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City and County of Denver

# Performance-Based Infrastructure Program

**Market Sounding Guidelines**



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# 1 Introduction

## 1.1 Purpose

This document outlines guidelines for Sponsoring Agencies and the Performance-Based Infrastructure (PBI) Office to conduct market sounding activities for PBI projects. This guide is meant to facilitate dialogue between the City and County of Denver (the City) and PBI market participants throughout the project development stages, as well as to foster transparency regarding the City’s market outreach processes.

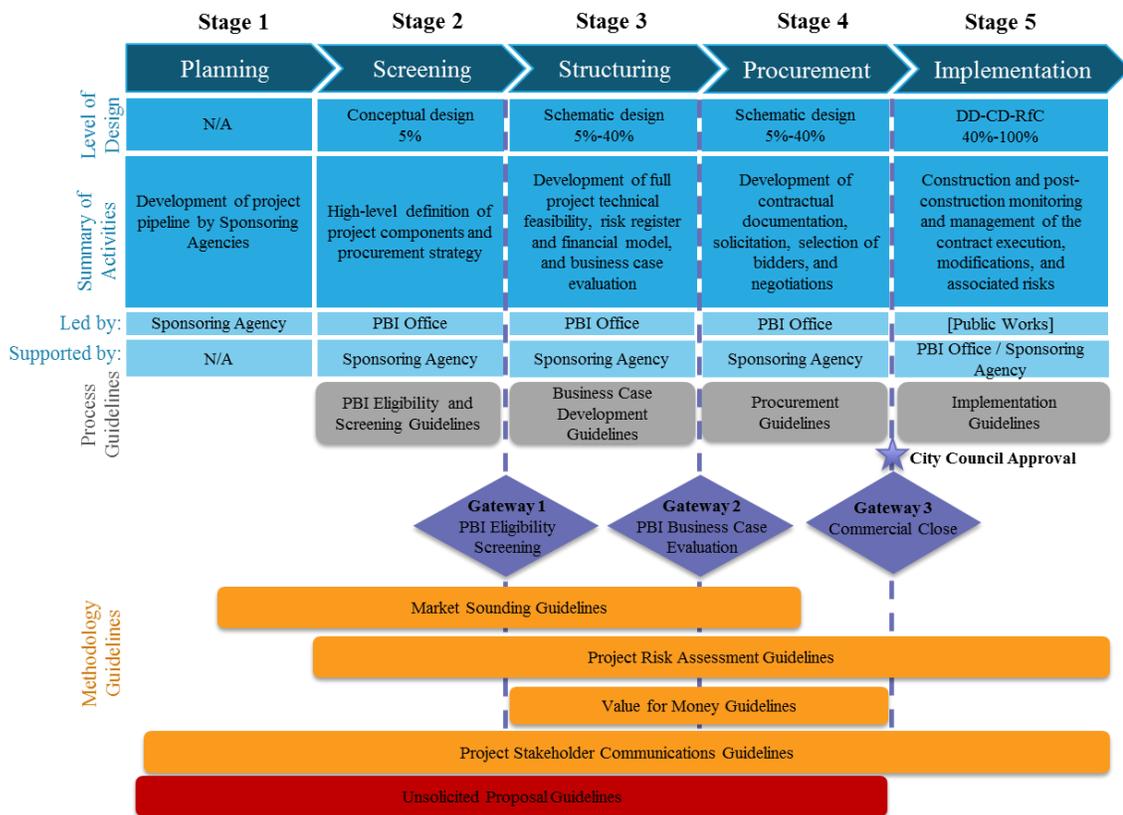


Figure 1: PBI Program framework

## 1.2 Intended Audiences

This document is intended to be used by the following audiences:

- City agencies spearheading the development of PBI projects (e.g., relevant Sponsoring Agencies and the PBI Office), as well as other public entities including but not limited to the Performance Infrastructure Committee, Department of Finance, and the City Attorney’s Office

- Private sector PBI market participants, including potential proposers, infrastructure developers, contractors, equity investors, debt and equity funds, lenders, insurance providers, institutional investors, and rating agencies

## 2 Market Sounding Objectives and Considerations

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### 2.1 Objectives

The primary objective of a market sounding is to evaluate the viability of a PBI project from the market's perspective. This is accomplished by testing the private sector's capacity and appetite to accept the risks transferred by the public sector, while gathering feedback from the market on its interest in proposing on and undertaking the proposed project.

An effective market sounding is conducted as a structured process. It identifies and addresses the private sector's main concerns with regards to the project's technical characteristics and business strategy, improves the marketability of the project, fosters private sector participation in the Procurement Stage, and supports a robust procurement.

Market sounding should not be conflated with stakeholder outreach. Market sounding specifically evaluates the project's suitability and attractiveness for prospective proposers and lenders. A well-structured market sounding engages with the private sector at different stages of the procurement of the PBI project.

### 2.2 Timing

Market sounding is an iterative exercise conducted throughout the development stages of the PBI project. At a minimum, a market sounding is conducted early in the Structuring Stage. It may also be valuable as early as the Screening Stage, provided that sufficient information regarding the project's size, scope, schedule, and business scheme is available at that time.

Typically, the Planning Stage is too early in the development of the project; however, in some special cases a more limited market sounding may be valuable.

Additional market sounding at the Procurement Stage may also be useful. For example, during the request for qualifications (RFQ) stage, the PBI Office and the Sponsoring Agency may seek comments to the draft Term Sheet from the short-listed proposers.

The RFQ and request for proposals (RFP) process typically includes a separate, structured process for interaction with the proposers, e.g., questions and answers, and consideration of alternative technical concepts. This process is specified in the

RFQ and RFP documents. It is an integral part of the Procurement Stage and is separate from the market sounding process described in this document.

## 2.3 Participants

Market sounding should encompass a variety of infrastructure and PBI experts, with both US and international experience.

In addition to potential proposers (e.g., developers, contractors, operators, suppliers, and equity investors), the City should seek input from lenders, insurers, rating agencies, and industry experts.

For each instance where feedback is sought — whether through interviews, meetings, or any other form — the City should reach out to multiple firms in each area where they seek input.

## 2.4 Materials

Market sounding can take several forms: general meetings, industry forums, one-on-one interviews, written questionnaires, etc. Relevant materials should be prepared by the PBI Office and the Sponsoring Agency in advance.

A project teaser or information memorandum may be sent to market sounding participants prior to meetings. The level of detail of the information increases as the project continues through the stages of the PBI Program.

In later stages, the PBI Office may also share the draft Term Sheet, the draft Project Agreement, or other relevant documents, to receive feedback from the private sector.

Materials prepared for market sounding should be developed with the following considerations in mind:

- Participants in a market sounding are not proposing or expressing interest in the project.
- Participation is voluntary and does not provide participants with advantages in the RFQ and RFP stages.
- The purpose of marketing sounding is to receive feedback on the project and its procurement, not to receive marketing pitches.

## 3 Conducting the Market Sounding

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### 3.1 Key Questions

Market sounding's iterative nature allows the PBI Office to continuously collect industry feedback.

Table 1 lists some key questions to guide a market sounding at different stages.

Project-specific questions should also be developed on a case-by-case basis to complement the general questions.

Table 1: Key market sounding questions at different stages

	Stage 2: Screening	Stage 3: Structuring	Stage 4: Procurement		
			RFI	RFQ	RFP
<i>Level of design development</i>	<5%	~5%	~15%-40%		
<b>Project viability</b>					
Are the project’s scope, technical characteristics, and service-level requirements clear and reasonable?	✓	✓	✓	✓	
Are the estimated capital and operational expenditures commensurate with the project’s scope?	✓	✓	✓	✓	✓
Is the lifecycle investment program adequate considering the proposed concession term?	✓	✓	✓	✓	✓
Is the proposed project schedule achievable?	✓	✓	✓	✓	✓
Are the proposed project revenue sources reasonable (e.g., availability payments, commercial revenues, user-paid fees)?		✓	✓	✓	✓
Are the project’s key performance indicators achievable and sustainable?		✓	✓	✓	✓
Are the project’s performance specifications reasonable given its size and scope?				✓	✓
Are there technology solutions that can enhance the project (e.g., reduce cost, improve service levels)?	✓	✓	✓	✓	✓
Are the financial (e.g., debt/equity ratio and respective costs) assumptions reasonable?		✓	✓	✓	✓
Are the evaluation criteria/competency factors for the RFQ and RFP stages clear, transparent, and fair?				✓	✓
<b>Private sector capability and appetite</b>					
Given its technical features, size, and scope, should the project be procured by means of a Firm-Bid or Co-Development solicitation process?	✓	✓	✓		
Does the private sector have adequate experience and track record delivering comparable projects?	✓	✓	✓	✓	✓

	Stage 2: Screening	Stage 3: Structuring	Stage 4: Procurement		
			RFI	RFQ	RFP
Can the project’s technical and revenue risks be efficiently managed by the private sector?		✓	✓	✓	✓
Does the private sector agree with the proposed risk allocation and preliminary contract structure?		✓	✓	✓	✓
Should innovative or alternative business models be proposed for the project given its size and scope?		✓	✓	✓	
Is the draft Project Agreement fair and reasonable?					✓
<b>Market capacity and maturity</b>					
Should the project be procured with a PBI method?	✓	✓			
Is the number of market players enough to foster competition and formation of consortia?	✓	✓	✓	✓	

### 3.2 Findings

The PBI Office manages the market sounding process and directs its advisors and/or the Procurement Team to document and analyze the responses. On this basis, a market sounding summary report is prepared to provide the PBI Office and other relevant agencies with a concise set of findings.

The Procurement Team then uses this feedback to develop and evaluate procurement options, and draft the various documents and analyses needed at different stages.

## **Appendix A**

### **Glossary and Abbreviations**

## A1 Glossary

Term	Definition
City	City and County of Denver.
Co-development Solicitation Process	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.
Firm-Bid Solicitation Process	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.
Implementation Team	The staff and consultants assigned by the City to manage the implementation of a PBI project following execution of its Project Agreement.
Intent to Submit Form	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.
Notice of Intent to Procure PBI Services	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.
PBI Model	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.
PBI Pipeline	The portfolio of projects approved by the PIC for evaluation as PBIs.
PBI Screening Application	Form submitted by Sponsoring Agencies along with the CIP Discretionary Funding Form, indicating whether the project passes PBI qualification criteria.
Preferred Proposer	The highest ranked proposer selected by the City after RFP responses are received and evaluated.
Private Partner	The private development partner after execution of the project agreement.
Procurement Team	The staff and consultants assigned by the City to manage the PBI procurement process.

Term	Definition
Project Agreement	The PBI contract signed by the City and the Preferred Proposer.
Project Liaison	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.
Public Sector Comparator	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.
Term Sheet	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.
Sponsoring Agency	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.

## A2 Abbreviations

Abbreviation	Description
CAO	City Attorney's Office
CapEx	capital expenditure
CAPM	capital asset pricing model
CIP	Capital Improvement Plan
CORA	Colorado Open Records Act
CPP	Capital Planning and Programming
CPR	Capital Project Request Form
DoF	Department of Finance
DSRA	debt service reserve account

Abbreviation	Description
KPI	key performance indicator
MMRA	major maintenance reserve account
NPV	net present value
OpEx	operational expenditure
PBI	performance-based infrastructure
PDA	Predevelopment Agreement
PERT	Program Evaluation and Review Technique
PIC	Performance Infrastructure Committee
PSA	PBI Screening Application
PSC	Public Sector Comparator
PW	Public Works
RFAP	request for alternative proposals
RFAQ	request for alternative qualifications
RFDP	request for detailed proposal
RFI	request for information
RFP	request for proposals
RFQ	request for qualifications
USP	unsolicited proposal
VfM	value for money
WACC	weighted average cost of capital