

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



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# Unsolicited Proposals



# Today's presenters



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# Today's Agenda

- Lessons Learned From Global Survey of Unsolicited Proposals (USPs)
- Colorado's High Performance Transportation Enterprise's Experience with USPs



# What are Unsolicited Proposals (USPs)?

## Simple Definition of a USP

A USP is a proposal for a Project submitted by a Private Entity to the Public Agency without an explicit request by the Public Agency.

## Other Definitions of a USP

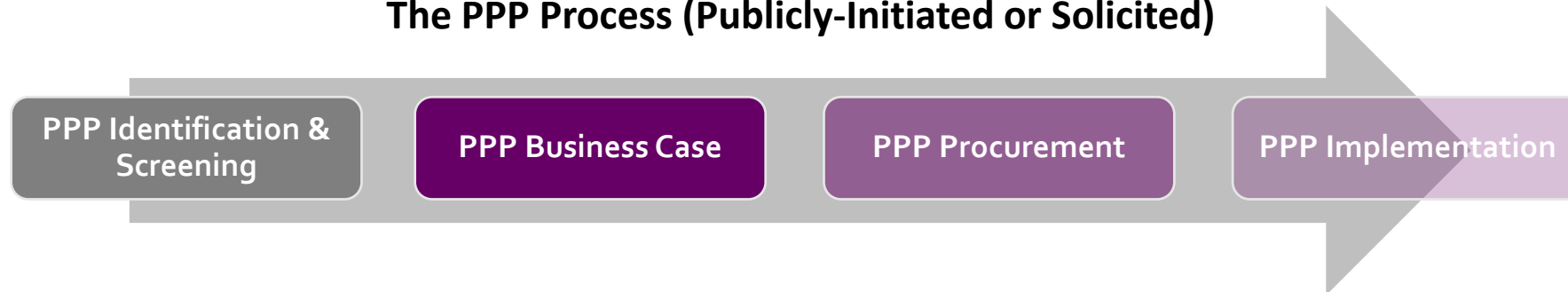
A USP is a proposal for a Project Concept submitted by a Private Entity to the Public Agency without an explicit request or solicitation by the Public Agency, that is either:

- i. Not listed in the Government's Project or PPP Pipeline, or
- ii. Proposes an innovative solution to a project listed in the Government's Project Pipeline.

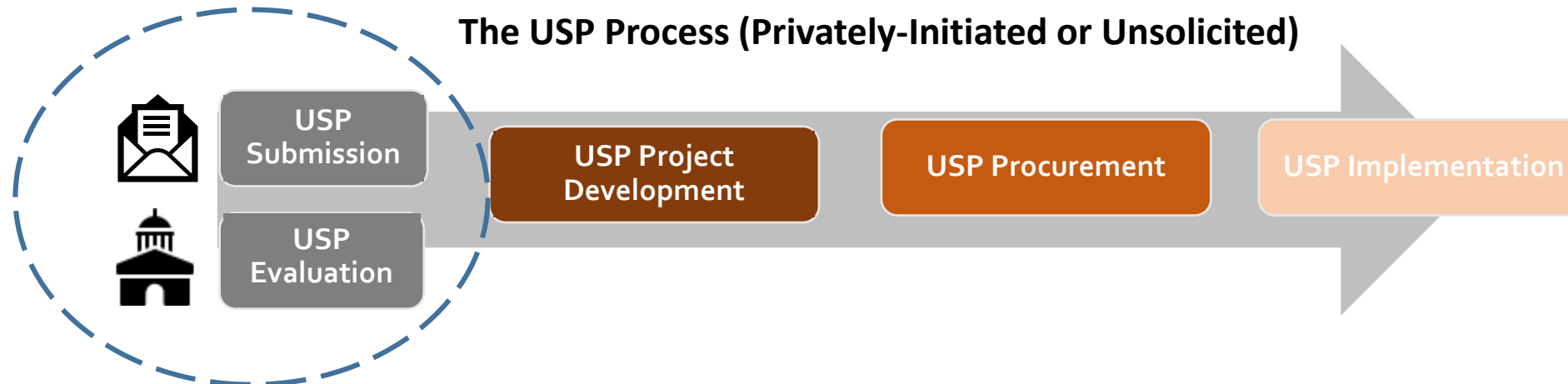


# How do USPs differ from publicly-initiated PPP projects?

## The PPP Process (Publicly-Initiated or Solicited)



## The USP Process (Privately-Initiated or Unsolicited)



The only “by definition” difference between public PPPs and USPs is at project inception – the other phases can be managed identically.



# Common perceptions about USPs vs reality

## COMMON PERCEPTIONS THAT USPs:



Statement 1: "... will be **easier and faster** to implement than a publicly initiated PPP project."



Statement 2: "...are more likely to provide **access to finance** than publicly initiated projects."



Statement 3: "... help governments overcome a **lack of technical capacity** to prepare, procure and implement PPPs."



Statement 4: "...allow governments to take advantage of private-sector **innovation**, resulting in efficiencies..."

## EXPERIENCE SHOWS

Often take longer,  
e.g. Ghana

Good project preparation  
does

USPs can exacerbate capacity  
constraints, e.g. Colombia.

USPs often do not present  
true innovations

*\*Note: These statements originate from qualitative interviews conducted with public-sector officials in over 15 countries during 2014 and 2015.*



# Accepting USPs can present challenges...

Strain Public Sector Capacity

Exacerbate Institutional Challenges

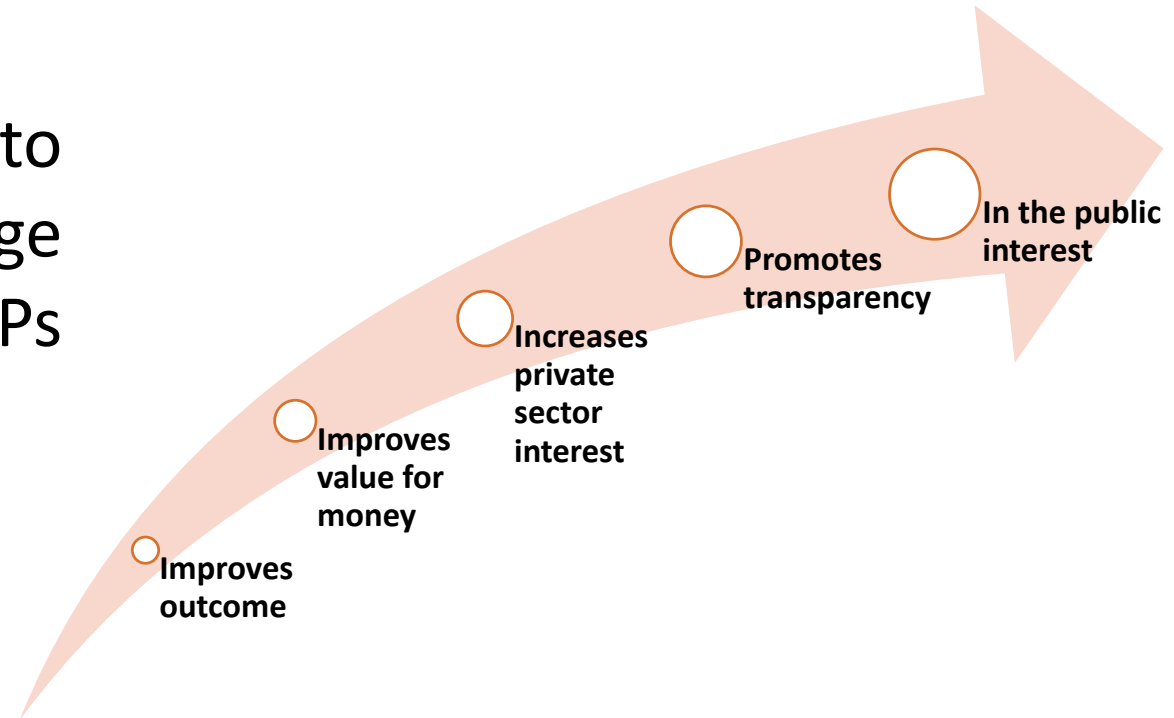
Less Competition

Corruption

...thus several benefits exist to creating a policy to manage USPs

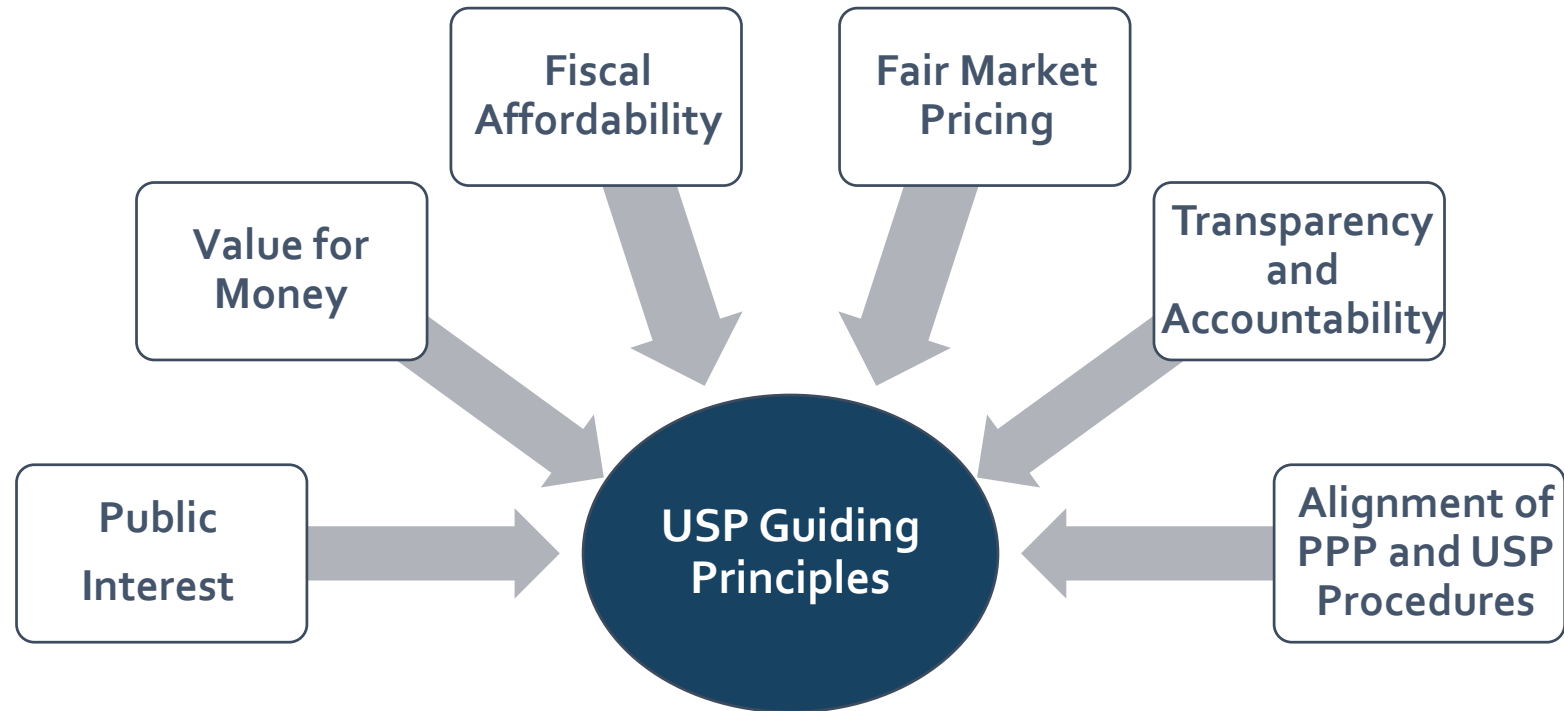
**\*\*This policy should be accompanied by\*\*:**

1. An effective PPP regulatory framework
2. An effective institutional organization
3. Development of institutional & human capacity

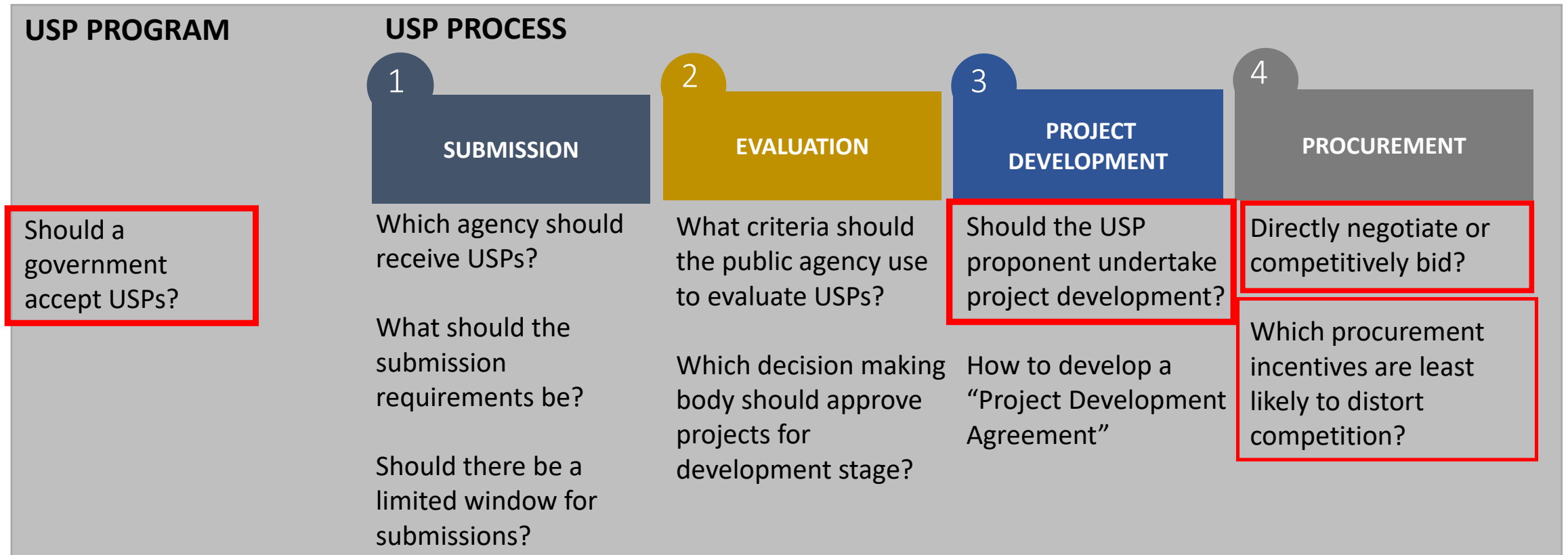




# Establishing clear and effective guiding principles is a critical first step to develop a USP Policy



# There are several key policy decisions to make with regards to setting a USP policy



... these are a subset for further discussion.



# Should a government allow USPs?

**Policy recommendation is that Governments should only consider accepting USPs if they are able to:**



## Protect Public Interest

- During evaluation, development and procurement of a USP



## Ensure Transparency and Accountability

- Throughout the USP process



# Should the USP proponent undertake project development?

## Policy recommendation is that:



### Public agency lead project development

- With support of external advisors
- Maximized competition, value-for-money, and public interest considerations; retains government control



### In certain cases, engage USP proponent to carry out specific studies

- Subject to review by external advisors
- Governed by Project Development Agreement (PDA)

\*Ensure that the process aligns with the PPP policy procedures.



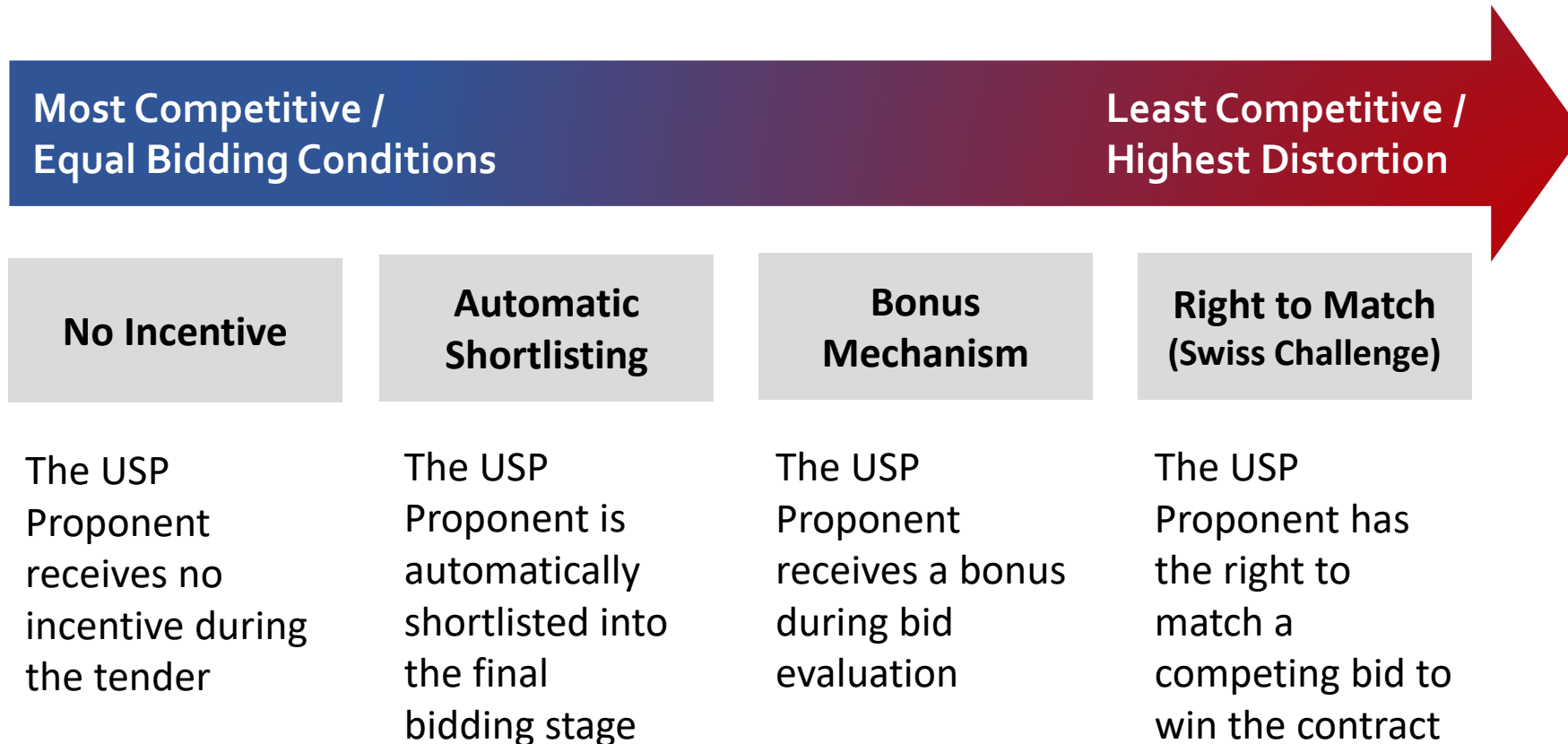
# Should USPs be directly negotiated or competitively procured?

## Policy Recommendation is that:

- Governments **competitively tender USPs in most, if not all situations.**
- Providing a (small) bonus or automatically short-listing the USP proponent may not limit competitive tension.
- Some governments may decide to directly negotiate with the USP proponent for exceptional circumstances—for example, when project characteristics limit market interest.
  - In these circumstances, governments should undertake benchmarking and/or market testing, in addition to creating additional safeguards to protect public interest



# Which incentives are least likely to distort competition?



# Trends of different USP programs from around the world



Australia

Only accept under unique and exceptional circumstances;

Deal flow from USPs is very limited.

- 



South Africa

Although National Treasury's PPP framework makes provisions for USPs, in practice NOT encouraged.

- 



Senegal, Ghana, Kenya

Governments in Africa tend to rely on the USP proponent to develop the project.

Many believe USPs will help execute priority projects.



Chile

One of the few that succeeds in creating significant competitive tension in competitive procurements for USPs



# Summary

- USPs present many challenges; the decision to consider USPs should be taken carefully. There are many alternatives to USPs.
- The information asymmetry inherent to USPs means that many safeguards are required to make sure that a contract is a “good deal” for society.
- These safeguards should follow some key guiding principles— including ensuring fiscal affordability, Value for Money, public interest, etc.
- Having a clear strategy is critical for the successful management of USPs.





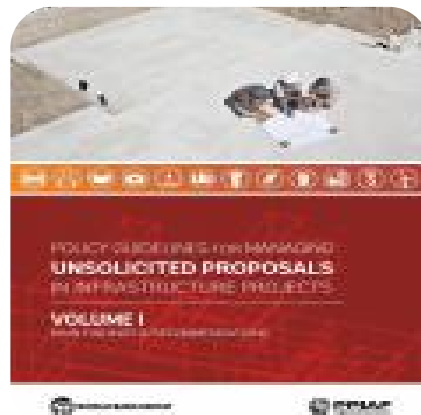
# Thank You!

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The World Bank's initiative on Managing Unsolicited Proposals in Infrastructure Projects consists of three volumes:

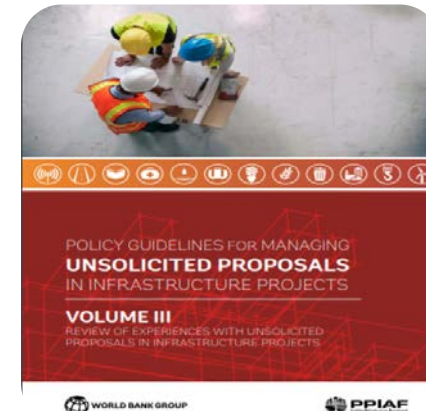
## VOLUME I



## VOLUME II



## VOLUME III





# Overview (2020)



# Presentation Outline

1. Overview of the High Performance Transportation Enterprise (HPTE)
2. HPTE's Unsolicited Proposal Policy
  1. A word of caution
  2. Why did HPTE decide to update it's policy?
  3. What are the key elements of the policy?
  4. What was the process HPTE used to develop it?
  5. How successful it has been
  6. Advice for an agency for developing a USP process



# About HPTE

- Formed in 2009 with the passage of Senate Bill 09-108, known as FASTER (Funding Advancements for Surface Transportation and Economic Recovery) Act
- HPTE operates as a government-owned business within CDOT to pursue innovative means of more efficiently financing important transportation projects
- Required to “***aggressively pursue***” innovative means of more efficiently financing important transportation projects:
  - Public Private Partnerships
  - Operating concession agreements
  - User fee-based project financing (tolls)
  - Annual performance payment agreements



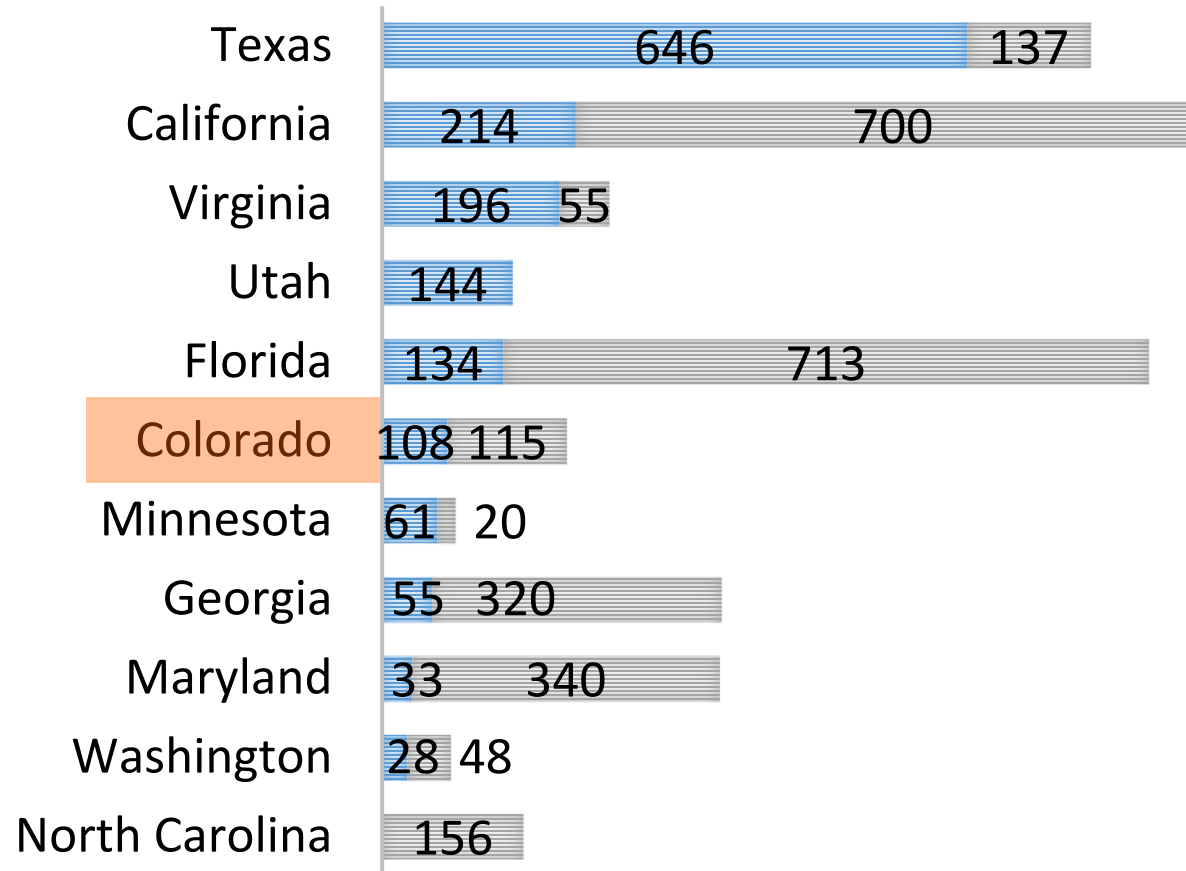
# HPTE Mission

- **Partner** with CDOT, private industry, and local communities;
- **Aggressively pursue innovative financing** alternatives not otherwise available to the state;
- **Quickly deliver transportation infrastructure** options that improve mobility; and
- **Communicate openly** with all stakeholders



# US Comparison

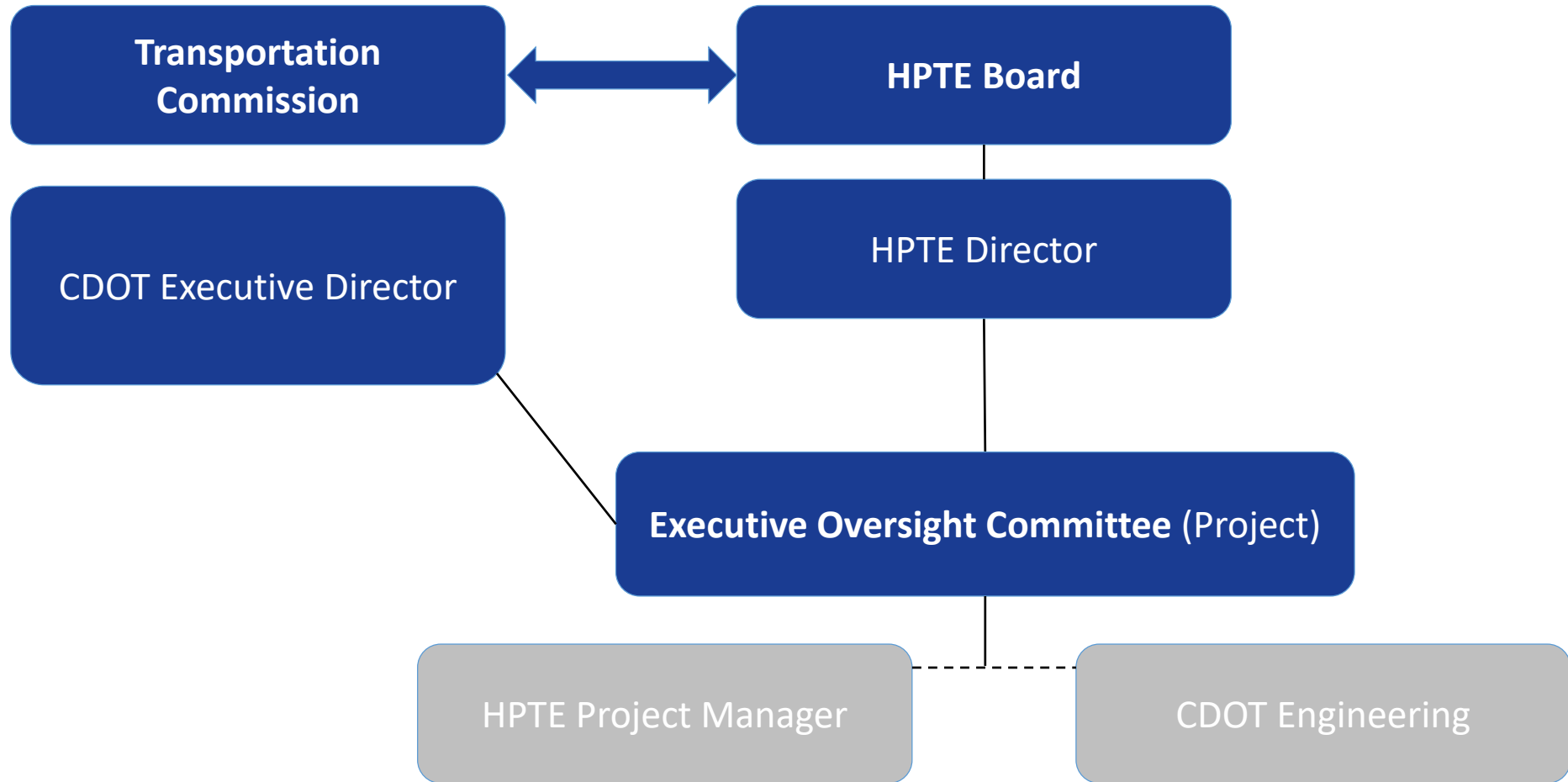
- Colorado has approximately 108 operational lane miles of Express Lanes.
- Colorado ranks #6 of 11 states with Express Lanes.



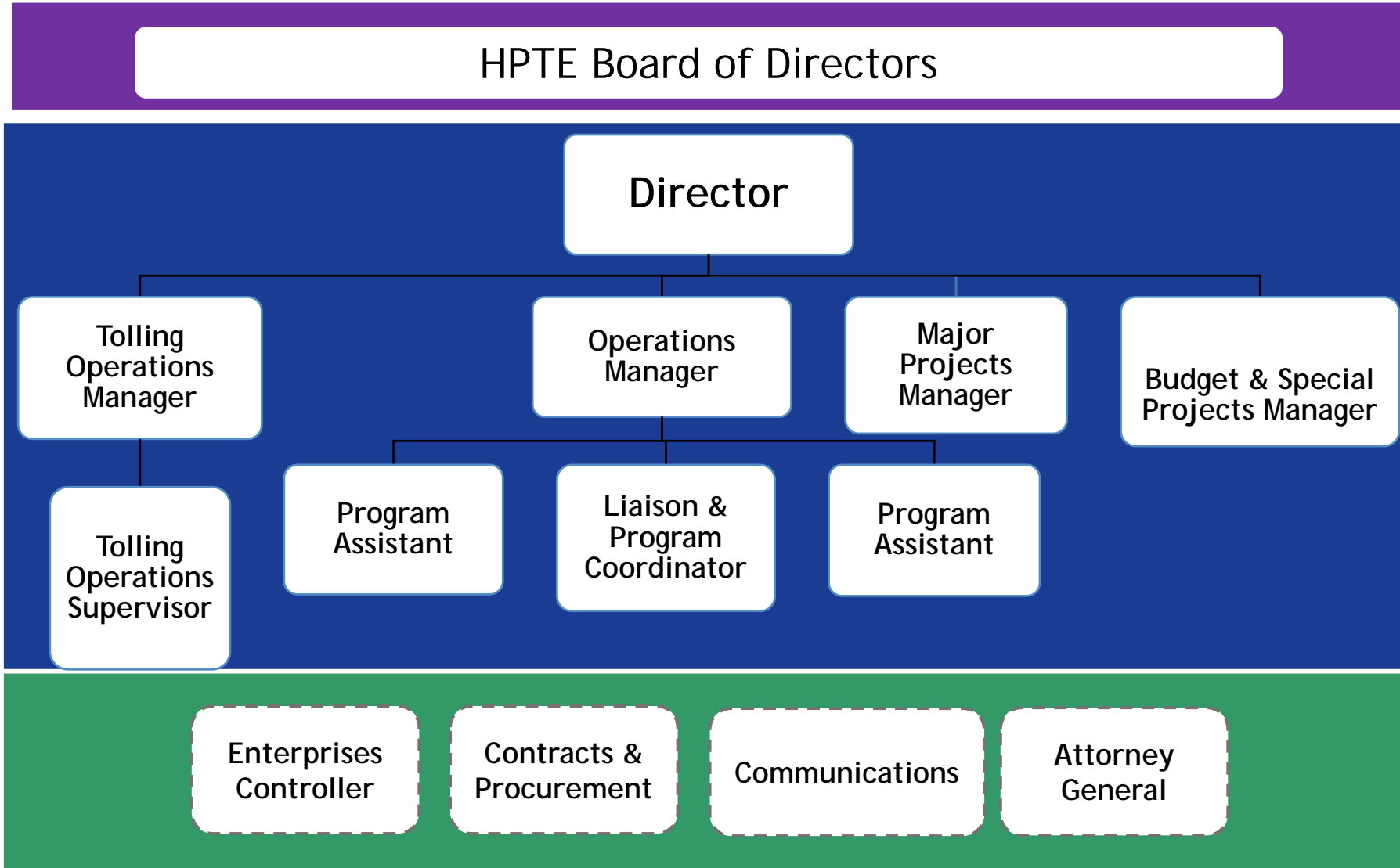
■ Operational ■ In Development



# HPTE Governance

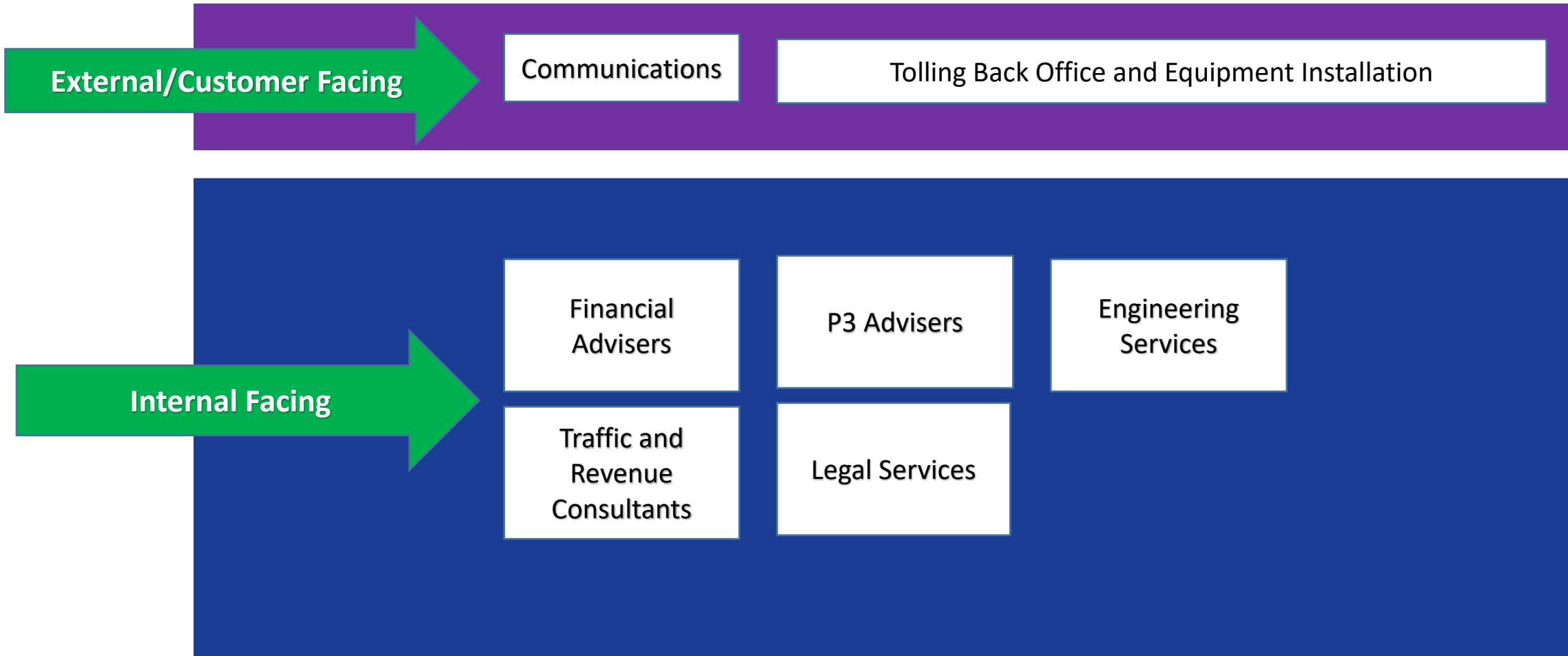


# HPTE Organizational Chart: Internal





# HPTE Organizational Chart: External Support





# Unsolicited Proposals



# A Word of Caution

- **Unsolicited proposals are challenging**, which is why only a small number of states allow them for transportation projects
- **Success rates are extremely low** – HPTE has only ever implemented one in almost 10 years
- HPTE views them as a way of receiving innovative ideas and potentially jump starting a project – **NOT a way of avoiding a regular procurement process**
- **Ensuring it is in the best interest of the state and provides the best value for money**, by introducing competition, are **two key** considerations to HPTE and CDOT moving USPs forward
- **Governance, transparency, and accountability are vital** to ensuring a USPs are appropriately scrutinized



# Why did HPTE decide to update its Unsolicited Proposal Policy

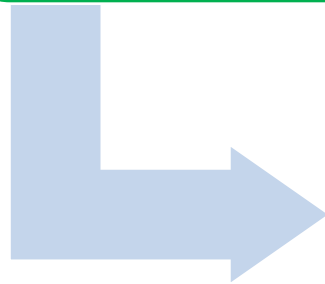
- HPTE's has had an unsolicited proposal policy since 2011
- The original policy was complicated and unclear
- The HPTE Board of Directors directed staff to increase engagement with the market through unsolicited proposals (USP's)
- This prompted significant changes to reflect best industry practices and an evaluation of how to best process USP they received



# Key elements of the New Unsolicited Proposal Policy

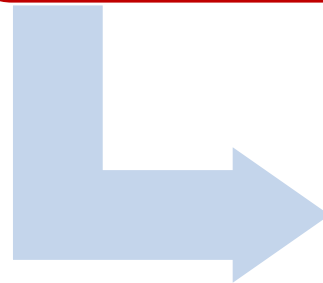
## Threshold Review

- In requested format
- Evaluation Fee - \$5k
- Request for confidentiality



## Phase One: Conceptual Proposal

- Review Team formed to evaluate proposal
- Meeting(s) with proposer
- Decision to proceed or reject the proposal
- HPTE Board Briefed



## Phase Two: Detailed Proposal

- Invitation to submit a detailed proposal
- Evaluation Fee - \$50k
- Evaluation
- Meeting(s) with proposer
- Executive Summary Made Public



# Process and key considerations in developing the policy

- **Goal – Alignment with transportation plans and generates revenue**
- **Research**
  - World Bank Study
  - Peer Review of other Departments of Transportation (DOT's) in the United States
- **Consultation with key stakeholders**
  - Internal – CDOT procurement
  - External – Federal Highway Administration and the Industry facilitated by the Association for the Improvement of American Infrastructure (AIAI)
- **Key elements that were considered which didn't make it into the policy**
  - Percentage based submission fees
  - Windows of time or themes for USPs



# How successful has the new policy been and what lessons have been learned?

## Lessons Learned

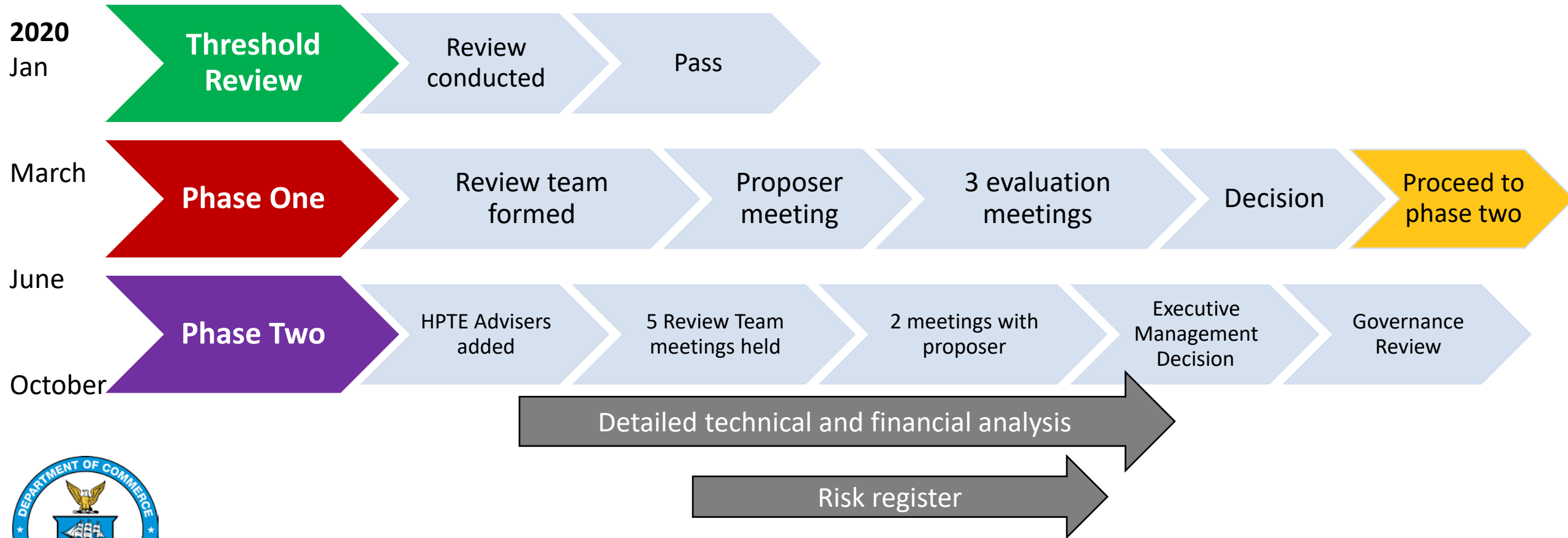
- **Competition** - clarity around incorporating competition to get the best value for money for the State of Colorado
- **Fee's** are not a barrier, they ensure only high quality proposals are submitted.

## 12 Unsolicited Proposal Received

Proposal	Proposal	Proposal
Proposal	Proposal	Proposal
Proposal	Proposal	Proposal
Proposal	Proposal	Proposal



# Proposal Review Process In Action





# Advice for agency's developing a USP policy

1. Ensure there is a clear goal
2. Dedicated P3 office
3. Consider the internal process
  - What steps will be taken internally to evaluate the proposal
  - Who makes the decision and when
  - How and when information is shared with governance structure (HPTE Board) and stakeholders
  - When a USP becomes part of a normal procurement process to ensure value for money
4. Engage trusted advisors
5. A USP is a Work in progress  
You should constantly be evaluating and analyzing how the process could be improved





# Thank You!

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# Upcoming Webinars

## **Financial Modeling**

Financial modeling is the tool that allows the assessment of commercial feasibility. The financial model is designed to reflect the estimated financial situation of the project company during the life of the contract. In this webinar, the speaker will cover the basics of developing a Financial Model.

## **PPP Business Case**

The PPP process requires a significant amount of time and resources. To ensure that those resources are well spent, it is important to ensure that PPPs have the requisite business case and make financial sense in order to move forward. In this webinar, we will learn about how to structure the business case for a PPP.

## **Life Cycle Costs**

Accurately estimating the costs throughout the full term of a project is critical for its financial success. Understanding life cycle costs can help effectively evaluate project viability as well as proposals. In this webinar, in partnership with the United States Trade and Development Agency, the presenter will cover what to consider when calculating the life cycle costs of a project.





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