a private party for the purpose of obtaining a contract with the City. USPs may be submitted by private proposers in response to City agencies’ published or stated development plans or early-stage capital projects. They are not developed in response to a formal RFP by the City.

A streamlined Unsolicited Proposal Process creates a parallel avenue to the Solicited Proposal Process and enables the City to engage directly with the knowledge and ideas of private parties while developing potential capital projects. As is the case for the Solicited Proposal Process, the Unsolicited Proposal Process is meant to provide an advantageous procurement or recommend a new PBI option for the City.

The City expects to issue the Unsolicited Proposal Guidelines by the end of March 2019. A notification will be posted on the PBI Office website once the USP Guidelines are available.
Appendix A

Glossary and Abbreviations
# Glossary

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>City</td>
<td>City and County of Denver.</td>
</tr>
<tr>
<td>Co-development Solicitation Process</td>
<td>Solicitation process in which the Procurement Team plans to select a private partner with whom to co-develop the project based on the performance requirements of a Predevelopment Agreement or similar document. The selection can be done based on an RFQ and/or RFP. See Section 10 of the Procurement Guidelines for more details.</td>
</tr>
<tr>
<td>Firm-Bid Solicitation Process</td>
<td>A solicitation process in which the Procurement Team issues procurement documents; interested parties respond with a firm bid, generally including firm price and financing commitments; and, proposals are reviewed by the Procurement Team to select a private partner. See the Procurement Guidelines for more details.</td>
</tr>
<tr>
<td>Implementation Team</td>
<td>The staff and consultants assigned by the City to manage the implementation of a PBI project following execution of its Project Agreement.</td>
</tr>
<tr>
<td>Intent to Submit Form</td>
<td>Form that should be submitted by the Sponsoring Agency once the project passes Gateway 2, indicating their intention to prepare and submit a business case.</td>
</tr>
<tr>
<td>Notice of Intent to Procure PBI Services</td>
<td>Notification issued by the PIC to the Mayor / City Council once the PBI Office has reviewed the business case and considers the project suitable and ready for PBI procurement.</td>
</tr>
<tr>
<td>PBI Model</td>
<td>The financial model developed by the PBI Office to evaluate the risk-adjusted cash flows of a PBI procurement method during Stage 3: Structuring. It is used to develop the project’s business case and the value for money analysis. At Stage 4: Procurement it is updated based on the proposals received and/or the Preferred Proposer’s proposal. It may also be used to support evaluation of the financial models received from the proposers.</td>
</tr>
<tr>
<td>PBI Pipeline</td>
<td>The portfolio of projects approved by the PIC for evaluation as PBIs.</td>
</tr>
<tr>
<td>PBI Screening Application</td>
<td>Form submitted by Sponsoring Agencies along with the CIP Discretionary Funding Form, indicating whether the project passes PBI qualification criteria.</td>
</tr>
<tr>
<td>Preferred Proposer</td>
<td>The highest ranked proposer selected by the City after RFP responses are received and evaluated.</td>
</tr>
<tr>
<td>Private Partner</td>
<td>The private development partner after execution of the project agreement.</td>
</tr>
<tr>
<td>Procurement Team</td>
<td>The staff and consultants assigned by the City to manage the PBI procurement process.</td>
</tr>
</tbody>
</table>
### Performance-Based Infrastructure Program Overview

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Project Agreement</td>
<td>The PBI contract signed by the City and the Preferred Proposer.</td>
</tr>
<tr>
<td>Project Liaison</td>
<td>The staff responsible for facilitating coordination between the different entities involved in the project development process such as, but not limited to, the PIC, CAO, and the PBI Office.</td>
</tr>
<tr>
<td>Public Sector Comparator</td>
<td>A hypothetical scenario representing the standard government procurement method that would be used to deliver a project in the absence of a PBI procurement option.</td>
</tr>
<tr>
<td>Term Sheet</td>
<td>The legal document that lays out the key terms of the project. Refer to the Procurement Guidelines for more information on the contents of the Term Sheet.</td>
</tr>
<tr>
<td>Sponsoring Agency</td>
<td>The applicable City entity that develops and identifies potential PBI projects during the screening stage. It coordinates with and supports the PBI Office during the project screening, structuring, and procurement stages. And it leads implementation of the PBI project after execution of the project agreement. During the implementation stage it may be referred to as Implementation Agency in instances when the agency in charge of implementing the project is different from the Sponsoring Agency in prior stages.</td>
</tr>
</tbody>
</table>

### A2 Abbreviations

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAO</td>
<td>City Attorney’s Office</td>
</tr>
<tr>
<td>CapEx</td>
<td>capital expenditure</td>
</tr>
<tr>
<td>CAPM</td>
<td>capital asset pricing model</td>
</tr>
<tr>
<td>CIP</td>
<td>Capital Improvement Plan</td>
</tr>
<tr>
<td>CORA</td>
<td>Colorado Open Records Act</td>
</tr>
<tr>
<td>CPP</td>
<td>Capital Planning and Programming</td>
</tr>
<tr>
<td>CPR</td>
<td>Capital Project Request Form</td>
</tr>
<tr>
<td>DoF</td>
<td>Department of Finance</td>
</tr>
<tr>
<td>DSRA</td>
<td>debt service reserve account</td>
</tr>
<tr>
<td>Abbreviation</td>
<td>Description</td>
</tr>
<tr>
<td>--------------</td>
<td>--------------------------------------------------</td>
</tr>
<tr>
<td>KPI</td>
<td>key performance indicator</td>
</tr>
<tr>
<td>MMRA</td>
<td>major maintenance reserve account</td>
</tr>
<tr>
<td>NPV</td>
<td>net present value</td>
</tr>
<tr>
<td>OpEx</td>
<td>operational expenditure</td>
</tr>
<tr>
<td>PBI</td>
<td>performance-based infrastructure</td>
</tr>
<tr>
<td>PDA</td>
<td>Predevelopment Agreement</td>
</tr>
<tr>
<td>PERT</td>
<td>Program Evaluation and Review Technique</td>
</tr>
<tr>
<td>PIC</td>
<td>Performance Infrastructure Committee</td>
</tr>
<tr>
<td>PSA</td>
<td>PBI Screening Application</td>
</tr>
<tr>
<td>PSC</td>
<td>Public Sector Comparator</td>
</tr>
<tr>
<td>PW</td>
<td>Public Works</td>
</tr>
<tr>
<td>RFAP</td>
<td>request for alternative proposals</td>
</tr>
<tr>
<td>RFAQ</td>
<td>request for alternative qualifications</td>
</tr>
<tr>
<td>RFDP</td>
<td>request for detailed proposal</td>
</tr>
<tr>
<td>RFI</td>
<td>request for information</td>
</tr>
<tr>
<td>RFP</td>
<td>request for proposals</td>
</tr>
<tr>
<td>RFQ</td>
<td>request for qualifications</td>
</tr>
<tr>
<td>USP</td>
<td>unsolicited proposal</td>
</tr>
<tr>
<td>ViM</td>
<td>value for money</td>
</tr>
<tr>
<td>WACC</td>
<td>weighted average cost of capital</td>
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