

# The Commercial Law Development Program *Presents* *Public-Private Partnership Webinar Series*



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# Pre-Qualification and Evaluation



# Today's presenters



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# Today's Agenda

- Purpose and timing of pre-qualification and evaluation within the P3 process
- Breakdown of the difference between RfI and RfQ
- Criteria for an effective RfQ
- How to design and implement an RfQ
- How to evaluate project bidders



# Pre-Qualification Process: P3 Key Principles

## Transparency

- Public Meetings
- Policies and Guidelines
- Goals and Objectives
- Term Sheets
- Procurement Documents

## Accountability

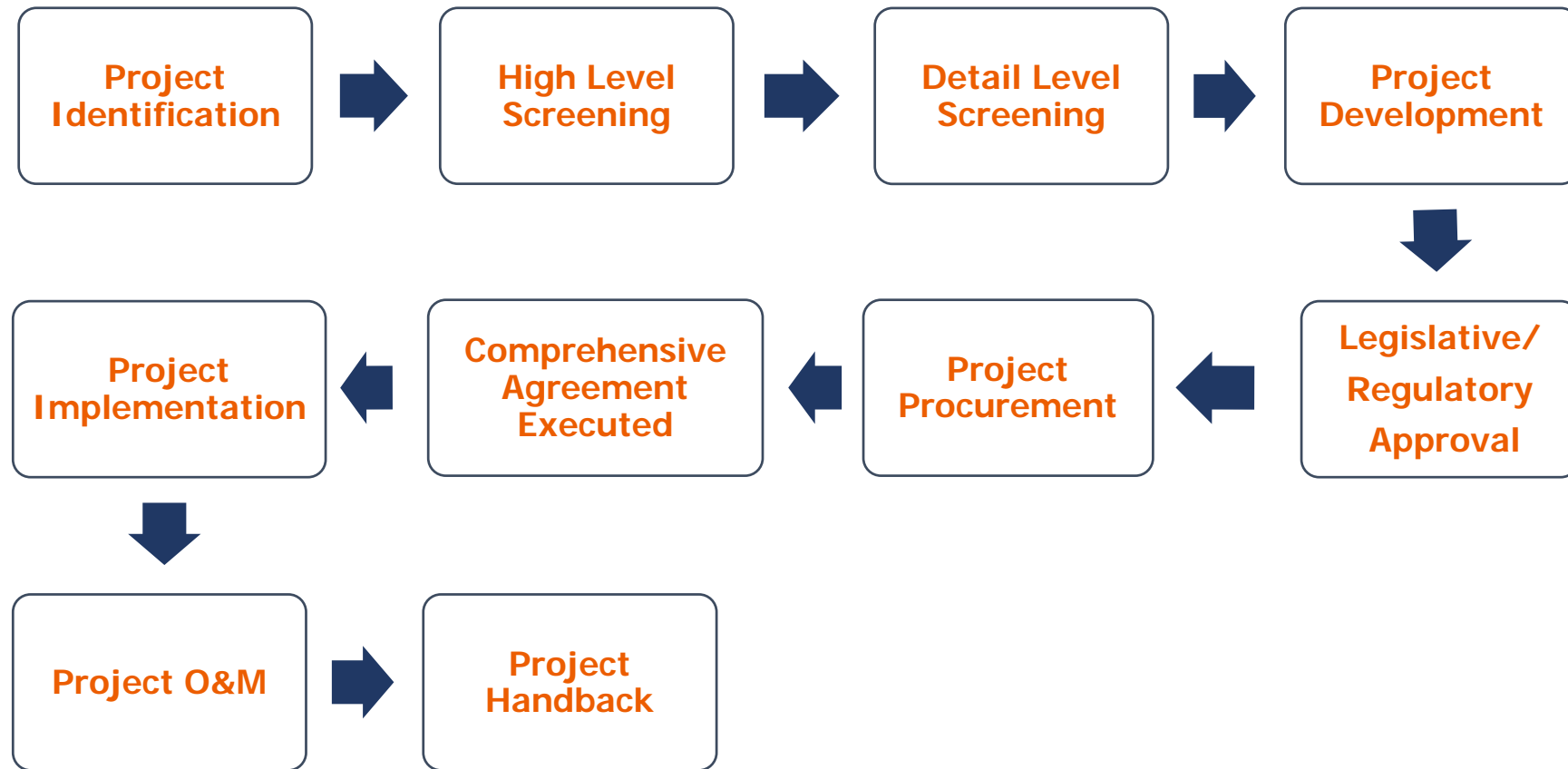
- Finding of Public Interest
- Value for Money
- Quality - Speed - Transparency

## Integrity

- Fair and transparent procurement
- Is a P3 the best model for the project?
- Contracts as outputs of the process



# Pre-Qualification Process: Project Development Lifecycle





# Pre-Qualification Process: What makes a successful P3 project?

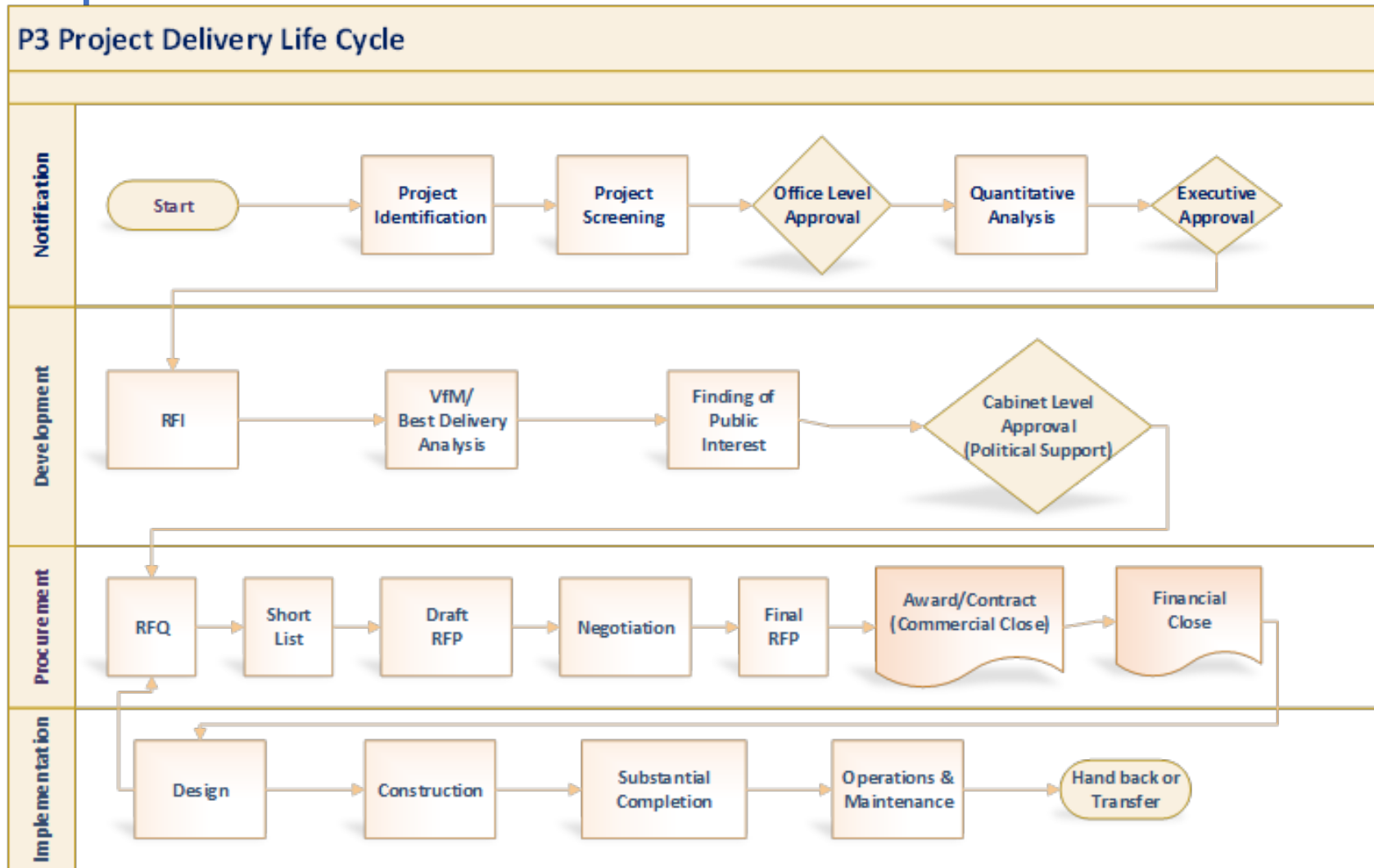
**Enabled** by **legislative authorization** allowing the public and private entities to enter into a contract

**Shaped** by **policies** that clearly outline the intent, desires, rules, and requirements of the law

**Developed** through **guidelines**, based upon transparency and accountability, by which the public and private entities engage



# Pre-Qualification Process: Example of P3 Guidelines





# Pre-Qualification Process: How to Influence the Project Outcome

**Early stages of project development offer the greatest ability to influence outcome**

**Define** the Project Needs and  
**Identify** Delivery Strategy

Defined Terms and  
Procurement = **Less**  
**Flexibility**

**Confirm** the Project Justification  
through Value for Money Analysis

Award of Contract →  
Set Performance  
Requirements  
→ **Difficult to Make**  
**Changes**



# Designing the RfQ: RfI vs. RfQ

## RfI

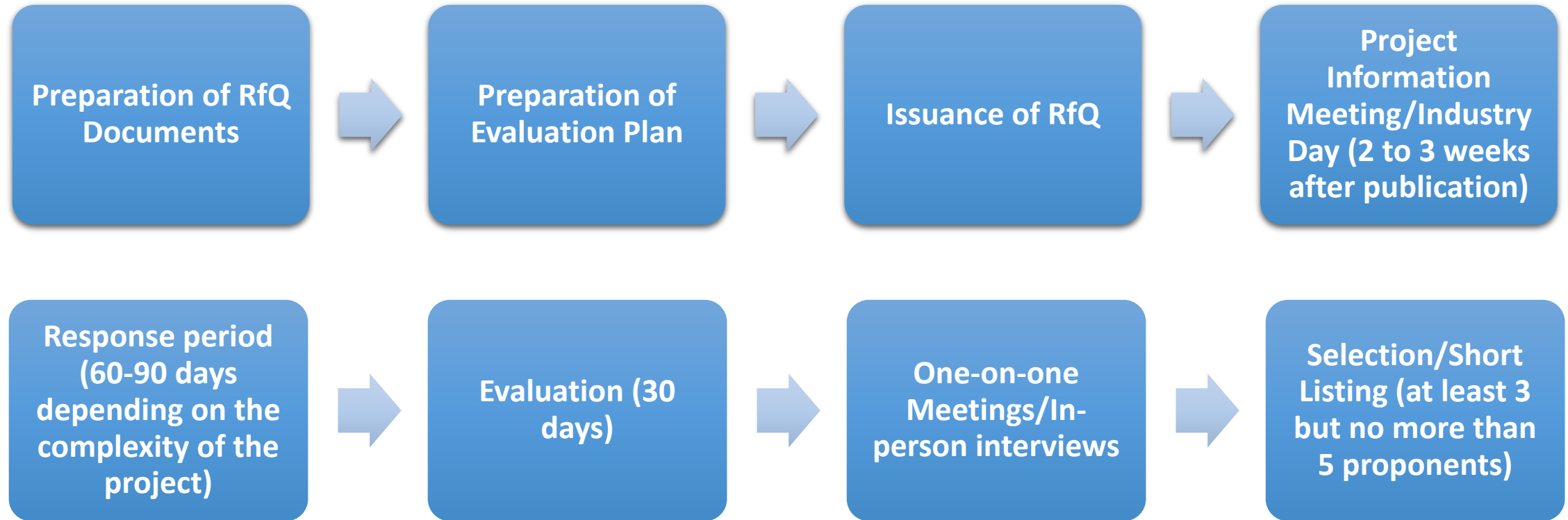
- Issued during project development and before procurement
- Used to:
  - Gauge the market appetite
  - Validate assumptions with feedback
  - Refine the goals, objectives, affordability and technical aspects

## RfQ

- First step in procurement phase
- Outlines goals, objectives, scope, and roles and responsibilities
- Solicits qualifications (technical, financial and legal)
- Identifies most qualified partners
- Validates project assumptions
- Reduces project failure risk



# Designing the RfQ: RfQ Schedule



# Designing the RfQ: RfQ Objectives

## Two Essential Objectives of a Request for Qualifications:

1. Acquaint the market with the public owner, the project and the decision to use P3 as the delivery mechanism.
2. Obtain a short list of qualified potential private partners and respondents who may eventually receive a Request for Proposals



# Designing the RfQ: Development Process

- Treat the Request for Qualifications development process **as an exercise**
- The process should **solidify**:
  - The goals and objectives regarding the project
  - The preferred course of action to procure the project
  - The desired outcome of the process
- Assemble a **qualified staff of advisors**
  - Legal, technical and financial
  - Should help determine a good short-listed party



# Designing the RfQ: Before Releasing

- What are the goals and objectives of the Request?
  - Should be **clearly defined**
  - **Policy perspective – resolution of fundamental issues**
- **No** fundamental concerns remaining
  - Decision to commit public resources to the project
  - P3 as the delivery mechanism
- **Do not** use an Request for Qualifications as a basis for determining whether the deal should go forward



# Designing the RfQ: Necessary Elements of Success

- Have a firm policy decision to pursue the project and to commit public resources to the effort
- Obtain preliminary/final policy approvals to proceed with the project
- Confirm that there are no external policy approvals to undertake the project, e.g. a vote of the electorate
- Confirm legal authority to undertake the project and use a P3 delivery mechanism



# Designing the RfQ: Mistakes

- Do not use a Request for Qualifications as a process for deciding to do the project
- Do not use a Request for Qualifications as a process for confirming the decision to use P3 as a delivery mechanism
- If you are uncertain about the project or the use of P3 as a delivery mechanism, or if critical approvals are yet to be secured (e.g. a public vote) defer sending the Request for Qualifications
- Consider the use of a Request for Information as an vehicle to resolve issues and questions and to lay the ground work for making decisions





# Designing the RfQ: Is it the Appropriate Delivery Mechanism?

- **Design**

- Access the private sector to provide design services for the project
- Maximize design benefits of a life cycle cost approach

- **Build**

- Obtain private construction services
- Making the contractor (or affiliates) responsible for the long-term functionality of the project

- **Finance**

- Accessing private capital provides the discipline of private risk analysis and risk monitoring
- Private capital is not a method to avoid bad project economics – funding vs. financing



# Designing the RfQ: What You Seek Determines What You Ask For

- **Operate**

- Obtaining the skills of a private partner to assume operational responsibility for the project
- Long term operational risk is an essential consideration
- Economic risk of demand
- Availability payments vs. demand risk

- **Maintain**

- Long term maintenance commitment
- Renewal and replacement
- Handback requirements
- Life cycle cost analysis related a consortium that design and builds a project with long term maintenance obligations in mind



# Designing the RfQ: Other Considerations

- Do not be afraid to **share** the evaluation criteria with the market
- Think of the RFQ as a road that travels in **both** directions; benefits accrue to all parties
- Provide information about your project and your objectives as you solicit information about the ability of the industry to perform



# Designing the RfQ: The Larger Picture

- Do not convey a sense of uncertainty about the project
  - Make it clear you reserve the right to take whatever steps **best suit** your objectives, including cancelling the procurement process
- Ask questions of the industry that **illustrate the importance** of the project to you as an owner and the strong public policy reasons in support of the procurement



# Designing the RfQ: Final Thoughts on Preparation

- Use your advisors to help you **frame** the questions in a way that illustrates you understand how a public private partnership is a delivery mechanism that is different in many ways from other delivery mechanisms
- Life Cycle Cost Analysis; risk identification and allocation; risk is allocated to the party based able to manage the risk
- Understand that the **scope** of transferred risk will be a major contributor to determining the cost of the projects; some risks need to be retained
- Alternate **technical** concepts; alternate **financial** concepts



# Determining RfQ Evaluation Criteria

- Communicating messages and obtaining the **best qualified** list of potential respondents
- Think of the respondents as a potential consortium – a team of entities which each bring unique and essential skills to the process
- Do not focus solely on a **single high-profile** lead player. It is the team that will deliver the product



# Evaluation Criteria: Considerations and Objectives

- Evaluation criteria should **focus on the team**, not just the lead



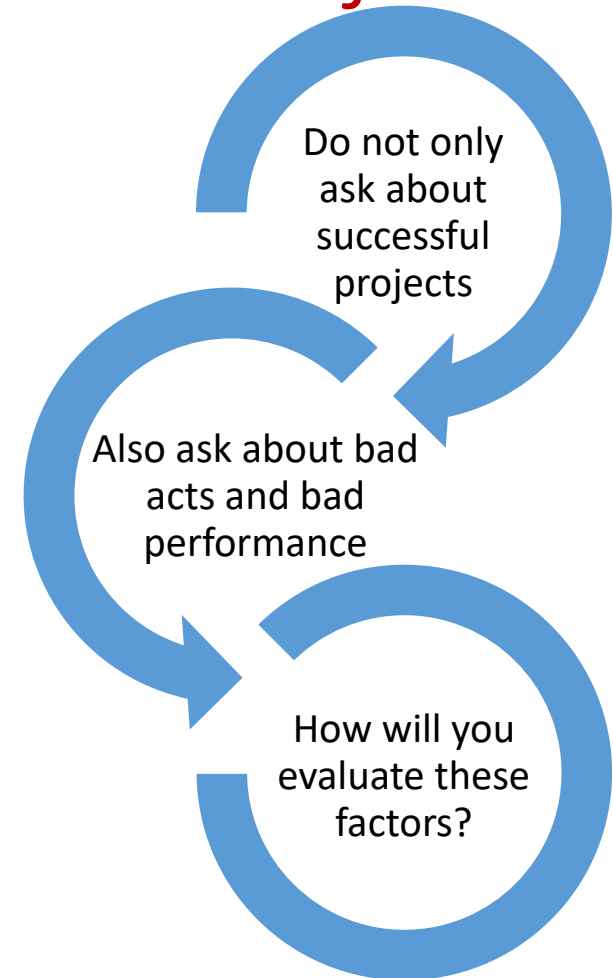
Ask questions that allow industry respondents to demonstrate their understanding of the following:

- Your goals and objectives
- Your reasons for picking a DBFOM or something else
- Risk identification and risk pricing
- Risk allocation to those best suited to manage the risk
- Life Cycle Cost analysis as a basis for evaluating success



# Evaluation Criteria: Using Evaluation Criteria to Achieve Objectives

- Identify the types of prior comparable deals that will best indicate an ability to **successfully deliver** your project
  - Not just prior projects of the same type, but prior projects that present the same types of issues
- What are trying to **learn?** Design your questions and evaluation criteria accordingly





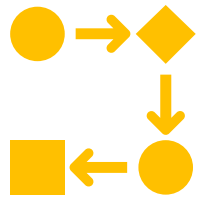
# Evaluation Criteria: Other Factors in Designing Evaluation Criteria

- Prepare to perform **due diligence** on the responses
  - How will you figure out whether you are getting the full story?
- Determine which prior bad acts **matter** and which do not
- What are the **unique** aspects of your country's legal and administrative framework that require particular focus?



# Evaluation Criteria: Criteria as Unique as Your Project

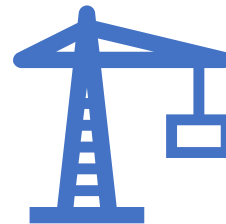
- What are the unique aspects of your project that may or may not make other prior experience pertinent or not pertinent?



Unique **Technical** aspects



Unique **Operational** aspects



Unique **Design and Construction** aspects



# Evaluation Criteria: Other Considerations

- Consider the unique **financial** aspects of your project that may or may not make other prior experience pertinent or not pertinent
- Structure your evaluation team to provide the right composition of skills, experience and perspective
- Determine how to staff and use your consultants **effectively**. In what areas do you need special expertise in order to evaluate RfQ responses effectively



# Advertising Tender

- Publish as required by law, **guidelines**, and **best practices**
  - Traditional medium print media and website
  - Outreach:
    - trade publication
    - media events
    - social media
- Goal is to attract as much **competition** as possible



# Advertising Tender: Project Information Meeting

- **Publishing project information** - VfM, ESIA report etc.
- Usually occurs few weeks after publishing of the RfQ and giving the potential bidder/developers an opportunity to review the project
- Must be careful about what information to share.
  - Sponsor **internal due diligence activities** such as traffic and revenues, and cost estimates, and VfM analysis must be kept confidential to ensure best value
- Institute **code of silence** process to ensure fair, transparent and competitive process.



# Advertising Tender: Project Information Meeting Delivery

- The location of venue should be within or **near the project** location
- Must make **project information/fact sheet** available
- **Plan project presentation** to include:
  - projects goals and objectives
  - purpose and needs
  - features and desired benefits
  - environmental studies where applicable
  - drawings
  - schedule of activities
  - public support and meetings
- Delivery must be made by **project champion** and support by staff and advisors where applicable



# Evaluation Process: Price as the Sole Determining Factor

- If price is the only criteria for selecting a short list, consider whether a P3 is the right delivery mechanism for you
- An exclusive focus on price may **reduce or eliminate** the ability to take private performance skills into consideration
  - Alternate Technical Concepts
  - Alternate Financial Concepts
  - Alternate Design Concepts
  - Financial strength and long-term reliability



# Evaluation Process: Price as the Sole Determining Factor

- If you are looking at price alone, are you looking at it from the perspective of life cycle cost analysis?
- Are you looking only at cost to design and construct when you should be looking at the **life cycle cost of the asset**, including operation and capital repair and replacement
- Life cycle cost analysis is what makes DBFOM a delivery mechanism of unique value to an owner





# Evaluation Criteria: Price, Quality and Other Factors

- **Design** – experience in life cycle cost driven design work – maximizing the value of P3
- **Construction** – experience in guaranteed maximum price, guaranteed delivery date DB agreements. Financial wherewithal to secure appropriate levels of performance and payment bonds
- **Finance** – experience with developing creative financing solutions in the legal and administrative market in which the project operates; access to capital and experience with the particular market



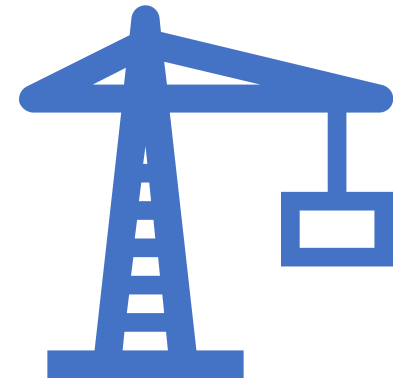
# Evaluation Criteria: Price, Quality and Other Factors

- **Operational** – understanding and experience with the legal, administrative and practical consequences of operating this type of improvement in this particular context of governmental, technological and financial constraints
- **Maintenance** – ability to deliver long term maintenance services that maximize the value of the life cycle cost analysis component of the DBFOM approach
- **Social and Policy** – ability to accommodate the social and policy objectives of the public owner while preserving the cost and efficiency benefits of a DBFOM delivery mechanism to the maximum extent possible



# CONCLUSION

- Designing and implementing a proper Request for Qualifications process will set the stage for everything that follows in your procurement



# Upcoming Webinars

- **Unsolicited Proposals**
- **Financial Modeling**
- **Life Cycle Costs**
- **Project Agreements**





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