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CALIFORNIA DEPARTMENT OF TRANSPORTATION

P3 Public-Private Partnerships

PROGRAM GUIDE

December 30, 2011

Table of Contents

1. INTRODUCTION/OVERVIEW 1

1.1 Caltrans Mission 1
1.2 Purpose 1
1.3 Public-Private Partnerships Defined 1
1.4 Elements of Public-Private Partnerships 2
1.5 Objectives 3
1.6 General P3 Process Overview 4

2. AUTHORITY 5

2.1 Statutory Authority 5
2.2 California Transportation Commission (CTC) Resolution 5

3. PROJECT SELECTION 6

3.1 Project Attributes 6
3.2 Screening and Selection Process 8
3.2.1 Project Suitability 9
3.2.2. Project Selection 10
3.2.3. Project Nomination 11
3.2.4. Project Approval 11
3.3 Project Pipeline 11

4. PROJECT PROCUREMENT 11

4.1 Delivery Mechanisms 12
4.2 P3 Procurement Components 12
4.3 P3 Procurement Process 13
4.3.1 Request for Qualifications 13
4.3.2. Industry Review Meetings 14
4.3.3. Request for Proposals 14

5. UNSOLICITED PROPOSALS 15

5.1 Authority 15
5.2 Costs Incurred 15
5.3 Preliminary Meetings 15
5.4 Proposal Review Fees 15
5.4.1 Administrative Fees 15
5.4.2 Cost of Public Input Process 17
5.4.3 Other Costs of Caltrans Services 17
5.5 Required Contents 17
5.5.1 Executive Summary 17
5.5.2 Qualifications 17
5.5.3 Project Description 18
5.5.4 Schedule 18
5.5.5 Operating Plan 18
5.5.6 Finance Plan 18
5.5.7 Financial Feasibility 18

DRAFT

5.5.8 Legal Basis for the Project 19
5.5.9 Bonds, Letters of Credit, Guarantees, Insurance 19
5.5.10 Breach of Contract or Disqualifications 19
5.5.11 Licenses and Certifications 19
5.5.12 Project Value 19
5.6 Protection Against Disclosures 19

6. PROJECT EVALUATION 20

6.1 "Pass/Fail" Evaluation Factors 20
6.1.1 Administrative Pass/Fail Requirements 20
6.1.2 Technical Pass/Fail Requirements 20
6.1.3 Financial Pass/Fail Requirements 21
6.2 Proposal Evaluation Criteria 21
6.3 Technical Proposal Criteria 21
6.3.1 Management / Administration Evaluation Criteria 21
6.3.2 Operation and Maintenance Evaluation Criteria 22
6.4 Financial and Commercial Proposal Criteria 22
6.4.1 Feasibility of Financial and Commercial Proposal 23
6.5 Adjectival Scoring System 23
6.6 Proposal Score 24
6.7 Procedure 24

7. BASIC ELEMENTS OF A P3 AGREEMENT 25

7.1 Agreement Assignments 25
7.2 Agreement Conditions 26

8. FINANCING INSTRUMENTS 27

8.1 Transportation Infrastructure Finance and Innovation Act 27
8.2 Private Activity Bonds 28
8.3 Availability Payments 28
8.4 Tolls 29

APPENDIX A: Definitions 30

APPENDIX B: CTC Resolution G-09-13 34

APPENDIX C: Project Data Request Form 38

APPENDIX D: Project Suitability Criteria Chart 41

APPENDIX E: Caltrans District Office Locations 42

DRAFT

Public – Private Partnership [P3]

PROGRAM GUIDE

1. INTRODUCTION/OVERVIEW

The California Department of Transportation (Department) recognizes the benefits of attracting private sector capital and expertise to participate in building transportation infrastructure through Public-Private Partnerships (P3). As such, the Department intends to partner with the private sector as necessary to develop, construct, operate and maintain additional transportation projects to improve mobility, accelerate goods movement, improve air quality, and facilitate California's economic development. The policy and program intent is to develop a P3 Program that helps the Department accomplish its mission and strategic goals.

1.1 California Department of Transportation Mission

The mission of the Department is to improve mobility across California. This is achieved by meeting the following strategic goals:

- Provide the safest transportation system in the nation for users and workers.
- Maximize transportation system performance and accessibility.
- Efficiently deliver quality transportation projects and services.
- Preserve and enhance California's resources and assets.
- Promote quality service through an excellent workforce.

1.2 Purpose

The purpose of this Program Guide is to assist the Department, partners and stakeholders in the transparent stewardship and oversight of P3 activities. To ensure a healthy P3 Program, it is important for staff to know how to pick the right project for P3 delivery and understand the logical process for the procurement and implementation of P3 projects. This Program Guide is not intended, however, to provide a comprehensive, detailed procedures manual for implementing P3 projects.

This Program Guide will be available to our partners and the public on the Department's P3 website, which is can be found at: http://www.dot.ca.gov/p3/ .

1.3 Definition

A *public-private partnership* (P3) is a comprehensive development lease agreement formed between public and private sector partners that allows for more private sector participation than is typically seen in conventional or traditional project delivery method, like design-bid-build, that is typically used by the Department to deliver projects. The California P3 authority also allows for two public entities to enter into comprehensive development lease agreements. The agreements usually involve a government agency contracting with a private company to design, develop, finance, renovate, construct,

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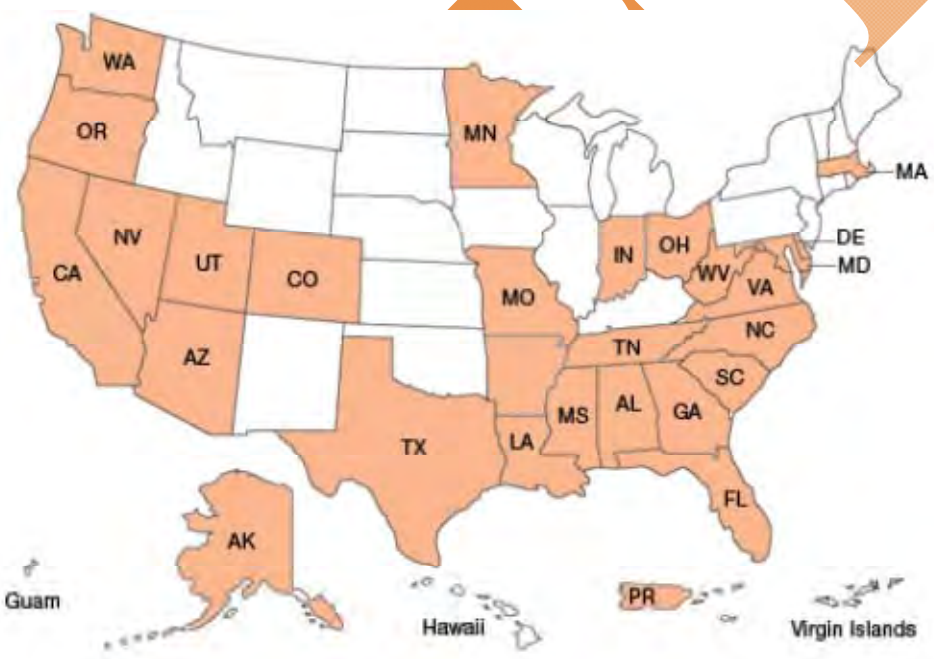
reconstruct, rehabilitate, improve, operate, maintain and/or manage a facility or system. Through this comprehensive development lease agreement, the skills and assets of each sector (public and private) are shared in delivering a service or facility for the use of the general public. While the public sector usually retains ownership in the facility or system, the private party will be given additional decision rights in determining how the project or task will be completed. In addition to the sharing of resources, each party shares in the potential risks and rewards in the delivery of the service and/or facility.

1.4 Elements of Public-Private Partnerships

P3s have been in use in the United States for many years, and thousands are operating today across the globe. As noted in the map below, more than half of the states in the country have authorized P3s, and it is widely used as a proven project delivery tool in Canada.



Source: FHWA Office of Innovative Program Delivery: Public Private Partnerships

These contractual arrangements between government entities and private companies for the delivery of services or facilities are used for many applications, including transportation, water/wastewater, urban development, and delivery of social services and infrastructure. The resources, skills and capacities of both the public and private sectors are combined to provide greater efficiency, better access to capital, and improved compliance with a range of government regulations regarding the environment and workplace. The public's interests are assured through provisions in the contracts for ongoing monitoring and oversight of operations or development of facilities. The use

of P3s is increasing because they provide an effective tool in meeting growing public needs, maintain a high level of public control, improve the quality of services, and can be more cost-effective than traditional delivery methods when implemented appropriately.

According to the National Council for Public-Private Partnerships, the following basic components of a P3 are necessary and should be considered to ensure a successful P3 project will be implemented:

- Statutory and Political Environment – The most senior public officials must be willing to be actively involved in supporting P3s and take a leadership role in their development.
- Public Sector's Organized Structure – Once a partnership is established, the public-sector must remain actively involved in the project or program.
- Detailed Business Plan (Contract) – A carefully developed contract or Concession agreement will substantially increase the probability of the partnership's success.
- Guaranteed Revenue Stream – While the Private Partner may provide the initial funding for capital improvements, there must be a means of repayment of this investment over the long term of the partnership.
- Stakeholder Support – Various interest groups will be affected by a partnership than just the public officials and the private-sector partner.
- Careful Partner Selection – The "lowest bid" is not always the best choice for selecting a partner. The "best value" is critical in a long-term relationship and successful partnership.

1.5 Program Objectives

The Department's objectives in implementing a P3 Program are to accelerate and enhance the delivery of transportation projects benefiting the State and its citizens by utilizing additional available project delivery methods. For those projects selected, the Department will determine which innovative project delivery methods can provide some or all of the following:

- Leverage existing funding
- Accelerate project delivery
- Greater cost certainty
- Transfer prudent risks to private sector
- Capture private sector innovation
- Promote life cycle efficiencies
- Create competition to increase value
- Spur economic growth

A P3 Program steering committee will be maintained to guide the development and implementation of program activities. The membership of the committee will include the Department's key stakeholders.

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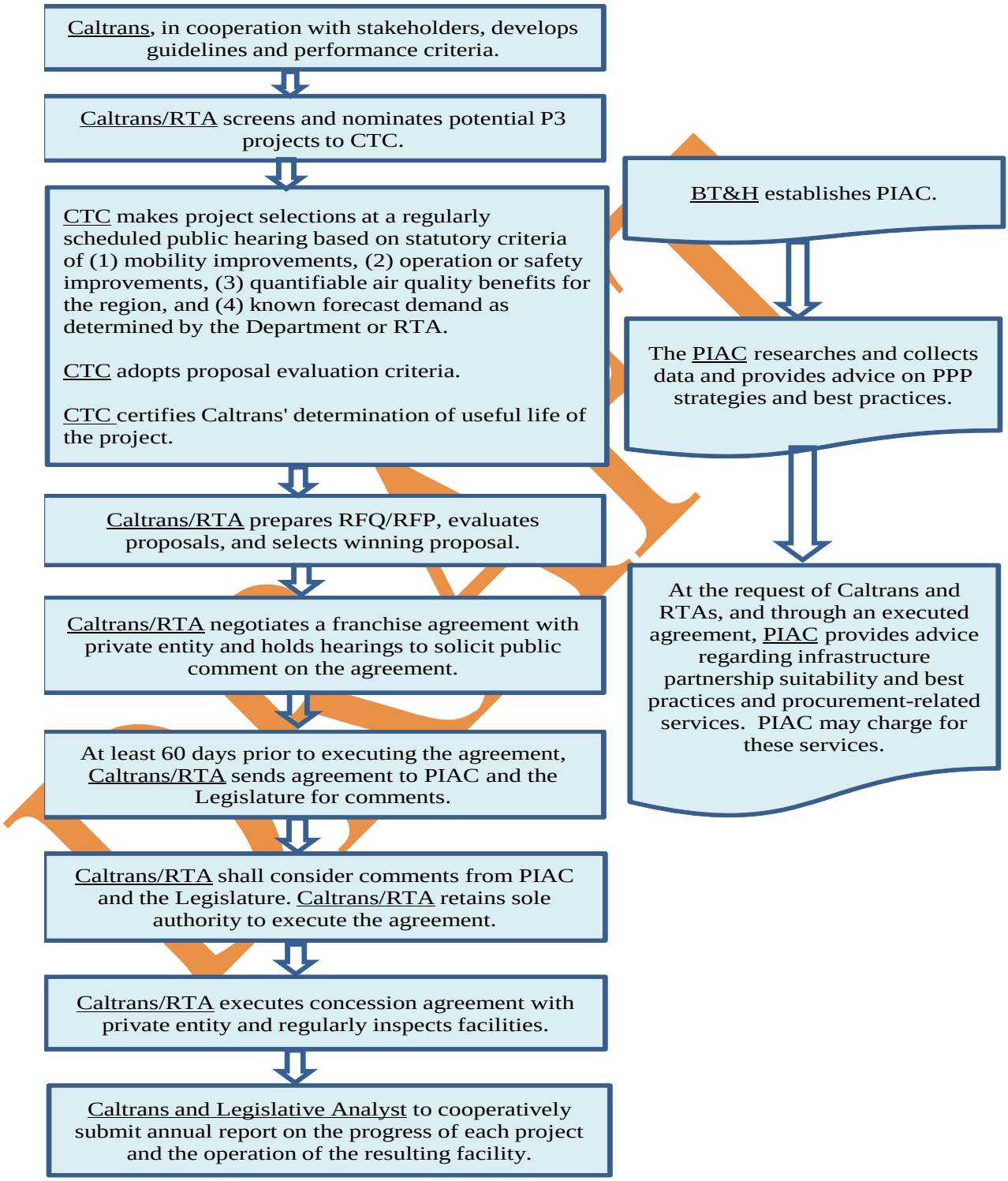
1.6 General Public Private Partnership (P3) Process Overview



2. AUTHORITY

2.1 Statutory Authority

On February 20, 2009, Governor Schwarzenegger signed Senate Bill Second Extraordinary Session 4 (SBX2 4) Chapter 2, Statutes of 2009 (Cogdill), which established the legislative authority for the Department and regional transportation agencies (RTAs) to enter into an unlimited number of P3s and deleted the restrictions on the number and type of projects that may be undertaken. Among other things, for transportation, the law:

- Establishes the Public Infrastructure Advisory Commission (PIAC), within the Business, Transportation and Housing (BT&H) Agency, to advise the Department and RTAs in developing P3 transportation projects.
- Vests responsibility with the California Transportation Commission (CTC) to oversee the process of approving projects for P3s.
- Requires the Department or a regional transportation entity to submit a proposed Agreement to the Legislature and the PIAC at least 60 days in advance of executing the final Agreement, and to hold at least one public hearing for purposes of receiving public comment.
- Provides the Legislature with an opportunity to submit written comments about a proposed Agreement to the Department or a RTA prior to the end of the 60-day review period.
- Provides that the leased facility must at all times be owned by the Department or the RTA, as appropriate, and must revert to the Department or the RTA at the expiration of the lease, without charge.

The current P3 authority will sunset on January 1, 2017.

2.2 California Transportation Commission (CTC) Resolution G-09-13

The California Transportation Commission (CTC) passed Resolution G-09-13 on October 14, 2009. SBX2 4 authorizes the CTC to select and approve each P3 transportation project through the adoption of a resolution at a regularly scheduled CTC meeting. Before approving a project, the CTC will conduct a public hearing on the project as a scheduled meeting agenda item. The CTC's P3 project approval will include, but not be limited to, the project description and scope; the project location; the project financial plan, including financial risks; the determination of useful life; and the criteria used for evaluation, if based on qualifications and Best Value in selecting contracting entity.

The CTC will approve a P3 project only if it determines specific findings, as identified in Resolution G-09-13. The CTC will consider approval of a P3 project only when the Department or RTA has prepared and submitted a Project Proposal Report (PPR). The PPR and request for P3 project approval will include or make reference to the description and location of the project; the project financial plan including, but not limited

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to, tolls and User Fee revenue forecasts and commitments of state or local funds; the basis of the Department or RTA for finding that it would be in the public interest to implement the project through a P3 Agreement; the Department or RTA's estimate of the extent to which the project will be designed to achieve each of the performance objectives identified in Resolution G-09-13; forecast of travel demand; the terms of the draft Agreement associated with the project; the criteria used for evaluation, if based on qualifications and Best Value in selecting contracting entity.

The CTC does not approve or execute the final Agreement. However, the CTC's expectation is that the final Agreement executed by the Department or RTA will implement the project as approved by the CTC. After the CTC has approved a project, it will have no further role in reviewing or approving changes to the project or the Agreement except at the request of the Department or RTA.

Guidance: Specific requirements and conditions of the CTC can be found in CTC Resolution G-09-13, which is attached as Appendix B.

3. Project Selection

The selection process for P3 projects has to reflect the objectives of the P3 Program in meeting the Department's strategic goals and mission. Project selection should lead to opportunities for innovation in design, construction, operation, maintenance, or financing of the transportation infrastructure. It should allow staff to rationally identify projects for which private investment would fulfill a critical financial need to complete a project; and among other things, the selection process should call out projects for which a business case demonstrates that a P3 can deliver the Best Value to the traveling public. In project selection, analysis of potential projects will be performed to identify the following attributes.

3.1 Project Attributes

Consistency with Statewide Transportation Plan	*The Department will consider whether or not a project is included in an adopted statewide transportation plan or program.*
Network Continuity Considerations	*Network continuity considerations for a project will include its potential to function as an integral element of an overall network, including its potential to enhance multimodal aspects of a transportation network*

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Constructability	*Constructability will be evaluated based on a number of factors such as potential conflicts with existing facilities or developments, constraints due to topographic features or environmental issues, problematic geotechnical conditions, the ease of facility maintenance, the likelihood of multiple construction phases that would significantly increase the project costs and schedule, the presence of sufficient construction access, and maintenance of traffic during construction.*
Congestion Relief Potential	*This assessment will consider a project's potential to increase or decrease congestion on an adjacent vicinity, either by providing additional capacity or expanding the modal options.*
Potential Safety Impacts	*This assessment will be based on general observations of existing conditions within the vicinity of the proposed project and on the general nature of the proposed improvements.*
Social Impacts	*This evaluation will consider the general magnitude of right-of-way required, potential relocation of residences and/or business, noise, disruption during construction, aesthetic impacts on adjacent property and environmental justice, the social impacts of tolling, and other similar issues.*
Environmental Impacts and Status	*This evaluation is to determine if any previous environmental studies have been conducted for a project and, if so, the status of these assessments; to identify any potential environmental impacts of a project; and to determine the ease of providing for mitigation of these impacts.*
Project Revenue Potential	*The revenue screening for a project will consider revenue amounts projected over the anticipated project term. Only revenue amounts projected based on credible revenue studies will be considered.*

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Toll Operations Viability	*This assessment will consider the practicality of implementing tolls on a project.*
Project Costs	*This information will be used to help assess the project's financial feasibility. Project cost considerations will include facility construction costs, toll system construction costs if applicable, facility operations and maintenance costs for the term of the project.*
Financial Feasibility	*The financial feasibility screening will be based on a credible financial study utilizing typical financial structures. Considerations will include the levels of debt and equity financing that can be supported by a project's revenue stream.*
Stakeholder and Public Acceptability	*The Department will consider the existing levels of support, the issues raised by any project opposition, and potential means to mitigate any opposition.*
Attractiveness to the Private Sector	*For any project moving forward, it will be critical to package a project in such a way that maximizes competition from the private sector while achieving the Department's goals and objectives for the project.*

3.2 Screening and Selection Process

The following is a methodology for identifying projects suitable for P3 delivery and the type of P3 most suitable for each project. The P3 project screening methodology involves a four-step evaluation process, as described in the sections below.

The initial step of the project selection process would involve the "Project Sponsor's" (Department or RTA, or a combination thereof, collectively referred to as Sponsor) submission of a project data request form. The information provided in the project data request form should be sufficient for the Sponsor to evaluate a project in accordance with the process screening described below.

Guidance: A copy of a draft project data request form can be found in Appendix C.

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3.2.1 Project Suitability

The first step of the project screening process consists of evaluating each project in terms of its suitability for P3 procurement. The project suitability criteria are largely objective and would be standardized across the P3 Program. This first step requires analysis of the factual characteristics of each project and should facilitate a critical evaluation regarding whether a project is generally suitable for P3 project delivery. Accordingly, completion of the suitability assessment could eliminate from consideration any projects with obvious fatal flaws that would make them incompatible for delivery under the P3 Program.

Basic requirements are that (i) construction cost for identified projects should begin at $250 million and higher, and (ii) projects should have environmental documents (Project Approval & Environmental Document) completed or within 18 months of completion.

Some of the attributes to consider in determining project suitability are:

Attribute	***Factors to Consider***
POTENTIAL FOR VALUE ADDED *Does private sector involvement suggest potential for value added?*	• Life cycle cost efficiencies • Cash flow management • On-time, within-budget delivery • Innovative ideas for design, construction and Operations & Maintenance (O&M) • Integration and coordination issues • Efficient risk allocation
INSTITUTIONAL PREPAREDNESS *Is the Department/RTA capable of obtaining institutional preparedness prior to start of project procurement?*	• Project is in the Department's 20-year plan / RTA long-range transportation plan • Clear internal decision-making structure • Clear work allocation • Adopted rules and regulations • Dedicated capable P3 staff and consultant team • Adopted conflicts of interest policy • Local political support / consensus on project and alternative delivery • Adopted standard form P3 documents
PROJECT MATURITY *Is project development at a stage that is suitable to start / use P3 procurement?*	• Status of environmental clearance and major permits • Status of preliminary engineering • Sufficient design to permit price and completion date guarantees but not so far advanced to preclude private sector innovation • Status of site characterization, geotechnical investigations, etc. for estimating and allocating risks • Status of third party agreements • Proposed project schedule

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Attribute	***Factors to Consider***
MARKET INTEREST *Will the project be attractive to the industry?*	• Favorable investment environment • Competitive interest from industry • Feedback from industry
FINANCIAL FEASIBILITY *Does a preliminary financial feasibility analysis indicate that the project is suitable for private financing?*	• Level and reliability of public funding commitment / cash flow • Opportunity / need for private equity or debt • Decisions regarding tolling (i.e. are funds needed from tolling?) • If fully funded, can value be recovered by redirecting allocated funds to other projects? • Financial market conditions
PROJECT SCOPE *Is the project scope suitable for P3 delivery?*	• Comparison of project scope alternatives • Construction cost (preferable if between $250 million to $1.5 billion) • Project complexity, including whether there are any significant design / construction constraints • Approach to O&M, including integration with existing roadway systems • Other project characteristics that make it particularly appropriate for a P3

It is expected that this evaluation step in the screening process would be fairly expeditious and not require significant resources to perform. A review and determination by the Department's local district office will be conducted on a periodic basis as determined by the P3 Program.

Guidance: Additional information about project suitability criteria is attached as Appendix D.

3.2.2 Project Selection

This step of the project screening process requires assessing whether a P3 delivery method would better achieve project-specific objectives when compared to traditional delivery methods. This involves a comparison of the various delivery alternatives including P3s and traditional design-bid-build (DBB) or design-build (DB) to identify (i) advantages of pursuing a P3 delivery method, and (ii) which type of P3 is best suited to deliver the project and reduce lifecycle costs. The analysis would require determinations of the project scope, expected risk allocations, and quantification of procurement options. It would also require evaluation of qualitative factors.

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It is expected that this part of the screening process would require commitment of a reasonable amount of time and resources to prepare a comprehensive financial analysis and a business case evaluating quantitative and qualitative factors to determine financial feasibility and comparison of reasonable delivery alternatives. The screening tools may include a value for money analysis with completion of a reference case or public sector comparator.

3.2.3 Project Nomination

This step of the project screening process requires that both *Suitability* and *Selection* criteria have been met and that a PPR has been prepared to nominate the project to the CTC. The PPR must illustrate that the project meets CTC policy guidance requirements (see Resolution G-09-13) on P3s and ensures that the PPR is consistent with SBX2 4. Thus, the PPR must be adequate to meet the requirements of the required CTC review and approval.

3.2.4 Project Approval

This step of the project screening process would require that prior screening and evaluation has been completed and that a PPR approval request, including a business case report, has been submitted to the CTC. The submission of the PPR and business case will provide the basis for a formal approval by the CTC based on procedures and objectives identified in the CTC policy guidance (Resolution G-09-13). Approval by the CTC would allow the start of the procurement process.

3.3 Project Pipeline

The pipeline consists of projects that (1) meet a high-priority transportation need; (2) enjoy significant public and political support; (3) have or soon will have achieved sufficient environmental readiness; (4) show the promise of greater value–including speed of delivery–when compared to conventional procurement; and (5) have the potential to generate revenue or enhance program capacity through a more efficient cashflow or other means. Projects are categorized in pipeline levels one (low readiness) through four (high readiness), depending upon the level of progress and effort towards P3 delivery.

4. Project Procurement

The Department and/or RTAs may solicit proposals, accept unsolicited proposals, negotiate, and enter into comprehensive development lease agreements with public or private entities, or consortia thereof, for transportation projects. The Department may solicit interested parties for participation in a P3 for any project presuming the project selection criteria includes public need, technical and financial feasibility, cost effectiveness, available resources, or project acceleration. The selection process must

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consider economy and potential savings to the public, but selection of the successful Proposer will also consider the quality and technical merit of the proposal.

The Department or RTA may engage in preliminary steps leading to the development of procurement documentation for a P3 project prior to the CTC's project approval, which may include the solicitation of a Request for Interest (RFI) or Request for Qualification (RFQ). However, the CTC expects that the Department or RTA will not issue the Request for Proposal (RFP) prior to securing the CTC approval. Based on the approved evaluation criteria, the Department or RTA may select the preferred proposal, and develop and negotiate the comprehensive development lease agreement associated with the project.

If the Department determines that a proposed project, whether arising from an Unsolicited Proposal or its internal project selection process, serves a public purpose, the Department may request competing proposals to develop, finance, construct, improve, maintain or operate, or any combination thereof, the transportation facility.

4.1 Delivery Mechanisms

Both Solicited Proposal and Unsolicited Proposal processes will accommodate several different types of project and service delivery methods. The type of delivery mechanism will be determined on the basis of, among other things, the nature and status of the project, project risk factors, schedule, funding and goals. The procurement package will reflect the intended project delivery mechanisms. Possible delivery mechanisms for P3 projects include:

- Predevelopment Agreements leading to other implementing agreements
- Design-Build-Maintain Agreement
- Design-Build-Finance-Operate Agreement
- Design-Build-Operate-Maintain Agreement
- Design-Build-Finance-Operate-Maintain Agreement
- Concession providing for the Private Partner to design, build, operate, maintain, manage or lease an Eligible Facility defined as a transportation project under the P3 authority
- Any other project delivery method or agreement or combination of methods or agreements that the Department determines will serve the public interest

4.2 P3 Procurement Components

P3 procurement components will vary and require specific adjustments depending on a particular project, but the general components and activities of a typical P3 procurement process are as follows:

- Development – Obtain environmental and other approvals; assess the value of P3 versus public procurement; develop institutional capability; engage financial, legal, technical and other advisors; and develop drafts of RFQs, RFP, comprehensive development lease agreement, and other project documents.

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- RFQ/RFP – Host Industry Review meetings, issue RFQ, receive Statement of Qualifications (SOQs), shortlist Proposers, issue preliminary-draft RFP, conduct one-on-one meetings, consolidate feedback, issue final RFP, receive detailed proposals, select winning Proposer based on evaluation criteria.
- Closing – Execute Agreement, developer finalizes financing package, developer and lenders execute financing agreements, developer draws on financing and funding commitments.
- Term of Agreement – Developer completes design work and constructs the facility, developer operates and maintains the facility. The public sector is responsible for ongoing oversight and monitoring activities, and facility reverts to public sector at the end of the term.

4.3 P3 Procurement Process

The Department may use a multi-phase process to procure a P3 project. A multi-phase selection process may consist of some or all of the following: the issuance of a RFQ, Industry Review Meetings, and/or issuance of a RFP. The determination whether to utilize some or all of these procurement phases will be project-specific. Although there may be several phases as described above, including Industry Review Meetings, common terminology refers to “one-step” or “two-step” procurements. The former is used when a RFP is posted and any entity may respond. The latter is used when qualifications are evaluated and then used as a basis for issuing RFPs to a shortlist of entities deemed qualified.

Upon receipt of an Unsolicited Proposal and a determination that the transportation facility serves a public purpose, the Department may issue a RFP for competing project proposals or may issue a RFQ for the transportation facility described in the Unsolicited Proposal. The Department may also modify the potential project submitted in the Unsolicited Proposal for the RFP.

4.3.1 Request for Qualifications (RFQ)

The purpose of a RFQ is to identify qualified candidates to participate in the procurement process. The Department may select a short-list of two or more candidates based on their responses to the RFQ. Those candidates will then be eligible to receive a RFP and submit a proposal for the project in response to the RFP. The Department is not obligated to utilize a RFQ and may, in its sole discretion, proceed directly to the issuance of a RFP. If procurement is for a proposed project identified by an Unsolicited Proposal, the entity that submitted the original Unsolicited Proposal may, in the sole discretion of the Department, be required to submit a SOQ in response to a RFQ or a Proposal in response to a RFP.

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4.3.2 Industry Review Meetings

Industry Review Meetings, held at the discretion of the Department, are intended to share information regarding RFP-related documents (Instruction to Proposers, Technical Provisions, draft P3 Agreement) with shortlisted candidates and to obtain feedback, comments and suggestions from such Proposers regarding draft documents, key project components and technical, financial and legal issues. The meetings may be joint workshops with all shortlisted candidates or individual one-on-one meetings (which may be in-person meetings or conference calls), as deemed necessary by the Department. One-on-one meetings with the shortlisted candidates are confidential and often address topics that are proprietary to the shortlisted candidates. Nonetheless, the Department will always reserve the right to modify or revise the RFP documents as a result of the one-on-one meetings. Each shortlisted candidate shall be afforded the same opportunity to meet and talk with the Department in connection with the project and, to the extent practicable, the same Department personnel and advisors, if appropriate, will be present during each round of meetings.

In addition to meetings with the shortlisted candidates, the Department may issue drafts of some or all of the RFP documents, including the Instructions to Proposers, Technical Provisions/Scope of Work and the draft Agreement. Shortlisted Proposers will be encouraged to submit written comments and questions concerning these documents through a written request for clarification process, and the Department will review and consider, in its sole discretion, such input and potentially revise or adjust the documents as appropriate.

The goal of the industry review process is primarily, to the extent possible, to refine the RFP in order to address Proposers' concerns while maximizing competition and incorporating innovative and/or cost-saving ideas. The Industry Review process can prove mutually beneficial to the Department and shortlisted Proposers. Information and materials that may be provided and discussed during Industry Review Meetings may also include updated project information on preliminary engineering, ROW acquisition, utility work, environmental clearances and the procurement schedule.

Following shortlisting and the industry review process, the Department may issue a RFP.

4.3.3 Request for Proposal (RFP)

The RFP will outline the minimum Proposal requirements and selection criteria. The Department and/or RTAs may engage in preliminary steps leading to the development of procurement documentation (RFP) for a P3 project prior to the CTC's project approval. However, the Department or RTA should not issue the RFP prior to securing project selection approval from the CTC.

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5. UNSOLICITED PROPOSALS

5.1 Authority

SBX2 4 allows the Department and RTAs to accept Unsolicited Proposals if the Department determines that such proposal has sufficient merit and that a reasonable opportunity is afforded other entities to submit competing proposals for consideration. A submittal by an entity that conforms to the statutory authority and regulations with respect to a project which has not been initiated by the Department is considered an Unsolicited Proposal. Each Unsolicited Proposal must meet statutory and CTC Policy Guidance requirements to be valid.

5.2 Costs Incurred

All costs incurred by the Proposer in preparing and submitting an Unsolicited Proposal will be borne solely and completely by the Proposer. Under no circumstances will the State, the Department or any of their agents, representatives, consultants, directors, officers or employees be liable for, or otherwise obligated to, reimburse the costs incurred by the Proposer for preparing and submitting an Unsolicited Proposal, whether or not the Proposer is selected for negotiations, in developing the Proposal or negotiating an Agreement.

5.3 Preliminary Meetings to Discuss Unsolicited Proposals

Prospective Proposers are encouraged to request confidential one-on-one meetings with the Department for preliminary discussions on potential Unsolicited Proposals prior to submission.

5.4 Proposal Review (Administration) Fees and Other Fees

5.4.1 Administration Fees

Unlike a Solicited Proposal where the Department defines a project and establishes project parameters, the definition of a project through an Unsolicited Proposal is initially established by the Proposer. As a result, an evaluation of the Proposal by the Department will be made to determine if:

- The project is of value to the State
- The Proposer is qualified to execute the project if awarded
- The proposed project has a reasonable probability of being successful as a P3 project

The burden is on the Proposer to demonstrate these attributes to the Department.

Unsolicited Proposals will be subject to a Preliminary Evaluation (Accept/Reject) and a follow-up Detailed Evaluation. Once an Unsolicited Proposal has been determined to have met the requirements of the Preliminary Evaluation, the Department will then

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conduct a Detailed Evaluation. The Department may return the Unsolicited Proposal to the Proposer at any time during this period if it determines that the Unsolicited Proposal lacks merit.

When an Unsolicited Proposal is received it must be accompanied by two certified checks. These checks together constitute the administrative fee for Unsolicited Proposals. The intended purpose of the administrative fee is to cover part of the costs of the Department's evaluation of Unsolicited Proposals. The Department, in its sole discretion, may waive the fee(s) for an Unsolicited Proposal, in whole or in part, if it determines that its costs have been substantially covered by a portion of the fee or if it is otherwise determined to be reasonable and in the best interest of the State.

The first check is for $15,000 and covers the Preliminary Evaluation costs and will be deposited by the Department once it is determined that the Unsolicited Proposal passes the Accept/Reject test. The second check submitted will be for the Detailed Evaluation; the amount should be based on the schedule below and calculated based on the anticipated capital cost of the project described by the Unsolicited Proposal. This second certified check will be deposited by the Department once it determines that the Proposal has sufficient merit to move to the Detailed Evaluation. Should the Department determine after the Preliminary Evaluation that the Unsolicited Proposal lacks merit; the second check will be returned to the Proposer.

As part of the Preliminary Evaluation, an assessment will be made as to the anticipated complexity of the Detailed Evaluation. If this assessment leads the Department to determine that the Detailed Evaluation costs will be materially greater than the Estimated Detailed Review Fee submitted, the Proposer will be contacted and provided with an additional amount which must be paid by certified check or direct wire transfer prior to the commencement of the Detailed Evaluation. If the Proposer does not wish to incur the additional costs, the Detailed Review Fee check will be returned and the Unsolicited Proposal process terminated.

Estimated Capital Cost	Estimated Detailed Review Fee
< $100 Million	$ 35,000
$100 Million to $250 Million	$ 60,000
$250 Million to $500 Million	$ 85,000
$500 Million to $1 Billion	$110,000
>$1 Billion	$135,000

These fee amounts are subject to change. The fee amounts expressed on the Department's P3 website at the time of the original submittal will govern.

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5.4.2 Cost of Public Input Process

Evidence of support by the public and elected officials may be a condition for advancing an Unsolicited Proposal to the procurement stage. The Department at its sole discretion may choose the mode of public input during the Detailed Evaluation. If it does so, the cost of such effort will be borne by the Proposer as a condition of continued evaluation and the Proposer will be informed of the additional cost prior to the commencement of the Detailed Evaluation.

5.4.3 Other Costs of Department Services

If the Department rejects an Unsolicited Proposal after the Preliminary or Detailed Evaluations and the Proposer wishes to request further consideration, the Department may, at its sole discretion, continue to further evaluate additional information presented by the Proposer. However, the Proposer will be responsible for paying all Department costs beyond the initial rejection, including staff and consultant costs. These costs will be estimated and must be paid prior to the commencement of the further analysis.

5.5 Required Contents

In order to be considered responsive, an Unsolicited Proposal must contain information which is sufficient for the Department to evaluate the merits of the proposed project, the capability of the Proposer to deliver the project, the financial viability of the project and the benefits to the State of a P3 delivery method over a conventional delivery method. The information required to be included in an Unsolicited Proposal will be posted on the Department's website and may be modified from time to time. The requirements posted on the day the Unsolicited Proposal is submitted will govern its contents.

The number of copies of the Unsolicited Proposal and the location in which they are to be delivered will be made available on the Department's P3 website.

5.5.1 Executive Summary

The Proposer must include an Executive Summary covering the major elements of its Proposal that do not address the Proposer's price, financing plan or other confidential or proprietary information. The Executive Summary may be made a public document and posted on the Department's P3 website.

5.5.2 Qualifications

The Proposer should provide information concerning the experience, expertise, technical competence and qualifications of the Proposer and of each member of the Proposer's management team and of other key employees, consultants and subcontractors, including the name, address and professional designation. This should include enough information to demonstrate the capacity of the Proposer in terms of resources and financial strength.

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5.5.3 Project Description

A description of the project depicted through graphics (maps, plans, etc.) with accompanying narrative of:

- The limits, scope, location of the proposed facility, including where applicable project length, termini, number of lanes and lane miles, number and type of structures, rolling stock, capital equipment, etc.
- Right-of-way requirements
- Interconnections to other transportation facilities and improvements to other facilities which will be necessary if the project is developed
- A conceptual project design if available
- A statement of the project's consistency with the Statewide Transportation Plan and relevant metropolitan planning organization plans and expected results including financial performance and improvements to mobility and capacity
- All studies which may have been completed by the Proposer concerning the project
- Status of environmental review activities.

5.5.4 Schedule

A schedule should be provided showing anticipated dates of key milestones such as contract award, start of construction, completion of construction, start of operations and anticipated major maintenance or reconstruction activities during the life of proposed Agreement.

5.5.5 Operating Plan

A plan describing the operation of the completed facility is required, if operation is a part of the Proposal. This should describe the management structure and approach, the proposed period of operations, enforcement, and emergency response among other key issues related to operations.

5.5.6 Finance Plan

A plan describing the proposed financing of the project should identify the source of funds to design, construct, operate and maintain the facility, including Proposer equity, commercial debt, TIFIA loans, requested Department contributions if any, and the projected revenue stream.

5.5.7 Financial Feasibility

The financial feasibility of the project should be demonstrated by showing that projected funding from all relevant sources is sufficient to support all design, construction, operation and maintenance activities, as well as providing for contingencies and all necessary cost items required to meet all performance requirements, including handback requirements at the end of the Agreement (pursuant to the Department's Technical Provisions outlined in the Agreement).

DRAFT

5.5.8 Legal Basis for the Project

The Proposer must cite the statutory authority (federal, state and local if applicable) under which the project will be delivered. Otherwise, Proposer should identify relevant changes to processes and procedures which are necessary to allow the project to move forward.

5.5.9 Bonds, Letters of Credit, Guarantees, Insurance

The Proposer must demonstrate that it is able to obtain performance and payment bonds, a letter of credit, parent company guarantee or other security acceptable to the Department and consistent with the size and complexity of the project. Similarly, it must demonstrate that it is able to obtain insurance covering general liability and liability for errors and omissions as the Department, in its sole discretion, may require.

5.5.10 Previous Breach of Contract or Disqualification

The Proposer must demonstrate that neither it nor its subcontractors and consultants have, within the past five years, been found in breach of contract with the Department or been disqualified from contracting with the Department.

5.5.11 Licenses and Certifications

The Proposer must demonstrate that it and its members, subcontractors, and consultants possess or can obtain by the award date, if any, the licenses and certificates necessary to carry out their respective functions within the State.

5.5.12 Project Value

Unsolicited Proposals will be evaluated on a project's compatibility with existing transportation plans and its value in increasing capacity, decreasing congestion, improving air quality, improving safety, improving intelligent transportation systems or satisfying other Department or RTA needs. Proposal review will also assess whether the Proposer has clearly demonstrated creativity, innovation, such that moving a proposed project as a P3 project is clearly advantageous to the State as compared to other public delivery methods.

5.6 Protection Against Disclosures

Subject to the California Records Act (California Government Code §§ 6250 et seq.), the Department has taken measures to protect the confidentiality of all submitted SOQs, letters of interest, and Proposals during the entire evaluation and selection process. Every person involved in the process shall sign a confidentiality and nondisclosure agreement. However, under no circumstances will the Department be responsible or liable to a Proposer or any other party as a result of disclosing any materials, whether the disclosure is deemed required by law, by an order of court, or occurs through inadvertence, mistake, or negligence on the part of Department or its respective officers, employees, contractors, or consultants.

DRAFT

In the event Department is requested to disclose any of the materials identified by the Proposer as confidential, Department will promptly notify the Proposer so that Proposer may seek a protective order or other appropriate remedy. If it wishes to protect the materials from disclosure, the Proposer shall seek court protection immediately on an emergency basis. In the event that such protective order or other remedy is not sought by the Proposer within seven (7) days after the Proposer receives notice from Department, Department will be free to release the requested information. Department will consider the Proposer to have waived any claim of confidentiality and exemption from public disclosure for any materials not identified as confidential. Proposers are advised to consult with their legal counsel regarding the scope and provisions of the Public Records Act.

6. Project Evaluation Process

The CTC's Policy Guidance indicates that the PPR and request for P3 project approval is to include or make reference to whether the Department or RTA proposes to make a final evaluation of proposals based on qualifications and Best Value, consistent with Section 143(g)(1)(C), and the criteria used in making that evaluation.

In general, the Department proposes the RFP evaluation criteria set out below. Further refinements and details of these criteria, which will be developed in conjunction with the development of an RFP, are anticipated to follow and be consistent with the evaluation criteria set out below.

6.1 "Pass/Fail" Evaluation Factors

6.1.1 Administrative Pass/Fail Requirements

The administrative pass/fail requirements evaluate whether the Proposer has submitted the necessary documents pursuant to the RFP, and that the equity members, major non-equity members and key personnel listed in the Proposer's SOQ are consistent with the RFP, and if not, that such change is consistent with the Department's consent of an organizational change in the Proposer's team.

6.1.2 Technical Pass/Fail Requirements

The technical pass/fail requirements evaluate whether the Proposer has submitted certain Technical Proposal submittals. Also, to "pass," the Technical Proposal receives an average adjectival score of at least "Fair" on each of the individual technical evaluation criteria and receives an average adjectival score of at least "Good" on the entire Technical Proposal.

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6.1.3 Financial Pass/Fail Requirements

The financial pass/fail requirements evaluate whether or not the Proposer has submitted certain required financial proposal submittals including supporting documentation for the financing proposal.

6.2 Proposal Evaluation Criteria

Unless the Department determines that a proposal does not meet the "pass/fail" qualification requirements set forth above, each proposal will be evaluated and scored according to the criteria set forth below. The order in which the evaluation criteria appear within each category is not an indication of weighting or importance.

6.3 Technical Proposal Criteria

6.3.1 Management / Administration Evaluation Criteria

The Department may require the Proposer to provide such technical information regarding the project scope of work and technical requirements as the Department deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, project management approach, schedule, phasing, quality control and assurance approach, and other information as appropriate for the project's development. The intent of the Technical Proposal is to provide assurance that the Private Partner selected has:

- A sufficient understanding of the project or desired service
- An approach that meets technical and contractual requirements
- The ability to timely and efficiently deliver the project or service in a quality manner consistent with contractual requirements

The Department will use the following evaluation criteria, among others, to score the Management / Administration portion of the technical proposal:

- The degree to which the Project Management Plan (PMP) contains a comprehensive and efficient construction management concept.
- The degree to which the PMP contains a comprehensive and efficient design management concept.
- The degree to which the PMP demonstrates an efficient and effective interface between various stakeholders.
- The degree to which the PMP demonstrates a comprehensive and efficient approach to management of traffic during the construction period and the operating and maintenance (O&M) period.
- The degree to which the Preliminary Quality Plan demonstrates that adequate quality assurance/quality control procedures and staffing will be in place during performance of the design work, construction work and O&M work.

DRAFT

- The degree to which the project schedule and Construction Phasing/Sequencing Plan addresses certain issues, including traffic management and right of entry issues.

6.3.2 Operation and Maintenance Evaluation Criteria

The Department will use the following evaluation criteria to score the Operation and Maintenance (O&M) portion of the technical proposal, if applicable:

- The Proposer's approach, as described in the O&M Plan, to the operations and maintenance requirements during the construction period, including management of traffic during construction.
- The Proposer's approach, as described in the O&M Plan, to the operations and maintenance requirements during the operating period, including the Developer's approach to operation and maintenance of the facility, renewal work, and the Proposer's overall approach to meeting the routine maintenance requirements, incident response and the management of the project.
- The Proposer's approach, as described in the O&M Plan, to coordinating and working with other government agencies whose operations are associated with the project.
- The Proposer's approach, as described in the O&M Plan, to the Handback requirements for the project.

6.4 Financial and Commercial Proposal Criteria

The type and extent of financial documentation to be submitted as part of the financial proposal will depend on the delivery mechanism. The RFP may also require that the Proposer update the financial information provided in the SOQ.

If the RFP and project scope require the Proposer to finance any part or the entire project, the Financial Proposal must include a financial plan and a financial model. The nature of the project, the project delivery method and current market conditions will dictate the contents and level of detail of the financial plan, whether the financial section of the proposal is fully or partially committed, and whether conditions may be included by the Proposer.

Requirements for a Financial Plan may, among other things, require the Proposer to identify the financial institution(s) involved; provide a description of debt finance, equity finance, and any other forms of finance. Proposer should also expect to identify investors, lead managers and/or underwriting banks that have given indications of commitments; describe the type and purpose of each funding source and facility; describe the proposed steps and timeframes for reaching Financial Close. Proposer will provide specific information for each separate bank, loan facility, or other debt instrument such as commitments, amounts, terms and conditions attaching to the loan, drawdown schedule, capital repayment schedule and final maturity date, any reserve accounts, interest rate, credit ratings, due diligence, and timetables.

DRAFT

Generally, requirements for a Financial Model submittal may include inputs (specific dates, periods, revenues, expenditures, contingencies and profit margins, macroeconomic assumptions, and inflation), outputs (cash balances, returns on equity, cost of capital, net present value of construction costs, and reserves), and calculations. Proposers may be required to provide detailed backup information, a list of assumptions, and details of how the financial model operates.

The RFP will provide details regarding requirements for the Financial Plan and Financial Model portions of the Financial Proposal.

Where possible and financially feasible, the Department will seek Proposals that minimize the use of public funds as well as the creation of State-supported debt. If a Proposal including public or private debt is submitted, then the RFP may require that the Proposal, to the extent possible, identify the amount of public funds required and specify the project-level approvals by the Department, other appropriate public entities, private lending institutions and ratings agencies.

6.4.1 Feasibility of Financial and Commercial Proposal

The Department will use the following evaluation criteria to score the feasibility of the financial section of the proposal:

- The level of support from lenders and evidence of equity commitment
- Coherence, robustness and deliverability of the financial plan

6.5 Adjectival Scoring System

The Sponsors will evaluate and score the criteria for all portions of the proposal, other than the administrative information provided.

The evaluation process will include a rating of each evaluation criterion using an adjectival (qualitative/descriptive) ratings method, as follows:

ADJECTIVE RATING	DESCRIPTION
Excellent	The proposal exceeds in a significant manner stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the project, and provides a consistently outstanding level of quality.
Very Good	The proposal exceeds the stated requirements/objectives in a beneficial way, providing advantages, benefits or added value to the project, and offers a significantly better than acceptable quality.

DRAFT

ADJECTIVE RATING	DESCRIPTION
Good	The proposal comfortably meets the stated requirements/objectives, provides some advantages, benefits or added value to the project and offers a generally better than acceptable quality.
Fair	The proposer has demonstrated an approach which is considered to marginally meet stated requirements/objectives and meets a minimum level of quality.
Poor	The proposer has demonstrated an approach which contains significant weaknesses/deficiencies and/or unacceptable quality.

In assigning ratings, The Sponsor may assign "+" or "-" (such as, "Excellent -", "Good +", and "Fair +") to the ratings to better differentiate within a rating in order to more clearly distinguish between the evaluation factors and the overall Project Development Plans. However, the Sponsor will not assign ratings of "Poor –"or "Excellent +."

6.6 Proposal Score

The Technical Proposal Score is comprised of the sum of the categories under Evaluation Criteria and Weighting. The Technical Proposals Criteria and maximum number of points for each criterion will be set forth in the procurement documents specific to each project.

The allocation of points will vary from project to project depending on known risk allocation expectations. Generally, the Financial Proposal Score will include the Financial Proposal evaluation criteria, and the number of points for each criterion will be set forth in the procurement documents specific to each project. The Department recognizes that each potential P3 project is unique. The scoring protocol for projects will be clearly identified in the RFQ/RFP.

6.7 Procedure

The following is a brief outline of the evaluation process.

- Prior to receipt of the proposals, the Project Selection Committee (PSC), which will be comprised of public sector employees from the Department and other sponsor personnel (if appropriate), will meet to assign values/weights to each of the adjectival scores and determine the weightings of the criteria in each evaluation category. These numbers will not be revealed to the Proposers or the evaluation panels.
- The proposals will be received by the Department; a Pass/Fail Review Panel made up of public sector employees from the Department and/or sponsor personnel (if

DRAFT

appropriate) will review the proposals for responsiveness and compliance with the pass/fail requirements. The Pass/Fail Review Panel will make a recommendation to the PSC which will then determine whether the proposal meets the pass/fail requirements.

- Proposals will then be reviewed by technical and financial review panels, comprised of appropriate public sector employees from the Department and/or sponsor personnel, who will make consensus recommendations to the PSC for each of the evaluation criteria, using the adjectival scoring system described above. The review panels will not know the weighting of the adjectives, nor will they know the relative weightings of the criteria.
- The PSC will then receive the scoring from the review panels and, informed by these recommendations, make its own decision as to the scoring of each of the evaluation criteria for the proposals. These scores will then be multiplied by the "weighting" (which would have been assigned to the RFP Criteria by the PSC prior to the submittal of proposals). The products of the foregoing multiplications will be added together in order to compute the "Criteria Score."
- Finally, the PSC will determine the total proposal score for each proposal by adding the proposal's technical score and financial score. The "Best Value Proposer" will be the Proposer receiving the highest score out of 100 possible points.

7. Basic Elements of a P3 Agreement

7.1 Agreement Assignments

The Department may enter into one or more agreements with the successful Proposer. The agreements may be "pre-development", covering primarily project development or preconstruction activities, comprehensive development agreements, financing agreements, operating agreements, or any other agreement appropriate to the project. The Department may seek policy, legal, financial, and/or technical advice as may be needed to successfully negotiate or execute the agreements. The agreements may include, but not be limited to the following terms and conditions:

- Appropriation of responsibilities among parties
- Allocation of risk among parties
- Allocation of resources and costs among parties
- Penalties for non-performance
- Incentives for performance
- Invoicing and payment procedures
- Bonding and issue requirements
- Limitations on user fees
- Revenue sharing
- Encroachment agreements
- Environmental documentation requirements

DRAFT

- Asset management requirements
- Hand back provisions and expectations
- Costs for third-party constraints such as railroads and utility companies
- Cooperation with other existing or planned facilities
- Rights-of-Way dedicated and the Department's use of eminent domain
- Planning, development, design, construction, operation and maintenance standards
- Submittal requirements
- Inspection requirements and rights
- Terms of reimbursement for services provided by the Department
- Maximum rate or return on investment
- Default of contract provisions
- Force Majeure
- Liability for personal injury, facility repair and unknown hazards waste remediation
- Record retention and audit requirements
- Submission and review of financial statements
- Other requirements suitable to the type, size, complexity and duration of the contract

7.2 Agreement Conditions

The Department reserves all rights available to it by law in administering policies and procedures, including without limitation the right in its sole discretion, at any time, to:

- Withdraw a request for qualifications or a request for proposals and either issue a new request or suspend the solicitation indefinitely.
- Reject and/or terminate evaluation of any and all statements of qualifications, letters of interest or proposals.
- Issue a request for qualifications and request for proposals for competing proposals for any project presented to the Department in the form of an Unsolicited Proposal.
- Suspend, discontinue, or terminate negotiations with any Proposer prior to the actual authorized execution of a final development agreement by all parties.
- Negotiate with a Proposer without being bound by any provision in its proposal.
- Negotiate with a Proposer to include in the development agreement any aspect of unsuccessful proposals.
- Request or obtain additional information about any technical proposal from any source.
- Modify or issue addenda to any request for qualifications or request for proposals, including after review of competing proposals.
- Permit or request clarifications or supplements to statements of qualifications and proposals, either for responsive or non-responsive proposals

DRAFT

- Information provided to Proposers is done so for convenience and is without representation or warranty of any kind.
- Amend, supersede, or supplement any part of these policies and procedures, provided the amendment or supplement is clearly denoted in the request for qualifications or request for proposals as appropriate.

8. Financing Instruments

8.1 Transportation Infrastructure Finance and Innovation Act

The Transportation Infrastructure Finance and Innovation Act (TIFIA) program provides federal credit assistance in the form of direct loans, loan guarantees, and standby lines of credit to finance surface transportation projects of national and regional significance. TIFIA credit assistance provides improved access to capital markets, flexible repayment terms, and potentially more favorable interest rates than can be found in private capital markets for similar instruments. TIFIA can help advance qualified, large-scale projects that otherwise might be delayed or deferred because of size, complexity, or uncertainty over the timing of revenues. Many surface transportation projects--highway, transit, railroad, intermodal freight, and port access--are eligible for assistance.

The fundamental goal of TIFIA is to leverage federal funds by attracting substantial private and other non-federal co-investment in critical improvements to the nation's surface transportation system. TIFIA credit assistance is often available on more advantageous terms than in the financial market making it possible to obtain financing for needed projects when it might not otherwise be possible.

The TIFIA credit program offers three distinct types of financial assistance designed to address the varying requirements of projects throughout their life cycles:

- Secured (direct) loan — Offers flexible repayment terms and provides combined construction and permanent financing of capital costs. Maximum term of 35 years.
- Loan guarantee — Provides full-faith and credit guarantees by the federal government and guarantees a borrower's repayments to non-federal lender.
- Standby line of credit — Represents a secondary source of funding in the form of a contingent federal loan to supplement project revenues, if needed, during the first ten years of project operations, available up to ten years after substantial project completion.

8.2 Private Activity Bonds

A private activity bond is a bond issued by or on behalf of local or state government for the purpose of providing special financing benefits for qualified projects, and the government generally does not pledge its credit. These bonds are used to attract

DRAFT

private investment for projects that have some public benefit. This type of bond results in reduced financing costs because of the exception of federal tax. Section 11143 of Title XI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) amends Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued. This change allows private activity on these types of projects, while maintaining the tax-exempt status of the bonds. The law limits the total amount of such bonds to $15 billion and directs the Secretary of Transportation to allocate this amount among qualified facilities. The $15 billion in exempt facility bonds is not subject to the state volume caps.

Qualified highway or surface freight transfer facilities include:

- Any surface transportation project which receives federal assistance under Title 23, United States Code (effective August 10, 2005).
- Any project for an international bridge or tunnel for which an international entity authorized under federal or state law is responsible and which receives federal assistance under Title 23, United States Code.
- Any facility for the transfer of freight from truck to rail or rail to truck, including any temporary storage facilities directly related to such transfers, which receives federal assistance under Title 23 or Title 49.

8.3 Availability Payments

Many P3s involve projects that generate no revenues from users or inadequate revenues to cover their full cost of construction and ongoing operation. An *availability payment* is a payment for performance made irrespective of demand. They may serve as financing and project delivery alternatives for projects which, for reasons related to policy, public perception and/or profitability are not feasible or advisable under a user-fee based Concession. An availability payment-based payment structure:

- Transfers the risk of designing, building, financing and operating/maintaining a project to a Private Partner;
- Is generally appropriate if:
  - It does not generate direct revenue,
  - Performance/operational outcomes are easy to define and monitor,
  - Government wishes to retain direct rate setting authority,
  - Revenue and/or demand is difficult to predict and/or influence through operational changes, or
  - Service quality is more important than revenue maximization;
- Caps both the government's obligation and private upside and therefore can compare favorably to public debt;
- Results in public retention of demand risk, reducing the risk premium in private cost of capital but potentially increasing public exposure to shortfalls and volatility;

DRAFT

- Preserves strong incentives for concessionaries to provide efficiency gains in the construction, operations and maintenance of a project.

8.4 Tolls

SBX2 4 provides that P3 Agreements may authorize the lessee to impose tolls and user fees for use of a facility constructed by it, with revenues to be applied to payment of the capital outlay costs, operating costs, and other related costs. Excess revenues must be applied to the lessee's indebtedness, improvements to the facility, or paid into the State Highway Account, or for all three purposes. Excess revenue under a lease with a RTA may also be used for improving public transportation in and near the P3 facility.

SBX2 4 does not allow the conversion of a non-tolled, existing lane to a tolled lane, except for the conversion of a high occupancy lane (HOV) lane to a high-occupancy toll lane. Existing non-toll or non-user-fee lanes cannot be converted to toll lanes except that HOV lanes can be converted to high-occupancy toll lanes for vehicles not otherwise meeting the occupancy level requirements for those lanes.

DRAFT

APPENDIX A

DEFINITIONS

Agreement - A binding comprehensive development lease agreement between the Department and a Private Partner to finance, design, construct, operate and maintain (or any combination of these activities) an Eligible Facility.

Availability Payment - Payments made over a period of time (beginning at the time of beneficial use) by the Department to a Private Partner who has designed, built, financed, operated and maintained a project, with adjustments to the payment stream based on availability of the facility.

Best Value - The selection process in which a Proposal contains both financial and qualitative components as set forth in the RFP that the Sponsor determines, through the evaluation process and evaluation criteria described in this ITP, to present the best value and to be in the best interest of Sponsors and the State.

BT&H - The California Business, Transportation and Housing Agency.

California Transportation Commission - Also referred to as CTC or Commission, the California Transportation Commission consists of eleven voting members and two non-voting ex-officio members. The Commission is responsible for the programming and allocating of funds for the construction of highway, passenger rail and transit improvements throughout California. For P3 projects, the CTC has final approval authority for the project prior to the Department or RTA holding public hearings and executing a final Agreement.

Commercial Close - The date on which the Agreement (Contract) between the Department and the Private Partner is signed.

Competitive Range - A list of the initially most highly ranked proposals based on the rating of each proposal against all evaluation criteria.

Concession - Any lease, ground lease, franchise, easement, permit or other binding agreement transferring rights for the use or control, in whole or in part, of an Eligible Facility by the department or other unit of government to a Private Partner.

Department - The California Department of Transportation; also referred to as Caltrans.

Design-Build Agreement (DB) - An Agreement that provides for design and construction of improvements by a Private Partner.

DRAFT

Design-Build-Maintain Agreement (DBM) - An Agreement that provides for design and construction of improvements by a Private Partner and the maintenance of those improvements for a specified period of time.

Design-Build-Finance-Operate Agreement (DBFO) - An Agreement that provides for financing, design and construction of improvements by a Private Partner and the operation of those improvements for a specified period of time.

Design-Build-Operate-Maintain Agreement (DBOM) - An Agreement that provides for design and construction of improvements by a Private Partner and the operation and maintenance of those improvements for a specified period of time.

Design-Build-Finance-Operate-Maintain Agreement (DBFOM) - An Agreement that provides for financing, design and construction of improvements by a Private Partner and the operation and maintenance of those improvements for a specified period of time.

District Office – One of twelve geographically located Department offices staffed with personnel for the administration and delivery of regional transportation projects.

Eligible Facility - Any facility developed or operated in accordance with Streets and Highways Code section 143.

Evaluation Committee - A Committee consisting of Department personnel, assisted as appropriate by Department staff and outside consultants that evaluate and rank Statements of Qualifications and Proposals against criteria established in RFQs and RFPs, respectively.

Financial Close - The date on which the project financing documentation is signed and conditions precedent to the payment of equity and an initial drawing of the debt have been satisfied or waived.

Handback Provisions - The terms, conditions, requirements and procedures governing the condition in which a Private Partner is to deliver the project to the Department upon expiration or earlier termination of the Agreement, as set forth in the Technical Provisions.

Industry Review Meeting - A meeting held prior to the Department's issuance of either a RFQ or RFP in order to inform the industry of a project opportunity and to hear industry suggestions that may, at the Department's sole discretion, be incorporated into procurement documents.

One-on-One Meetings - A meeting held jointly or individually to share information regarding RFPs with shortlisted Proposers and to obtain feedback, comments and suggestions from such Proposers.

DRAFT

Project Development Agreement (PDA) - An Agreement with a Private Partner to provide predevelopment services such as concept definition, environmental studies, etc. in order to advance a project to the stage at which a fixed price DBFOM or variation thereof or a Concession can be negotiated.

Private Partner - A person, entity or organization that is not the federal government, the State of California, a political subdivision of the State of California, or a unit of government.

Public Infrastructure Advisory Commission (PIAC) - An auxiliary unit of the Business, Transportation and Housing Agency that advises the Department on potential P3 projects as well as assisting transportation agencies by helping to identify suitable P3 opportunities, researching and analyzing P3 projects around the world, assembling a library of best practices and lessons learned, and providing advice and procurement-related services.

Project Selection Committee - A committee of Department, and RTA (if appropriate) personnel formed on a project-specific basis to consider the recommendations of the Proposal Evaluation Committee and make a recommendation to the Department Director.

Proposal - A proposal submitted by a Proposer in response to the RFP.

Proposer – One or all (as the context requires) of the Private Partner teams, joint ventures, partnerships or consortia shortlisted by Department to submit a Proposal in response to a RFP.

Public-Private Partnership (P3) - A contractual Agreement formed between the Department and a Private Partner that allows for greater private sector participation in the delivery and financing of transportation projects than by traditional delivery methods, pursuant to Streets and Highways Code section 143.

Refinancing Gain - The net present value of the reduction in financing costs arising from a renegotiation of the loan terms which formed a part of the Agreement.

Relief Event - An event beyond the Private Partner's control and not due to any act, omission, negligence, recklessness, willful misconduct, breach of contract or law or violation of a governmental approval (and subject to notice requirements and the duty to mitigate) and which event or its effects could not have been avoided by the exercise of caution, due diligence, or reasonable efforts, for which adjustments to the project's schedule may be negotiated.

Request for Proposal (RFP) - A solicitation by the Department for a proposal to develop, finance, operate, and/or maintain an Eligible Facility.

DRAFT

Request for Qualifications (RFQ) - A solicitation by the Department for a SOQ that demonstrates a Private Partner's ability to develop and/or operate an Eligible Facility.

SBX2 4 - Senate Bill Second Extraordinary Session 4 (SBX2 4) Chapter 2, Statutes of 2009 (Cogdill), authorizes the Department and regional transportation agencies to enter into an unlimited number of public-private partnership agreements until January 1, 2017. Section 143 of the Streets and Highways code was codified by SBX2 4.

Section 143 – Reference to California Streets and Highways Code ("Section 143") that grants the Department the authority to solicit proposals from and enter into agreements with private entities, or consortia thereof, for the planning, design, development, finance, construction, reconstruction, rehabilitation, acquisition, lease, operation or maintenance of transportation projects.

Statement of Qualifications (SOQ) - A response to a Department issued RFQ by a Proposer that demonstrates its capabilities and capacity to develop a project described in the RFQ.

Solicited Proposal - A proposal issued by the Department as a result of its determining that a project may best be suited for and developed as a P3 project pursuant to Streets and Highways Code section 143.

Technical Advisory Committee (TAC) - A Committee formed on a project-specific basis to provide technical input during the project identification phase prior to a decision to proceed with procurement and to provide advice during the development of the RFQ, RFP and other procurement documents.

Technical Provisions - The document describing the scope of work and related standards, criteria requirements, conditions, procedures, specifications and other provisions for the project.

Unsolicited Proposal - A proposal to develop an Eligible Facility received unsolicited by the Department from a potential Proposer

User Fee - A fee charged for use of an Eligible Facility, usually a toll for a highway or fare for rail or bus travel.

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TRANSPORTATION COMMISSION

CALIFORNIA TRANSPORTATION COMMISSION

POLICY GUIDANCE
PUBLIC PRIVATE PARTNERSHIP PROJECTS
Resolution G-09-13

1. Authority and Purpose. Section 143 of the California Streets and Highways Code, as amended by Chapter 2 of the Statutes of 2009 (Senate Bill 4, Second Extraordinary Session), authorizes the California Department of Transportation and regional transportation agencies to enter into comprehensive development lease agreements with public or private entities for transportation projects, commonly known as public private partnership (P3) agreements. Section 143 further provides that P3 projects and associated lease agreements proposed by the Department or a regional transportation agency shall be submitted to the California Transportation Commission, and that the Commission shall select and approve the projects before the Department or regional transportation agency begins a public review process for the final lease agreement. For Department projects, the Commission shall also certify the Department's determination of the useful life of the project in establishing the lease agreement terms. Where the Department or a regional transportation agency uses a final evaluation of proposals based on qualifications and best value to select a contracting private entity, Section 143 mandates that the Commission adopt the criteria for making that evaluation. However, the Commission does not approve or execute the final lease agreement nor does it have a role in selecting the private entities for P3 agreements.

   The purpose of this guidance is to set forth the Commission's policy for carrying out its role in implementing P3 projects in order to assist and advise the Department, regional transportation entities, and private entities that may be contemplating the development of P3 agreements. This Commission policy guidance is not a regulation and should not be construed as imposing any requirement or imposing any deadline on any agency beyond those found in Section 143. References to timeframes in this guidance are statements of Commission intent for responding to submittals from other agencies. They are not deadlines or restrictions for either the Commission itself or for other agencies. References to the contents of submittals from other agencies are statements of what the Commission expects that it will need in order to carry out its own responsibility for project approval under statute. They are not procedural requirements. Section 143 does not modify nor does this guidance address the Commission's authority to program and allocate state funds. This guidance does not address Department and regional transportation agency P3 project procedures that are not within the purview of the Commission.

2. Scope of Project Approval. The Commission will select and approve each P3 transportation project, as defined in Section 143(a)(6), through the adoption of a resolution at a regularly scheduled Commission meeting. Before approving a project, the Commission will conduct a

public hearing on the project as a scheduled meeting agenda item. The Commission will approve each project with reference to a P3 project proposal report, as described in section 4 below, prepared and submitted by the Department or regional transportation agency. The Commission's P3 project approval will include and apply to:

- The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
- The project financial plan, including the allocation of financial risk between public and private entities.
- For Department projects, a certification of the determination of the useful life of the project in establishing the lease agreement terms.
- Where the Department or regional transportation agency proposes to use a final evaluation of proposals based on qualifications and best value to select a contracting entity or lessee, the criteria that the Department or regional transportation agency will use for that evaluation.

3. Criteria for Commission Approval. The Commission will approve a P3 project if, after reviewing the project proposal report as described in section 4 below, it finds all of the following:

- That the project as described in the project proposal report is consistent with the requirements of statute.
- That the Commission's approval of the project and its financial plan does not in and of itself create a new commitment of state transportation revenues or create an undue risk to state transportation revenues committed to other projects. This does not preclude the commitment of state funds as a separate, even simultaneous, action. For example, the Commission could approve an amendment of the state transportation improvement program (STIP) to commit new funds to a P3 project, subject to the constraints of STIP funding.
- That the project, consistent with Section 143(c)(3), is primarily designed to achieve the following performance objectives, as evidenced in the project proposal report:
    - Improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor.
    - Improve the operation or safety of the affected corridor.
    - Provide quantifiable air quality benefits for the region in which the project is located.
- That the project, consistent with Section 143(c)(4), addresses a known forecast demand, as determined by the Department or regional transportation agency and evidenced in the project proposal report.
- Where applicable, that the criteria that the Department or regional transportation agency proposes to use for a final evaluation of proposals based on qualifications and best value are consistent with statute.
- For a Department project, that the Department has made a determination of the useful life of the project in establishing the lease agreement terms that is consistent with the terms of the lease agreement.

4. Project Proposal Report. The Commission will consider approval of a P3 project only when the Department or regional transportation agency has prepared and submitted a project proposal report to the Commission. The Department or regional transportation agency may engage in preliminary steps leading to the development of the draft lease agreement, including the general solicitation of proposals and the prequalification of potential contracting entities, prior to submitting a project proposal report. However, the Department or regional transportation agency should not issue the final request for proposals to implement a specific transportation project, and the Department or regional transportation agency shall not conduct the final evaluation of proposals, prior to the Commission's approval of the P3 project. The Commission will place a request for approval of a P3 project on its agenda when the Commission office receives the project proposal report at least 45 days prior to the meeting.

   The project proposal report and request for P3 project approval will include or make reference to the following:

   - The description of the scope of the transportation project and its boundaries, including construction work and the performance of maintenance and operations.
   - The basis of the Department or regional transportation agency for finding that it would be in the public interest to implement the project through a public private partnership agreement.
   - The Department or regional transportation agency's proposed project financial plan, including the allocation of risk between public and private entities. The financial plan will include:
     - forecasts of revenue from tolls and user fees, as determined by the Department or regional transportation agency;
     - commitments of state or local revenues to the project (including capital, operating, maintenance, and debt service) or to any neighboring or ancillary projects necessary or desirable for full implementation of the project;
     - the alternative source of project revenue should revenues from tolls and user fees fail to meet projections or otherwise be insufficient to meet project costs; and
     - public financial responsibility for meeting project costs (including costs for operations, maintenance, and debt service) in case of default by the contracting entity or lessee.
   - The Department or regional transportation agency's estimate, with supporting documentation, of the extent to which the project will be designed to achieve each of the following performance objectives:
     - improve mobility by improving travel times or reducing the number of vehicle hours of delay in the affected corridor;
     - improve the operation or safety of the affected corridor; and
     - provide quantifiable air quality benefits for the region in which the project is located.
   - The Department or regional transportation agency's forecast of travel demand, with supporting documentation.
   - The terms of the draft lease agreement associated with the project.

- Where the Department or regional transportation agency proposes to make a final evaluation of proposals based on qualifications and best value, consistent with Section 143(g)(1)(C), the criteria the Department or regional transportation agency proposes to use in making that evaluation.
- For a Department project, the Department's determination of the useful life of the project in establishing the lease agreement terms, consistent with Section 143(d), including the basis the Department used for making that determination.

5. Project Changes after Approval. The Commission does not approve or execute the final lease agreement. However, the Commission's expectation is that, pursuant to Section 143, the final lease agreement executed by the Department or regional transportation agency will implement the project approved by the Commission, consistent with project scope as described in section 2 of this guidance. After the Commission has approved a project, it will have no further role in reviewing or approving changes to the project or the lease agreement except at the request of the Department or regional transportation agency. If the Department or regional transportation agency finds it necessary or appropriate to make changes that alter the project scope, as described in section 2 of this guidance, the Commission expects that the agency will request approval of the change by submitting a supplement to the project proposal report setting forth a description of the change and the reasons for it. The Commission will approve the change if it finds that the revised project meets the criteria set forth in section 3 of this guidance. The Commission will place a proposed project supplement on its agenda in sufficient time to allow action to be taken on the requested change within 45 days after the Commission office receives the supplement to the project proposal report.

APPENDIX C
PROJECT DATA REQUEST FORM

General Information	
Project sponsor (Regional Transportation Agency / Caltrans)	
Project name	
Project manager	
- E-mail address	
- Phone number	
Project description (note source document)	
Project purpose, objectives and need (note source document)	
Project scope and/or type of P3 (if undecided, include comparisons of scope alternatives (e.g., with/without O&M))	
Estimated Costs (Attach cost estimates)	
Capital cost (in Year-of-Expenditure $)	
Capital cost (in Constant $)	
Annual O&M cost (if any) (in Constant $)	
Proposed Funding Sources (Funding Levels and Years Currently Proposed) (Attach financial plan, if any)	
User fees (e.g., toll revenues)	
STIP / SHOPP	
Local sales tax revenues/other local sources	
Bond proceeds	
Other	
Proposed Project Development Schedule (Date Completed/Scheduled)	
Planning -Programming	
Conceptual Engineering	

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Environmental (completion of CEQA and NEPA Process)	
Completion of Final Design, Permits, and ROW	
Construction start	
Construction end	
Year operational	
Project Characteristics	
Distance/length	
Lane configurations (existing/planned)	
Significant structures	
Traffic/ Ridership volume	
Number of vehicles (transit only)	
Indicate if stand alone, extension, expansion, managed lanes, reconstruction, initial operating segment, etc.	
Indicate expected risk allocations	
Annual hours saved (congestion)	
Annual hours saved per million $	
Annual hours saved per mile	
State / Regional Planning Documents	
Adopted state transportation improvement plan (STIP) or regional long-range transportation plan (LRTP) (financially constrained, strategic element?)	
Draft STIP or LRTP	
Major Design and Construction Issues (Attach risk register, if any)	
Are there significant design and/or construction constraints?	
What are the significant design and construction risks?	

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APPENDIX C
PROJECT DATA REQUEST FORM

Right of Way Acquisition and Utility Relocation	
Are there significant ROW acquisition issues or constraints?	
Any federal, state or local government properties affected?	
Are there significant utility relocation issues or constraints?	
Has hazardous waste/contaminated soils been identified along project limits?	
Are condemnation activities anticipated for this project?	
Are there any railroad parcels (fee or easement) required for the project?	
Legal Issues/Political Support/Litigation	
Who are the key stakeholders and what do they expect to achieve with the project?	
What level of political commitment & stakeholder support does the project have?	
What are the legal and administrative considerations? Are they insurmountable?	
Is there any pending, threatened or anticipated litigation against the project? Briefly describe opponents and issues.	
System Interface	
How does the project integrate into the existing system?	
Location of Current Project Study Report	
Website address	
Hard copy location/contact person	
Key Reference Documents	
Website addresses	

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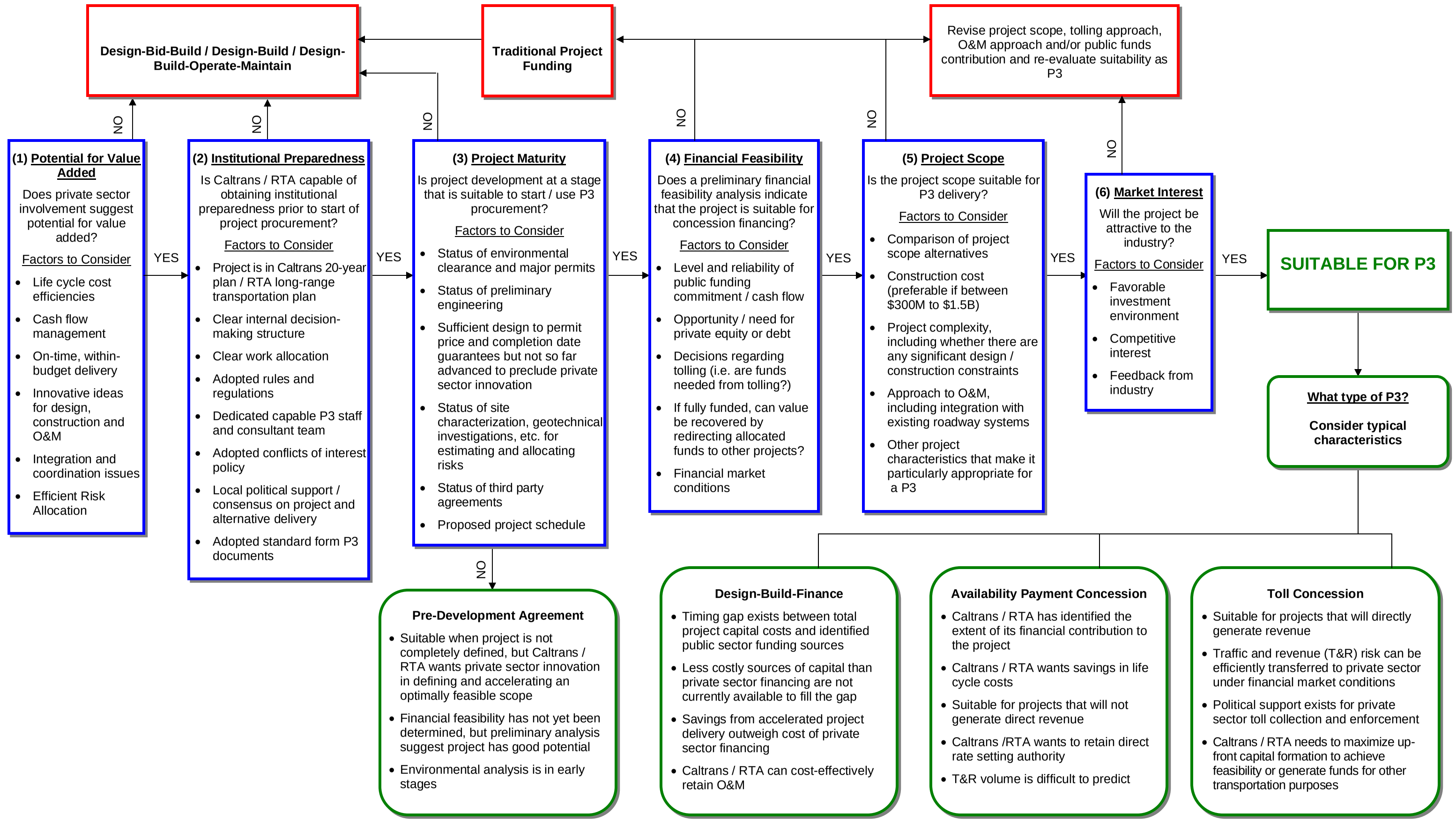
APPENDIX D

PROJECT SUITABILITY CRITERIA FOR P3



CALTRANS DISTRICTS AND DISTRICT OFFICES

Issued by: Department of Transportation
Division of Transportation System Information
Produced by: GIS - Mapping & Development Branch
February 24, 2009

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