

# Alberta Infrastructure and Transportation

*Draft*

# Management Framework: Procurement Document Preparation Guide

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### Introduction

#### Purpose

This guide is intended to help the Project Team prepare the procurement documents used for Alberta Infrastructure and Transportation Public Private Partnerships (P3s) for capital infrastructure projects. It aims to be informative rather than prescriptive, and reflect the best practices developed for Government of Alberta capital projects. The information in this guide should be adapted to suit the particular project requirements. Support Infrastructure Organizations may adapt the information in this guide as appropriate.

This guide should be used in conjunction with the latest versions of Alberta Infrastructure and Transportation's P3 Management Framework: 'Assessment Process' and 'Procurement Process' documents.

This guide should be read in conjunction with the sample procurement documents;

- Alberta highway infrastructure: (Northeast Stoney Trail RFQ, RFP and final form of Project Agreement)
- Alberta building (vertical) infrastructure: (to be developed)
- Alberta water/waste water infrastructure: (to be developed)

The procurement documents are an essential element of the P3 transaction and are the legal arrangement between the department and the private sector. The department may take on legal obligations as early as the Request for Qualifications stage. It is therefore imperative that the procurement documents are prepared with full participation and approval by Alberta Justice.

#### Public Private Partnerships

Public private partnership is a generic term for a "cooperative venture between the public and private sectors, built on the expertise of each partner that best meets clearly defined public needs through the appropriate allocation of resources, risks and rewards."<sup>1</sup> The term can be used to describe a wide variety of working arrangements from loose, informal and strategic partnerships to design build finance and operate (DBFO) type contracts and formal joint venture companies.<sup>2</sup>

#### Definition of Government of Alberta P3's

For the purposes of Government of Alberta capital projects, a Public Private Partnership (P3) is defined as a form of procurement for the provision of capital assets and associated long term operations that includes a component of private finance. Payment to the contractor is performance based.

#### Program Ministries' and Stakeholders' Involvement

Program ministries (such as Learning, Advanced Education and Health and Wellness) are key players in procuring all projects that address their specific program. The Supported

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<sup>1</sup> The Canadian Council for Public-Private Partnerships.

<sup>2</sup> 4ps (Public private partnership programme). UK government

Infrastructure Organizations (SIOs) and program ministries will be part of the Project Team to ensure projects meet the requirements of the program being addressed.

## Alberta Justice and Alberta Finance Involvement

Alberta Justice and Finance are key ministries in procuring all P3 projects. These ministries must be involved from the start of the P3 process and should have representatives on the Project Team.

## External Consultants/Advisors Involvement

The Project Team must include expertise in all aspects of the procurement. The department should retain external consultants and advisors to provide any expertise that is not readily available within the Alberta government. All external consultants should be retained immediately following approval to proceed with the P3 procurement and before the issuing of any project specific procurement documents. It is likely that the following external consultants will be retained;

- Technical consultant. The department Engineering/Architect consultant's role is to assist Alberta Infrastructure and Transportation in successfully preparing the project specific documentation and implementation of the P3 process. The technical consultant team will provide expert assistance to the department regarding all phases of the work from reviewing the draft project specific documentation, to assisting in the final preparation of the project specific documentation and assisting in the evaluation process.
- Process and Financial Consultants. The department Financial and Process Consultant's role is to assist Alberta Infrastructure and Transportation in successfully preparing the final documents and assisting in the procurement stages. The Financial and Process consultant teams will provide expert assistance to the department regarding all phases of the work from updating the project specific P3 procedures from start to finish, assisting in the review of the submissions, assisting in the review documentation and reporting.
- Fairness Auditor. The role of the Fairness Auditor is to oversee the process to ensure that it is fair and to provide an independent opinion by observing and reviewing the transaction process. The Fairness Auditor must be independent to the Government of Alberta and will report directly to the Steering Committee.

As a result of the department Consultants involvement on the project, the Consultants, their affiliates and sub-consultants are not eligible to participate as members of any Respondent/Proponent Team.

## Procurement Documents

This guide covers the following P3 procurement documents;

- Request for Expressions of Interest
- Request for Qualifications
- Request for Proposals
- Performance Specifications (technical requirements)

## Request for Expressions of Interest (REOI)

A REOI may be issued during the project assessment and approval stage (see AIT P3 Management Framework: Assessment Process) to determine private sector interest in a P3 delivery, and to identify interested parties that can be consulted during the development of the project documentation. A REOI is not part of the formal, competitive selection process.

## Request for Qualifications (RFQ)

The RFQ forms the first part of the selection process. It serves the following purposes:

- Officially signaling the intent of the department to proceed with the project and heighten its profile.
- Marketing the project to a wide audience to encourage participation and competition.
- Presenting an overview of the proposed scope and structure of the transaction to Interested Parties.
- Allowing Interested Parties to assemble the requisite resources and form teams as appropriate.
- Requesting Respondents to demonstrate their technical and financial capability to assume the role and responsibilities expected by the Province.
- Shortlisting of three Respondents to proceed to the RFP stage.

## Request for Proposals (RFP)

The RFP stage serves the following purposes:

- Providing the three shortlisted Proponents the opportunity to demonstrate their understanding of the Project, as well as their respective role and responsibilities.
- Allowing Proponents access to the site, the RFP data room and all relevant project related information.
- Providing Proponents with the opportunity to develop their technical and financial proposals.
- Allowing Proponents to review and comment on the draft Project Agreement that will be signed by the Preferred Proponent.
- Finalizing contractually what is being agreed upon as to the design, construction, operation and maintenance as well as the required payments.

The RFP typically consists of three volumes that provide complete information package to proponents;

1. Instructions to Proponent
2. Project Agreement
3. Performance Specifications (Technical Requirements)

## Instructions to Proponents (ITP)

The ITP summarizes the project scope and objectives, presents information on the selection process and identifies the submission requirements.

## Project Agreement

The Project Agreement is the legal contract that fully sets out the terms and conditions between the Government of Alberta and the Contractor (successful Proponent) for the duration of the Project including the financing; design and build; operations and maintain; provision of services; handback and assumption of risk. The Agreement is the entire agreement between the

Government and the Contractor regarding the project and must include all technical and administrative requirements as well as the designs, management systems and plans, construction schedules, payment schedule etc submitted and accepted in the Contractor's successful proposal. The Project Agreement must be prepared by Alberta Justice. Appendix A provides a typical table of contents of a Project Agreement for illustrative purposes only.

### Performance Specifications (Technical Requirements)

The Performance Specification is a key component of the documentation needed for a successful P3 procurement. The Performance Specification is the basis on which the department states in output terms what they need to achieve from the facilities and services to be provided. It helps to frame the bidders' response to the RFP.

The Performance Specification should detail **what** needs to be achieved, not **how** it is to be achieved. The emphasis is on service outcomes and outputs, explicit allocation of risks, and the integration of design and build with the operation of service facilities. A well-produced Performance Specification should allow new ideas about the design, construction and operation of the facility. Because this approach encourages Proponents to develop the means to deliver the outputs within the context of a fixed, performance-related pricing mechanism, it focuses attention on project risks.

### Acknowledgement

Output Specifications for PFI Schools, A 4Ps Guide for Schools. Public Private Partnerships Programme, UK. 1999

### Request for Expressions of Interest

The REOI serves to inform interested private sector parties of the possible business opportunity and allows them to provide current contact information for future announcements on the project and competitive selection process. It also provides the department with potential contacts for stakeholder consultations.

#### REOI Content

The REOI may be as simple as a newspaper advertisement but generally it is better to prepare a briefing document that provides high level information;

- General background on the project
  - Location and nature of the work
  - Current status
  - Consultants and advisors already retained by the department and ineligible to participate in the opportunity.
  - Reference material and websites.
- An outline of the proposed transaction process and anticipated timeline (if known)
  - DBFO arrangements including performance standards and performance payment.
  - Selection process (RFQ, RFP)
- How interested parties can submit their interest in participating in the opportunity.
  - Requested information
  - Department contact
  - Date for submission
- Input opportunities on various aspects of the transaction
  - Workshops and consultation meetings
  - Surveys
  - Comment and review of draft documents

#### Responses

Expressions of Interest (EOI) should generally be limited to 1-2 pages. They should simply provide general information on the Interested Party such as;

- Organization name, mailing address, (main) phone number, website.
- Contact name, position, phone number, fax, email and mailing address (if different from the main address).
- Line of business of the organization.

The EOI's are not evaluated in any way.

Submitting an EOI is not a pre-requisite to participating in the competitive selection process and does not imply any commitment by any party.



### Request for Qualifications

The intent of the Request for Qualifications (RFQ) is to **attract** qualified and experienced Respondents to submit responses and to **identify** the (three) best qualified Respondents to move forward to the Request for Proposal stage.

The RFQ must focus on the qualifications required to undertake the Project. Project specific technical and cost information is not required at the RFQ stage and should not be requested from the Respondents.

The department must have confidence that they would be prepared to enter into a Project Agreement with any of the shortlisted Respondents if they are identified as the Preferred Proponent following the Request for Proposal stage. The RFQ responses must contain sufficient information to allow the Selection Committee to make this determination in accordance with the evaluation criteria presented in the RFQ.

#### RFQ Outline

The RFQ will be prepared for the specific project. All legal conditions and clauses must be written or approved by Alberta Justice. The complete RFQ document should be reviewed by Alberta Justice prior to being issued.

In general, the RFQ should contain the following;

- Introduction
- The Project
- RFQ Requirements
- Respondent Team
- Respondent Experience
- Respondent Plan
- Competitive Advantage
- RFQ Evaluation
- Appendices (e.g. defined terms, templates, forms)

### Request for Qualifications Commentary

#### Introduction

The introduction presents the opportunity to prospective Respondents and gives an overall summary of the what, where and why of the Project and how prospective Respondents participate in the process.

The Introduction should contain the following:

##### Business opportunity

- Provide an overview of the Project, the form of the P3 procurement (Design, Build, Finance and Operate) and schedule.

##### Background information.

- Provide sufficient information to interest prospective respondents from outside of Alberta and Canada who may not know much about the Project, the province or the department.

##### Project and RFQ Objectives

- Identify the objectives of the department for the Project and the DBFO procurement, as well as the purpose of the RFQ.

##### Instructions to respondents

- Give instructions to respondents on submitting responses, as well as other administrative information such as the time and location of information sessions, registering attendance at information sessions, nature and location of available information, department contacts and procedures for addenda, questions and communications.

##### No lobbying

- This is a required clause to prevent political or other lobbying by any interested party

##### No liability

- This is a required clause that reserves the right of the department to modify or cancel the procurement of the Project.

##### Defined terms

- The defined terms used in the RFQ can be summarized in an Appendix.

#### The Project

##### Description of the project

- Capital works component
- Any upgrades of existing works
- Operating and maintenance component
- Any existing works that will be included in the operating or maintenance component
- Any services to be provided as part of the DBFO
- Revenue generating opportunities
- Private financing component

- Facilities, land or services being provided by the Department.

### Procurement process

- Describe the RFQ short-listing and the RFP submission process, including any staged submissions (see Management Framework: Procurement Process).
- Identify any honoraria that will be paid and conditions for payments.
- Clarify that the department will not use a Best and Final Offer approach and will not enter negotiations with the Preferred Proponent.

### DBFO Agreement

- Identify the schedule for releasing the draft DBFO Agreement and the opportunities for Proponents to provide comments and meet with the Project Team to review the Agreement.
- Include statements that the final form of the Agreement will be finalized before the submission of the financial proposal and that there will be no further negotiations with the Preferred Proponent.

### Procurement schedule

- Provide the expected schedule for the key procurement and Project milestones including;
  - RFQ submissions
  - Issue RFP
  - RFP staged submissions
  - DBFO Agreement comments and meetings
  - Final submissions
  - Notification of Preferred Proponent
  - Execution of DBFO Agreement
  - Capital works completion (and any required interim completion dates)

## RFQ Requirements

This section includes the standard terms and conditions for the RFQ. Alberta Justice will advise on the form of these terms and conditions.

### Ineligibility

- Consultants retained by the department in relation to the Project are ineligible to be on a Respondents team.
- The Fairness auditor is ineligible to be on a Respondents team.
- Members of the Legislative Assembly of Alberta are ineligible to be on a Respondents team.
- Failure to comply with these conditions or disclose any relationship or association that creates a conflict of interest or perceived conflict of interest can result in disqualification of the Respondent.

### Respondent Contact information

- The Respondent must provide a contact organization and individual that will be responsible for all communications on behalf of all members of the Respondent team or consortium.

### Consortium member firm declarations

- Team or consortium members must acknowledge that they have agreed to participate in the submission.

## Submission format and numbers of copies

### Confidentiality of submissions and collection of personal information

- Describe the responsibilities and duties under the Freedom of Information and Protection of Privacy Act.

### Publicity

- Respondents should not issue press releases and other publicity without department permission.

### No collusion

- Respondents must not collude with other Respondents, team members or consortia.

### Non-conforming submissions

- Outline the department's options in the case of non-conforming submissions including immaterial errors, material errors and inadvertent omissions.

### Expenses

- The cost of preparing the RFQ submission is solely the responsibility of the Respondent.

## Team and Experience

These sections of the RFQ allow the Respondent to present their qualifications to the department.

The Respondent should provide details on;

- Team members including role, contact information, legal status, past experience and references.
- Key individuals (and back-ups) including employer, role, experience, past projects and references.
- Substitutions after submission of the response.
- The use of templates or forms can assist in the preparation and review of this material. Such templates or forms should be included in the appendices of the RFQ.

## Plan

The Respondent should present their plans for:

- Design and construction including;
  - Design-construction organization and management.
  - Design management
  - Construction management
  - Quality management
  - Safety
  - Environmental management
  - Whole-life asset management
  - Innovation
  - Cost certainty
- Operations and maintenance
  - O&M organization and management.

- O&M whole-life asset management
- Service management
- Public safety
- Quality management
- Environmental management
- Innovation
- Cost control
- Financing Plan
  - Financing team organization and management.
  - Security or letter of credit required at time of final submission
  - Equity financing including anticipated sources
  - Debt financing including anticipated sources
  - Innovative approaches or alternatives contemplated to financing plan
- Consortium management plan
  - Governance of consortium during the procurement and delivery phases of the Project including decision making, contractual relationships between members, risk allocation between members, public relations.

### Competitive Advantage

The Respondents should succinctly describe why their experience, organization, innovation or methodology gives them an advantage and why the department should short-list them.

### RFQ Evaluation

In order to treat all Respondents openly and fairly the Department must describe how the submissions will be evaluated.

#### Example Scoring Matrix

Evaluation Category	Weighting (%)
Project Lead <ul style="list-style-type: none"> <li>● Organization and Plan</li> <li>● Team Members' Experience</li> <li>● Key Individuals' Experience</li> </ul>	#
Design-Construction Team <ul style="list-style-type: none"> <li>● Organization and Plan</li> <li>● Team Members' Experience</li> <li>● Design Key Individuals' Experience</li> <li>● Construction Key Individuals' Experience</li> </ul>	#
Operation and Maintenance Team <ul style="list-style-type: none"> <li>● Organization and Plan</li> <li>● Team Members' Experience</li> <li>● Key Individuals' Experience</li> </ul>	#

Financial Management Team <ul style="list-style-type: none"> <li>• Organization and Plan</li> <li>• Team Members' Experience</li> <li>• Key Individuals' Experience</li> </ul>	#
Total	100

Pass/fail requirements

- Clearly state pass/fail evaluation criteria, such as financial capacity and capability to arrange financing must be stated.

Basis of evaluation

- Include conditions that allow the Respondents to be evaluated on the basis of the submission, including any information obtained through clarifications, interviews and banking and reference checks.

Debriefing

- Unsuccessful Respondents may be debriefed in accordance with the Management Framework – Procurement Process.

### Request for Proposals

The intent of the Request for Proposals is to invite detailed technical and financial proposals from the three shortlisted Proponents. These proposals are used by the evaluation teams and selection committee to evaluate the proposals against pre-defined criteria and select the Preferred Proponent. The department will enter into a Project Agreement with the Preferred Proponent.

The RFP must focus on the technical and financial merit of the proposals and must not re-evaluate the qualitative factors already considered at the RFQ stage. The RFQ process has already identified three proponents that are qualified to undertake the Project and inclusion on the shortlist indicates that the department is prepared to enter an Agreement with the Proponent that submits the "best" proposal (see Management Framework: Procurement Process).

#### RFP Outline

The RFP will be prepared for the specific project. All legal conditions and clauses must be written or approved by Alberta Justice. The complete RFP documentation should be reviewed by Alberta Justice prior to being issued.

The RFP will typically consist of three volumes;

1. Instructions to Proponents
2. Project Agreement
3. Performance Specifications

#### Instructions to Proponents (ITP)

In general, the ITP should contain the following;

- Introduction and General Information
- Design and Construction
- Service, Operation and Maintenance
- Business Arrangements
- Proposal Submission and Selection Process
- Miscellaneous (other matters)
- Appendices (e.g. submission requirements, defined terms, forms)

#### Project Agreement

The draft version of the Project Agreement should be issued with the ITP. Proponents should have the opportunity to comment on the Agreement prior to re-issuance in final form. The final form of the Agreement will be executed by the Successful Proponent and Alberta Infrastructure and Transportation.

#### Performance Specifications

The performance specifications present the technical requirements for the Project. The contents will be bound into the final form of the Project Agreement as schedules.

### Instructions to Proponents Commentary

#### Introduction

Invite the short-listed proponents to submit proposals in accordance with the RFP. Identify the form of the RFP (typically three volumes). General or continuing conditions such as confidentiality and exclusion of liability may be restated.

#### General Information

##### Background

- Briefly recap the selection process to date.
- Identify the shortlisted Proponents.

##### Project Overview

- Describe the work and identify the Project location. Include figures as appropriate.

##### Transaction Overview

- Present all the key elements of the transaction including
  - Design, construction and financing
  - Operations and maintenance
  - Provision of services
  - Contract period
  - Payment mechanisms (progress, fixed, indexed)
  - Performance adjustments
  - Termination at end of operating period (handback)

##### Project Timing

- Identify the required guaranteed capital works construction completion date.

##### Project Objectives

- Recap the department's objectives for the Project as stated in the RFQ. These should be consistent throughout the whole procurement process.

##### Project Scope

- Identify all the major components of the capital works
- Identify the operations, maintenance, rehabilitation activities
- Identify the services to be provided
- Identify the required financing component
- Identify any other activities or components of the project

##### Partnering

- Alberta Infrastructure and Transportation has a strong record of partnering on major projects and believes that the approach is very beneficial.
- Proponents are required to submit their partnering strategy as part of the Submission Requirements.



### Safety Management

- Safety is of the utmost importance to the department.
- The Successful Proponent will be responsible for all safety aspects of the Project to users, the public and workers.
- Proponents are required to submit their Safety Plans as part of the Submission Requirements.

### Environmental Management

- Environment stewardship is a core value of the department.
- The Successful Proponent will be responsible to ensure compliance to all environmental requirements.
- Proponents are required to submit their Environmental Management System as part of the Submission Requirements.
- The Environmental Management System should comply with ISO 14000

### Quality Management

- The Successful Proponent is responsible for all quality control and quality assurance for the entire term of the Project Agreement.
- Proponents are required to submit their Quality Management System as part of the Submission Requirements.

### Risk Allocation

- The appropriate allocation of risk is critical to the success of any Government of Alberta P3 procurement.
- Risk allocation was initially identified during the Feasibility Assessment and subsequently refined during the approvals process.
- Provide a discussion and table summary of the allocation of risks of the Project. The details of the Project risks and responsibilities are contained in the Project Agreement.

### Use of the Proposal

- Portions of the successful Proposal will be incorporated into the Project Agreement schedules and form part of the Agreement

## Design and Construction

This section of the ITP presents an overview of the key facets of the design and construction of the Project. Details are provided in the Performance Specifications (Technical Requirements) and the Project Agreement

The Successful Proponent must design and construct the works to meet the relevant requirements set out in the Project Agreement, Performance Specifications and the functional planning, programming or pre-design studies.

### Innovation

- The department encourages innovation in the Proponents design and construction subject to meeting the Project requirements.
- Provide any design work already completed and other pertinent information in the electronic data room.

## Design and Construction Specifications

- The department should provide any illustrative design and construction specifications relevant to the Project that in the department's view may satisfy the technical requirements of the Project.
- The Proponents may or may not choose to use these specifications.
- Proponents submit their proposed specifications as part of the Submission Requirements.

## Designs

- The Successful Proponent will cause independent design checks to be conducted and provide evidence that they have been conducted to the department.

## Pre-design Studies

- The department should undertake studies to define functional requirements prior to completing the business case.
- The pre-design studies are to be made available to Proponents
- Proponents may adopt the solutions in the pre-design studies or develop their own solutions provided they can demonstrate to the satisfaction of the department that the solutions meet the functional requirements for the Project.

## Future Infrastructure

- Generally, the new works should be "full build out" at the time of initial construction or specific timing must be provided for the availability of facilities.
- Future, unplanned expansion of the infrastructure is generally the responsibility of the department.
- The Successful Proponent is responsible for ensuring that the capital works has the capacity to meet the stated requirements.

## Land

- The department is generally responsible for obtaining the land for the facility and should have it in place prior to the execution of the Project Agreement.
- The RFP should identify if the Proponent may develop any unused land for commercial purposes.

## Other Parties

- The Successful Proponent must coordinate its work with local municipalities and comply with any existing agreements or applicable bylaws.
- The Successful Proponent may coordinate its work with local developers.
- The Successful Proponent must negotiate and coordinate its work with utility companies, and comply with any existing agreements.
- The Successful Proponent must negotiate with railway companies and comply with any existing agreements.
- Agreements reached may be subject to approval by the department if they could set precedence or impose future obligations on the department.

## Environmental and Historical Resources

- The department should conduct environmental and historical resource assessments and acquire permits or approvals as part of the pre-design studies.

- The Successful Proponents must adhere to the approval and permit conditions and apply for any additional permits or approvals required for the work.

### Service, Operation and Maintenance

This section of the ITP presents an overview of the key facets of the service provision, operations and maintenance of the Project. Details are provided in the Performance Specifications/Technical Requirements and the Project Agreement.

The Successful Proponent will be responsible for the specified operations, maintenance and services.

#### Service, Operation and Maintenance Plans

- The Proponents submit details of their plans in accordance with the Submission Requirements.

#### Compliance

- The Successful Proponent must provide the services, operate and maintain the facility to meet the relevant requirements set out in the Project Agreement and Performance Specifications.
- Failure to meet the obligations will result in performance based adjustments to payments as specified.

#### Handback

- If the department is to take over the infrastructure on expiry of the Project Agreement, the facilities must satisfy the specified handback standards as detailed in the Performance Specifications.
- Handback inspections should be conducted during the last few years of the Agreement to identify potential deficiencies.
- Payment holdback may be required to cover the cost of fixing any handback deficiencies.

### Business Arrangements

#### Business Model

- The Successful Proponent is responsible for the Project over the term of the Agreement. In return, the Successful Proponent receives pre-defined payments over the term of the Agreement.
- Payments are from the department.
- The Province of Alberta does not guarantee any debt.
- The structure of the contracting entity is established by the Successful Proponent to offer best value to the department.

#### Timing

- Identify when the capital work is to be complete and open for use.
- Identify the duration of the operating period.
- Identify how early or late completion of the capital work will be dealt with.

### Payments

- Payments by the department to the Successful Proponent may consist of;
  - Progress payments to offset some of the capital borrowing requirements.
  - Capital payments for the remaining capital costs during the operating period.
  - Operating payments during the operating period
  - Maintenance payments during the operating period.
  - Service payments during the operating period.
  - Third party revenues
  - Performance-based payment adjustments and holdbacks (on progress payments and handback deficiencies) to amounts otherwise payable.
  - Special adjustments during the operating period for predefined events.

### Ownership

- The Province of Alberta retains freehold interest in the land required for the facility and enters into a nominal amount ground lease.
- The Successful Proponent owns all infrastructure improvements it constructs.
- On expiry of the Project Agreement all interest in the infrastructure improvements reverts to the Province free and clear.

### Tax

- Each Proponent needs to satisfy itself of the tax consequences of the Project Agreement.

### Insurance

- Certain mandatory insurances are required as detailed in the Project Agreement.
- Insurances must comply with Alberta legislation.
- The Successful Proponent can obtain additional insurance.

## Proposal Submission and Selection Process

### Process Overview

- The evaluation process may be multi-staged. A four stage process may consist of (see Management Framework: Procurement Process)
  - Innovation submission
  - Preliminary technical submission
  - Detailed technical submission and Indicative Financial Model and Indicative Financial Plan.
  - Financial model, Financing Plan, Financial Offer and Proposal deposit. Specified final components of the technical submissions are to be resubmitted with this submission.
- The intention is to provide early feedback to Proponents in order to minimize the possibility of unacceptable proposals.
- Proponents are also invited to submit comments on the draft Project Agreement.
- Provision of the Preferred Proponent deposit.
  - Within 3 business days of notification of the Preferred Proponent status.
- Execution of the Project Agreement
  - Within 10 business days of notification of the Preferred Proponent status
- Provide milestone dates for each of the stages and events.

### Department Representative

- State the contact information for the named Department Representative for the RFP.

### Information Meeting

- Provide details of the information meeting for all Proponents.
- Provide details of any information meetings with utility companies, municipalities or other interested parties.

### Data Room

- Provide the electronic address for the data room and information on user ID and/or passwords
- Provision of hard copy information.

### Site Access

- Include details on how Proponents may access the Project site
- Give information on any access agreements the Proponent is required to enter into.
- Explain insurance requirements.

### Clarifications, Questions and Addenda

- Provide instructions on how Proponents may submit questions to the department and confidentiality of responses.
- The department may issue addenda in response to questions raised by the Proponents.
- The department may request clarification to information submitted by Proponents.
- The department may require meetings with Proponents.
- The department may entertain requests for meetings from Proponents.
- Establish timelines for the submission of questions and responding to requests for clarifications.

### Comments on Project Agreement

- The department allows the opportunity to review and provide comments on the draft Project Agreement to achieve an optimal Agreement.
- The Proponents suggest modifications to the Agreement along with reasoning.
- The department may meet with Proponents to gain further understanding of any proposed modifications.
- Proponents should involve their financial advisors, lenders and equity investors in the review.
- The department issues the final form of the Project Agreement before the deadline for the final Proposal submission.
- The Preferred Proponent signs the final form of the Project Agreement without further negotiation or amendment or forfeits the Preferred Proponent Deposit.

### Submission Procedure

- Provide information on the number of copies and form of each submission (hard copy, electronic, bound, unbound)
- State time, location and person the submissions must be received.
- Identify any labeling requirements.

- If using a staged submission, the final submission must be a complete stand-alone Proposal incorporating the earlier submissions. All changes and clarifications from the earlier submissions must be shown.
- The final submission, including the Financial Offer shall be irrevocable, valid and binding for 90 days from the final submission deadline.

### Proposal Deposit

- Each Proponent must provide a certified cheque or unconditional irrevocable letter of credit at the time of the final Proposal submission.
- The deposit will be returned to the unsuccessful proponents after the Preferred Proponent has executed the Project Agreement.
- The deposit will be returned to the Successful Proponent when they provide the Preferred Proponent deposit.
- The amount of the deposit should be substantial (approx 0.5% of the estimated initial capital cost)

### Preferred Proponent Deposit

- In order to secure the financial commitment of the Preferred Proponent, they should be required to submit a Preferred Proponent Deposit upon notification of their preferred proponent status.
- The deposit is returned once the Successful Proponent has obtained committed, unconditional financing of 10% the value of the initial capital cost or has completed 10% of the capital works.
- The amount of the deposit should be approximately 5% of the initial capital cost.

### Proposal Content and Evaluation

- Each of the staged submissions should be reviewed to ensure that they are complete and address the stated Submission Requirements;
  - Assessment that a substantially complete submission has been received
  - Determination of the acceptability of the required forms
  - Determination of the acceptability of each component of the stage submission (pass/fail basis) or scoring of the components (qualitative added value basis).
- The submissions will be evaluated by technical and financial teams (see Management Framework: Procurement process).
- The department will use specific evaluation criteria
- A Proponent will fail any submission if, after clarification, it is deemed that the submission is materially incomplete or unacceptable. Failed Proponents will be excluded from any further involvement in the selection process.
- The Financial Offer will be assessed on a total net present value basis. The net present value will be calculated using a discount rate based on the borrowing rate of the Province of Alberta at the close of one business day before the deadline for the final submission.
- The department should reserve the right not to enter into a Project Agreement with any Proponent.

### Honorarium

- The department will generally pay an honorarium to each unsuccessful Proponent whose final submission met all requirements.

- If the department does not enter an Agreement with any Proponent, the honorarium should be paid to each Proponent whose final submission met all requirements.

### Fairness Auditor

- Identify that the department has retained a Fairness Auditor to monitor and report on the RFP process.

### Miscellaneous (other matters)

#### Eligibility

- Identify all companies and affiliates that are involved with the department on the Project and are therefore not eligible to participate with any Proponent.

#### Proponent Team Membership

- Identify which team members may not be on more than one Proponent team (e.g. Lead team members, Prime team members)

#### Changes to Proponents' Team Structure

- Changes from the Team structure identified in the RFQ are subject to approval by the department.
- The department may change the short list status of Proponents accordingly.

#### Standard Conditions

- Include clauses regarding (Alberta Justice must be consulted);
  - Conflict of Interest
  - Proponents' Expenses
  - Ownership of Documents
  - Copyright and licenses
  - No Collusion
  - No Lobbying
  - No Publicity
  - Confidentiality
  - Freedom of Information and Protection of Privacy
  - Amendments to and Cancellation of Process
  - Accuracy of Information
  - No Contract
  - Limitation of Damages
  - Time
  - Jurisdiction

#### Debriefing

- The department will debrief Proponents at the end of the procurement process upon request.

### Appendices (e.g. submission requirements, defined terms, forms)

The content of the Appendices are project dependent.

A typical table of contents for the Appendices could be;

## Appendix 1. Submission Requirements

### Submission #1 - Preliminary technical

- Proponent information
- Management plan
- Project Schedule
- Preliminary design
- Preliminary public communication strategy

### Submission #2 – Detailed Technical

- General information
- Design reports
- Safety audit plan
- Construction management plan
- Operations and management plan
- Infrastructure whole-life management plan
- Quality management plan
- Environmental management plan
- Safety plan
- Communication plan
- Partnering plan
- Financial capacity
- Proof of Insurance
- Indicative financial model
- Indicative financing plan

### Submission #3 – Financial Offer

- General information
- Submission #1 as clarified
- Submission #2 as clarified
- Insurance
- Final financial model
- Final financing plan
- Financial offer
- Proposal deposit

## Appendix 2. Required Forms

Proponent declarations for the Proponent and Prime Team Members (submission #1,2 and 3)

Acknowledgement of No Material Adverse Change

Insurance Brokers' Letter

Form of Letter of Credit

Financial Offer form

Capital payment price adjustment election form

- The department may offer a price adjustment to offer some protection against interest rate changes between the deadline for the final submission and the notification of Preferred Proponent status.

## Appendix 3. Definitions



### Performance Specifications

The Performance Specification is the basis on which the department and its stakeholders state in performance or output terms what they need to achieve from the facilities and services to be provided. It helps to frame the proponents' response to the Request for Proposals.

The Performance Specification should detail what needs to be achieved, not how it is to be achieved. The following examples illustrate the differences between the two:

- "Meeting rooms must have an adequate power supply to meet operational requirements" is an output.
- "Ensure that meeting rooms have at least two pairs of 120V power supply socket outlets available on each wall" is not an output.
- "Ensure that there are adequate arrangements in place to maintain the safety of the facility and its users" is an output.
- "The facility should have a 24-hour security patrol" is not an output.

#### Need for Performance Specifications

A well-drafted Performance Specification is fundamental to developing a robust P3 Agreement and the successful delivery of long-term services. It is part of a process that is fundamentally different to traditional procurement in that the emphasis is on the service outcomes and outputs, explicit allocation of risks, and the integration of design and build with the operation of facilities.

In comparison, conventional procurement methodology is often an iterative process in which an outline of the capital project is drawn up and costed. Further iterations and costing revisions normally occur during the planning and design process before a final scheme is agreed and the contract for construction is tendered. Using this process, the risks of cost increases and failure due to inappropriate design, planning, etc, tend to fall on the department. Traditionally, only limited account is taken of ongoing running costs in terms of building life-cycle maintenance, the ongoing provision of services, and the efficiency of facilities.

Performance Specifications encourage a focus on overall needs and objectives. A well-produced Performance Specification should allow new ideas about the design, construction and operation to flourish. Most critically, because this approach encourages proponents to develop the means to deliver the outputs within the context of a fixed, performance-related pricing mechanism, it focuses much more attention on project risks. This should lead to better designed and operated facilities in the longer term.

#### Stimulating innovation

The emphasis which the P3 process places on performance and outputs should encourage innovation in design and operational methods. In order to achieve value-for-money, a P3 procurement must be carefully tuned to balance the risks transferred to the proponent with the need to secure competitive financing. This does not necessarily rule out imaginative proposals, but a reliance on experience and knowing what will work is at the heart of the best projects.

The P3 process itself also offers scope for innovation. New forms of teamwork develop within proponent teams, with the potentially creative synergy between designers, contractors, and operators finding innovative ideas. In addition, the P3 approach should encourage proponents to focus more sharply on ideas and solutions that will drive down the whole life-cost of the project. This will also be attractive to lenders, improving their chances of being the successful proponent.

A P3 presents a challenge to the private sector to deliver facilities and services which will improve the level of service and remove unwanted problems. This challenge can only be met effectively if the department and other stakeholders are clear about their requirements, and communicate these in a way that allows the private sector to develop the optimal solution. Hence, proponents need to be able to work to a well-written Performance Specification from the outset of the P3 procurement.

### Key Features of the Performance Specifications.

The scope of the Performance Specification is very project dependent.

The range of high-level outputs required in a government facility project may typically cover some or all of the following:

- Demolition of existing buildings.
- The provision of serviced accommodation.
- Alterations to existing buildings.
- Provision of new/altered forms of access to the facility (e.g. roads, disabled access).
- Provision of recreational, sports, parking or other external facilities.
- Building, installations and asset maintenance.
- Site and landscaping maintenance.
- Cleaning and waste management.
- Furniture and equipment.
- Energy management.
- Caretaking/site supervisory services.
- Security and safety.
- Catering.

Information technology and other support activities (e.g. reception, administration, printing, photocopying, library, records management) could be delivered under the P3 but are not usually included. This may be due to a lack of market interest, inadequate value for money or that the service is integral to the provision of the core public service. These assumptions need to be fully tested when undertaking the initial feasibility assessment and business case (see Management Framework: Assessment).

### Factors affecting the scope of an Output Specification

A sufficient range and level of services has to be included in order to:

- Optimize the whole-life benefits of integrating design with operational solutions
- Sustain the level of competition to ensure value for money
- Make the project attractive to investors and lenders
- Allow the proponents to effectively manage the risks

These factors may provide a useful checklist for assessing the feasibility of excluding a service altogether.

## Developing Effective Performance Specifications

Producing an effective Performance Specification involves defining the end without specifying the means. Outputs should clearly and comprehensively state what is required, and the standards to be achieved. How the outputs are to be achieved will form part of the proposal from the Proponents.

In summary, a good Performance Specification must:

- Reflect the actual requirements of users.
- Be clear, concise and unambiguous.
- Give the potential proponents sufficient information to decide and cost the facilities and services they will offer.
- Take account of the need for compliance with legal or other statutory requirements and policies, and compatibility requirements – e.g. with IT systems.
- Specify any constraints which are essential to defining a deliverable project - e.g. planning requirements, access times, 'go live' date. These should distinguish between mandatory and other constraints.
- Permit projects to be evaluated in the procurement process against defined criteria.
- Identify those service areas which are critical to the availability and performance of the facility and which therefore will be given most weight in the payment structure and performance monitoring.
- Only contain requirements that can be afforded by the department or stakeholders and are deliverable.

A good Performance Specification must communicate what is expected from proponents, leaving them room to produce innovative, cost-effective solutions to the clearly specified needs and requirements of the department and stakeholders.

## Risk transfer

The Performance Specification, by defining outputs, necessarily defines many of the risks that the proponents are being asked to take on. It is for the proponents to assemble the optimum means of delivering the results required, and they do this at their own risk of failure. If the facilities or services fail in some way, the department cannot be blamed if it has had no responsibility for suggesting how those facilities and services are to be provided, and has effective recourse through the payment mechanism.

For instance, if a Successful Proponent installs an excellent state-of-the-art heating system (at perhaps higher cost than the department might have been able to afford on its own), it should be able to deliver the stated outputs more cost-effectively over the life of the contract. Because this decision has been made by the proponent, not by the department, it is the proponent that takes the consequences of running costs being greater than anticipated. No approval by the department, signing-off of drawings, or agreement as to details, absolves the proponent from its contractual responsibility.

### Quality standards

The Performance Specification should clearly define the quality standards of facility provision and services to be achieved. Standards are likely to be a combination of:

- Provincial or municipal standards
- Industry standards (ISO etc)
- Statutory or regulatory standards
- Best practice by benchmarking.

Without clear standards, the Performance Specification will be open to wide misinterpretation in terms of the required facility provision and service levels, and therefore cost. Responses from proponents are more likely to be less consistent, making a fair evaluation difficult.

A lack of clarity in the Performance Specification will also make it harder to build up the public sector comparator (PSC) properly, making value for money more difficult to establish. The PSC must be constructed on the same basis as the Performance Specification so that the comparison is on a like-for-like basis. Enhanced standards are sometimes specified in the Performance Specification but the PSC is costed based on traditional standards. This does not provide a good basis for establishing value for money (see Management Framework: Assessment).

### Managing the risks of changing standards

The Performance Specification needs to be drafted so that the emphasis is on the proponent keeping pace with changing standards. How the risks and rewards of such changes are reflected in the unitary charge must be included in the Project Agreement and the payment mechanisms. The approach will vary according to the nature of the risk. For example, some of these risks will fall within the generic definitions of general/specific legislative and regulatory risks, whilst others will have to be separately identified and catered for. In determining how such risks should be managed, a balance needs to be struck between providing incentives to the proponent to continue providing the same service levels, and value for money. Sufficient incentives should be developed to encourage the absorption of any additional costs arising from changing standards, without transferring so much risk that the proponent will try to recover the possible costs indirectly, whether or not they occur.

In some instances, it may be better value for money to share the risks of changing standards. This may be done in a number of different ways, including:

- Formula
- Capping the costs of change to both the department and the proponent.
- Negotiation at the time of the occurrence of the change within a pre-agreed framework.
- Both the department and the proponent bearing the risks at different points in the contract.

### Compliance with standards

The Performance Specification must dovetail with the payment mechanism, which is another important aspect of the RFP.

The proponent will be expected to bear the risk of non-compliance with agreed standards. The Agreement could be framed so that unitary charge payments are reduced if the proponent does not take corrective action in line with the agreed payment mechanism. Another way of specifying this is to stipulate that the maximum amount of the unitary payment must be earned by achieving the highest standards. If lower standards are achieved, lower payments will be made. There also needs to be a mechanism so that if the standards fall below certain given levels, further consequences follow.

A practical form of performance monitoring needs to be agreed which minimizes disputes and is not expensive or excessively time-consuming for the department/program ministry/SIO or the proponent.

As part of the response to the RFP, the proponents need to describe their quality assurance and control processes in a way that will demonstrate how the delivery and continuity of services are to be achieved over the life of the contract. The onus should be on the proponent to develop a self-monitoring system, with the department requirement being for exception reporting and the audit of such arrangements.

Within the proposed payment mechanism set out in the RFP, the department needs to reflect the standards specified in the Performance Specification through relevant performance indicators. Some generic examples are set out in Table 1.

Table 1

Type of standard	Measuring performance
Frequency/timeliness/continuity of service.	Agreed service plans. Records of service delivery. Sample checks.
Response times/rectification periods.	Log of failure reports and the type and timing of the response. Sample checks.
Client satisfaction.	Number and type of 'hotline' calls. Log of client complaints and responses. Independent reviews. Client surveys.
Standards of physical resources.	Condition surveys, inspection reports. Sample checks. Photographs (e.g. of damage with the date/time electronically recorded).
Compliance with recognized standards.	Proponent-driven or external or client audits, production of certificates etc. Time taken to implement new standards effectively.
Quality and capabilities of personnel.	Evidence of effective recruitment and retention policies (including training).
Security and Safety.	Log of incidents involving stealing and vandalism and responses taken.

The 'client' will normally be program ministry and SIO. In measuring client satisfaction views of users and staff should be taken into account as well, where practical.

Client surveys are a tool for the purposes of informing a debate between the department, program ministry or SIO and the proponent as to the effectiveness of service delivery.

A possible incentive may be to allow the proponent to win back penalty payments as a result of positive feedback from surveys. This will, of course, require agreement on an acceptable survey methodology.

### Method statements

In order to cost proposals properly, proponents will need to develop a high degree of detail in terms of their method statements and quality plans for the manner in which they intend to provide the facility and deliver the services. It is one thing to confirm that the facility will be clean at all times, but quite another to say that what that means is cleaning three/four/five times per day or whatever (with very different cost consequences). Performance Specification on its own is not enough for costing purposes. The department and program ministry also needs to know what it is getting and be satisfied on the adequacy of the services.

The proponents should provide method statements during the RFP that should demonstrate realistically how facilities are to be provided and services delivered at the required standards. The RFP should make it clear to proponents that they could, for example, offer a better service and invite discussion where:

- The standards appear undeliverable and/or unaffordable.
- Risk management needs to be considered further.
- The outputs require clarification.

There will undoubtedly be aspects of the Performance Specification that need clarification. The ITP must include processes for managing clarifications.

### Relationship with other contract documents

The Performance Specification is produced as a separate volume in the RFP documents. It remains, however, inseparable from other key documents. In particular, the Performance Specification needs to be cross-referenced appropriately to:

- The risk matrix which sets out proposals for risk allocation.
- The payment mechanism and the performance monitoring regime.
- Instructions to proponents.

### Acknowledgement

1. Output Specifications for PFI Projects, a 4Ps Guide for Schools. Public Private Partnerships Programme. U.K. 1999

## Developing the Performance Specification

### Responsibility for the Producing the Specifications

In developing the Performance Specification, the department Project Team should be able to draw on their experience of standard-setting but technical consultants may be needed to assist if appropriate in-house expertise is not available.

The production of the Performance Specification must not be left to consultants or advisors and must involve all stakeholders closely. Involvement and discussion are likely to result in wider ownership of the end product, and thus contribute to a better partnership. Those who may need to be consulted include:

- Supported Infrastructure Organization (SIO)
- Program ministry
- Existing facility users and service providers
- Property, developer, engineering, construction, architectural advisors
- Procurement experts
- Alberta Justice
- Alberta Finance
- Industry and professional associations

### Preparing the Performance Specification

There are a number of approaches to developing the Performance Specification. Workshops or brainstorming sessions, involving the key stakeholders, provide a vehicle for creating shared ownership of the end product and for achieving consensus on realistic, affordable outputs. It can be helpful to use an external facilitator for these sessions. An informed and experienced facilitator may encourage more lateral thinking, can provide the necessary focus, and act as broker to reconcile any differences.

When running a workshop, the Project Team may choose not to do any preparatory work but to start from a blank piece of paper. Alternatively, they may use some initially drafted thoughts as a basis for the discussion.

Another approach, but one that is compatible with the use of workshops, is to start off with the department's conventional specifications that can then be converted into output or performance criteria. At the outset it may be easier for many of the stakeholders to think in terms of inputs, and this may therefore be a suitable way of initiating the process. Care must be taken, however, to ensure that the final product does not retain unnecessary or unsuitable inputs.

A third approach has been to refer to Performance Specifications used elsewhere. In following this route, it is important not to adopt another document wholesale, but to use it selectively and as a basis for determining the project's own particular needs. It is intended that Alberta Infrastructure and Transportation will develop a "reference library" of typical specifications over time.

Production of the Performance Specification invariably takes longer than expected and this should be accounted for in the procurement schedule.



## Inputs versus outputs

Care should be taken to avoid a totally purist approach to drafting the Performance Specification which could leave proponents second-guessing what is wanted or acceptable. Such an approach may leave to chance (and therefore error) more detailed aspects which are seen as absolutely non-negotiable by the program ministry or SIO but which have been deliberately omitted because they are seen as inputs. This might apply, for instance, to certain aspects of the brief for the building, fixed equipment or certain furniture.

Pragmatic compromises can be made as to the balance between the inputs, intermediate and final outputs, and the parameters and standards specified. In moving away from outputs, the project team needs to consider whether the change in emphasis materially compromises risk transfer; stifles creative thinking; limits future changes; or potentially affects value for money.

For example, it would be acceptable to state that whiteboards are required in each meeting room. It would not be appropriate to prescribe that the whiteboards must be replaced every three years, as it is the responsibility of the proponent to determine the quality and replacement cycles in line with their approach to whole-life costs. Moreover, whiteboards may not be needed at all in future, given the increasing use of new technology.

In this example, it is better to take the 'input' approach for whiteboards in the Performance Specification rather than have to include them later. It is not an issue that will significantly affect risk transfer and can therefore be included.

## Phasing and timing of developing the Performance Specification

The development of the Performance Specification can be phased to reflect the various stages of the P3 procurement process. An outline Specification could be produced at the business case stage to provide a guide to key principles, objectives and requirements of the project, and should reflect the outcome of any market-soundings. It can then be further developed once the project has been approved as a P3.

It is worth developing the Performance Specification further for issue in draft form as part of the pre-qualification stage of the procurement process. This gives confidence to the bidders that the government is committed and knows what it is doing, as well as determining issues in advance of the ITP. The level of detail at this stage may be less, so that the authority can take account of ideas generated during the short-listing process.

The detailed Performance Specifications must be issued as part of the RFP. It can be expected that the content will be modified following issue of the RFP documents based on clarifications and questions received from proponents. However, the overall form and approach must not change significantly because of the need for fair and transparent competition.

## Determining and defining performance requirements

The following questions can provide a useful framework for determining and defining outputs/performance requirements:

- What are the objectives of the facility and services to be provided?



- How can these objectives contribute to the successful delivery of the program requirements?
- In the light of these objectives, what is not acceptable (e.g. no off-site catering)?
- What is negotiable (e.g. is IT one of the services provided or not)?
- What is the level and standard of facilities and service that must be delivered (such as core space)?
- What is desirable over that level and standard, if affordable (e.g. recreational space)?
- What service parameters are non-discretionary (e.g. security levels)?
- How do services and outputs rank in terms of functional criticality (i.e. where are the main risks)?
- What is likely to change over the life of the contract and what are the potential drivers? How can such changes be allowed for in the specification, where necessary?
- Is it possible to translate the specified standards into performance measures within the payment mechanism?

### Acknowledgement

1. Output Specifications for PFI Projects, a 4Ps Guide for Schools. Public Private Partnerships Programme. U.K. 1999

## Sample Project Agreement Table of Contents

This table of contents is for illustrative purposes only and is intended to demonstrate the scope of a typical Project Agreement. The Project Agreement must be project specific. The development of the Project Agreement is led by Alberta Justice.

### Illustrative Table of Contents

1. INTERPRETATION
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