



# Progressive Procurement Strategy: **Social Infrastructure**

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SEPTEMBER 2021

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# Progressive procurement: contracting approach

## Distinguishing progressive procurement from delivery model

IO distinguishes the progressive procurement strategy not as a standalone “delivery model,” in itself, but a different way to procure the final contract, which includes a separate Development Phase Agreement and final Project Agreement.

### Development Phase Agreement

The Development Phase is governed by an agreement between the Sponsor(s) and the Development Partner, which includes milestones for design development, required design submittals and terms that prescribe how the Development Phase will be conducted.

### Form of Project Agreement

The progressive procurement strategy can result in a classic form of P3 Project Agreement that is based on fixed pricing and third-party capital at risk, especially when the Sponsor has clearly disclosed approaches to decision-making and approvals.

IO expects that progressive procurement strategies applied to healthcare and other infrastructure projects will result in final contracts that are similar in form to Design-Build-Finance (DBF) or Design-Build-Finance-Maintain (DBFM) contracts.

## WHY

IO continuously improves upon its existing procurement and contracting models, building on its project experience and feedback from industry and public sector clients. Larger and more complex projects – along with market trends and forces – have created the need for new, creative partnerships to facilitate successful delivery of these projects.

## WHAT

A new, progressive procurement strategy fosters collaboration between the owner and its contracting partner, with both parties working together to define project requirements, design, pricing and risk, during the Development Phase of the project, before entering into a final Project Agreement.

## HOW

Development Partners will be selected through a competitive single-stage (gated) procurement process, based on their ability to deliver the full suite of services required during the Development Phase for projects of similar size and complexity, as well as their ability to raise private capital to finance the implementation phase of projects.

## WHEN

When the optimal conditions for classic P3 cannot be met, IO will look to deploy a Progressive Procurement P3 approach.

# A made for Ontario Progressive Procurement P3 Strategy

Infrastructure Ontario (IO) is developing a made for Ontario progressive procurement Public Private Partnership (P3) model for suitable social and other infrastructure projects.

The progressive procurement model will enable the participation of a long-term, sustainable market of qualified firms, competing to deliver projects developed through more collaborative means.

The progressive procurement P3 strategy maintains many features of the P3 model currently employed by IO. However, the strategy incorporates a Development Phase between the procurement and construction phases, where project sponsors (Sponsors) work with the Development Partner to:

Collaboratively develop designs to advanced levels that allow for more

**Efficient and accurate pricing**

Establish a committed project price based on

**Transparent Pricing**

AND

**Advanced Designs**

## Key benefits of the Ontario Progressive P3 Model

The **procurement timeline could be reduced** and there will be **fewer design- and construction-related submittals** during the Request for Proposals (RFP) stage.

The Development Partner will work with Sponsors in a more collaborative manner and have the **ability to shape the design and innovate**.

Sponsors and Development Partners have an opportunity to work **more collaboratively** to develop design, reduce risk and finalize pricing before contracting for project implementation.

Provisions will be included to **hold both Sponsors and Development Partners accountable** through the Development Phase and into the construction and operational phases.

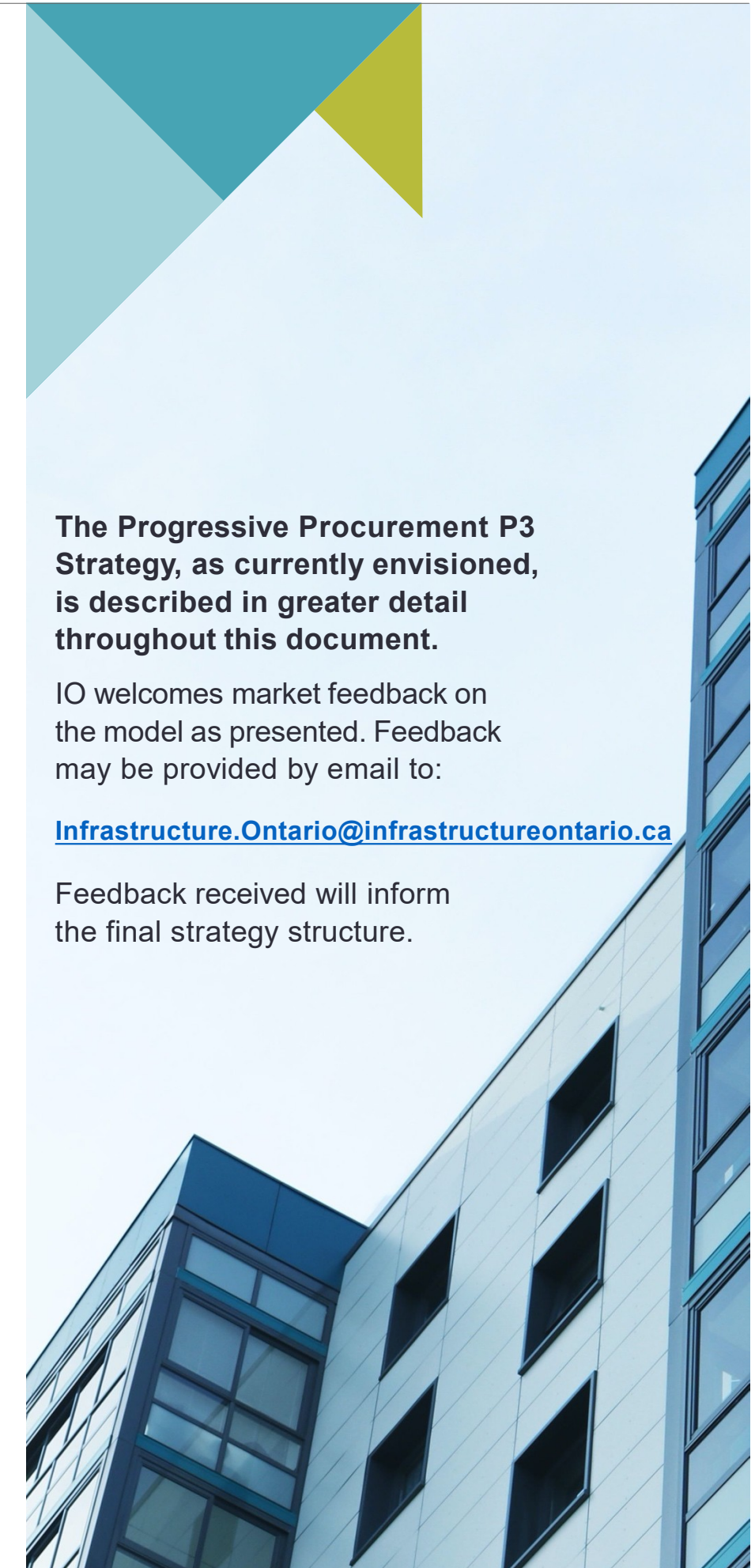
The value of private sector long-term capital continues to be recognized, with **opportunities for private sector long-term equity and debt participation still available**.

The Progressive Procurement P3 Strategy, as currently envisioned, is described in greater detail throughout this document.

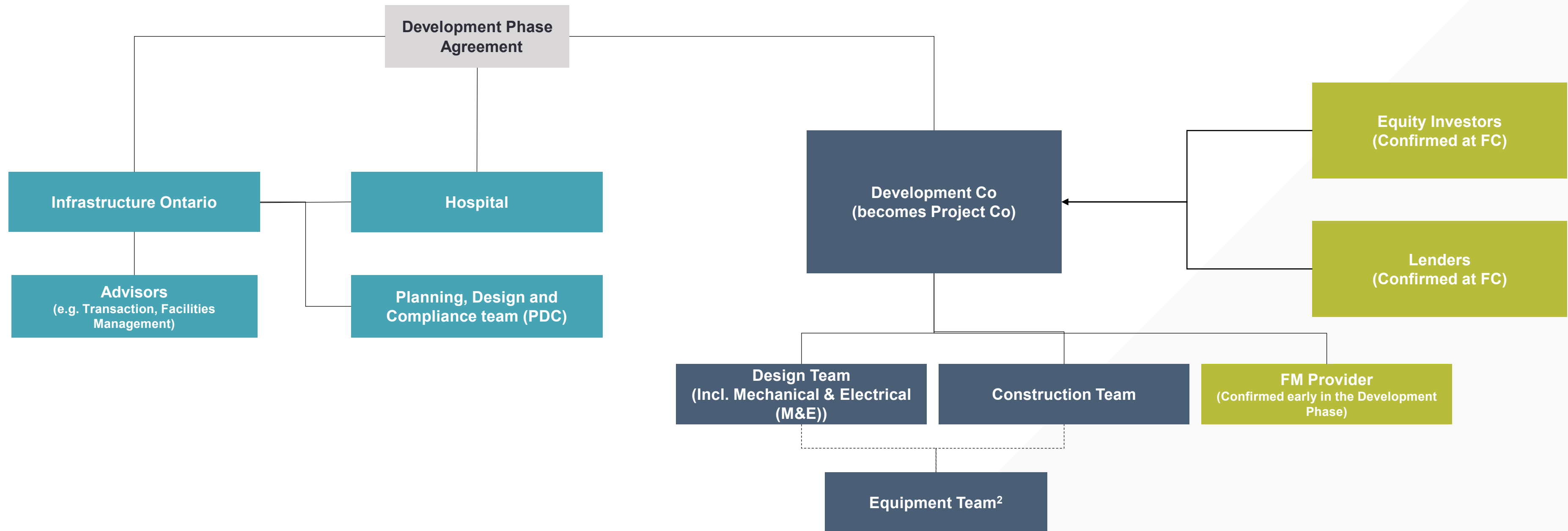
IO welcomes market feedback on the model as presented. Feedback may be provided by email to:

[Infrastructure.Ontario@infrastructureontario.ca](mailto:Infrastructure.Ontario@infrastructureontario.ca)

Feedback received will inform the final strategy structure.



# Illustrative contract structure<sup>1</sup>



**NOTES:**

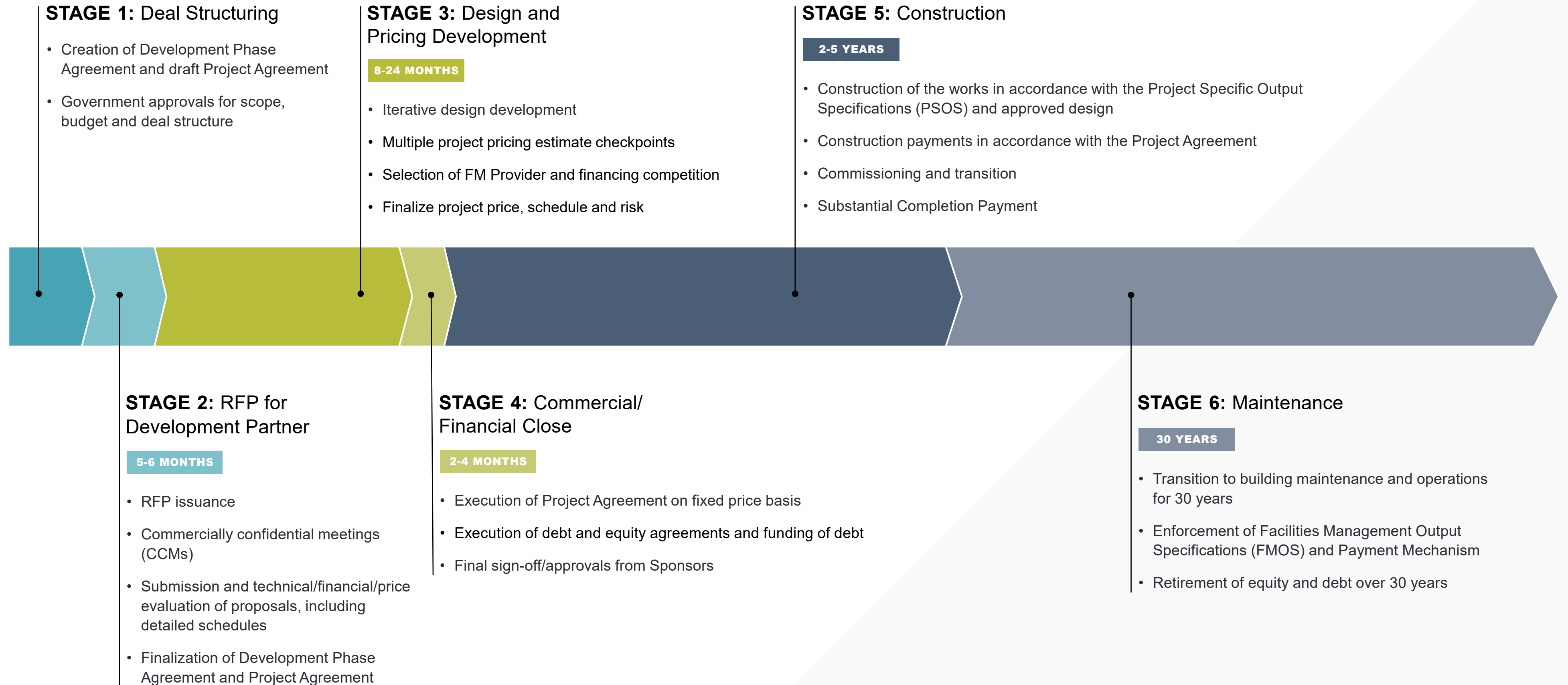
1. This structure above is for illustrative purposes. The precise composition of the Development Partner may differ from team to team. This shows the major components of the functions we would expect, at a minimum, to exist. Equity, Debt and the FM Provider are expected to join the team through the Development Phase and confirmed at Financial Close as a working assumption.
2. The Equipment Team could be a subcontractor to either the design or construction team.

**LEGEND**

- |  |   |  |
|--|---|--|
| <span style="color: teal;">■</span> Owner team   | <span style="color: darkblue;">■</span> Development Partner | — Direct contractual relationship                      |
| <span style="color: olive;">■</span> Parties involved following Development Co selection | <span style="color: grey;">■</span> Contract documents      | - - - Contractual relationship subject to confirmation |



# Progressive procurement indicative timeline & key activities



# Projects under consideration for Progressive procurement P3

Project	Delivery Model	Scheduled RFP release	Scheduled Commercial/Financial Close
Weeneebayko Area Health Authority Hospital (WAHA)	DBF	Winter 2021-22	Winter 2023-24
THPBRP - Mississauga Hospital Site (M-Site)	DBF/M	Winter 2021-22	Winter 2023-24
Ottawa Hospital - Civic Campus Redevelopment	DBF/M	Spring 2022	Fall 2023

*Note these are preliminary dates and will be adjusted based on RFP readiness.*



# Summary of key commercial principles

## RECOMMENDED POSITION AND RATIONALE

### 01 Contract Structure

[ADDITIONAL DETAILS](#)



- RFP will include forms of the Development Phase Agreement and Project Agreement to which Proponents will bid.
- Development Phase Agreement will be an agreement entered into between the Sponsor and the Development Partner.
- At the end the Development Phase, Sponsors will enter into the Project Agreement with Project Co.

### 02 Procurement Process

[ADDITIONAL DETAILS](#)



- Single RFP with a process to gate potential Proponent teams to continue in process. A proposal fee will be paid.
- Financial evaluation will consider the development fee [25%] and technical evaluation will be centered around the ability to deliver the project [75%], including a detailed design development schedule (amongst other criteria/requirements).
- FM and Financing to be established following award of the Development Phase Agreement.

### 03 Design and Technical

[ADDITIONAL DETAILS](#)



- Base PSOS will be developed.
- The Development Partner will iterate design, on a transparent (or open book) basis, and will be contractually held to detailed design and construction drawings, as completed.
- Enabling works, if applicable, will be project specific, with preference to awarding work to Development Partner under a DB contract.

### 04 Controls

[ADDITIONAL DETAILS](#)



- Risk management tools, including Quantitative Cost Risk Analysis (QCRA), will be used in partnership with Development Partner.
- Third party estimates to be compared to both cost and schedule at various checkpoints.
- Development Co will propose a detailed cost breakdown structure using industry norms. Sponsor(s) will have rights to review and audit.

## RECOMMENDED POSITION AND RATIONALE

### 05 Pricing and Payment

[ADDITIONAL DETAILS](#)



- Proponents will bid a fixed fee for the Development Phase that is paid monthly.
- The Development Partner will advance an iterative price estimate, on a transparent (or open book) basis, for the project (construction, financing, facilities management and lifecycle, as applicable) at key design milestones, concluding with conversion to a fixed price at the end of the Development Phase.
- Project budgets will not be disclosed unless known budget constraints exist.

### 06 Project Financing

[ADDITIONAL DETAILS](#)



- Debt and equity financing to be arranged towards the end of the Development Phase.
- Agency approach to be used by Sponsor and Project Co to competitively raise financing. The Development Partner may have right of first refusal on equity financing.
- Financing will be optimized to reduce project net present value (NPV) through rigorous financing competition.

### 07 Performance Security and Off-Ramps

[ADDITIONAL DETAILS](#)



- Letters of Credit will be required to secure against walk away risk in the Development Phase.
- Exit ramps may be used where there is budget overage, Development Partner failure to deliver on its obligations and for convenience.

### 08 FM and Lifecycle

[ADDITIONAL DETAILS](#)



- The Development Partner is to name an FM Provider within [60-90] days of award.
- The FM advisor role is to be maintained by IO/Hospital, working collaboratively with the Development Partners' FM teams.
- The FM Provider will have right of first offer to perform FM services, with clear rules around the Sponsors' ability to force tendering.



Appendix A:  
**Detailed key  
commercial principles**





# 01 Contract structure

## RECOMMENDED POSITION AND RATIONALE

### RFP/Procurement

- A RFP document will govern the procurement process, including technical/financial/price evaluation criteria for selection of the Preferred Development Partner.
- A form of the Development Phase Agreement and Project Agreement will be provided as part of the RFP document. If early works or preparatory activities are the responsibility of the Development Partner, a form of an Early Works Agreement will also be provided.
- Proponents will bid to a final form of the Development Phase Agreement and Project Agreement, with limited areas to be finalized throughout the Development Phase.

### Development Phase

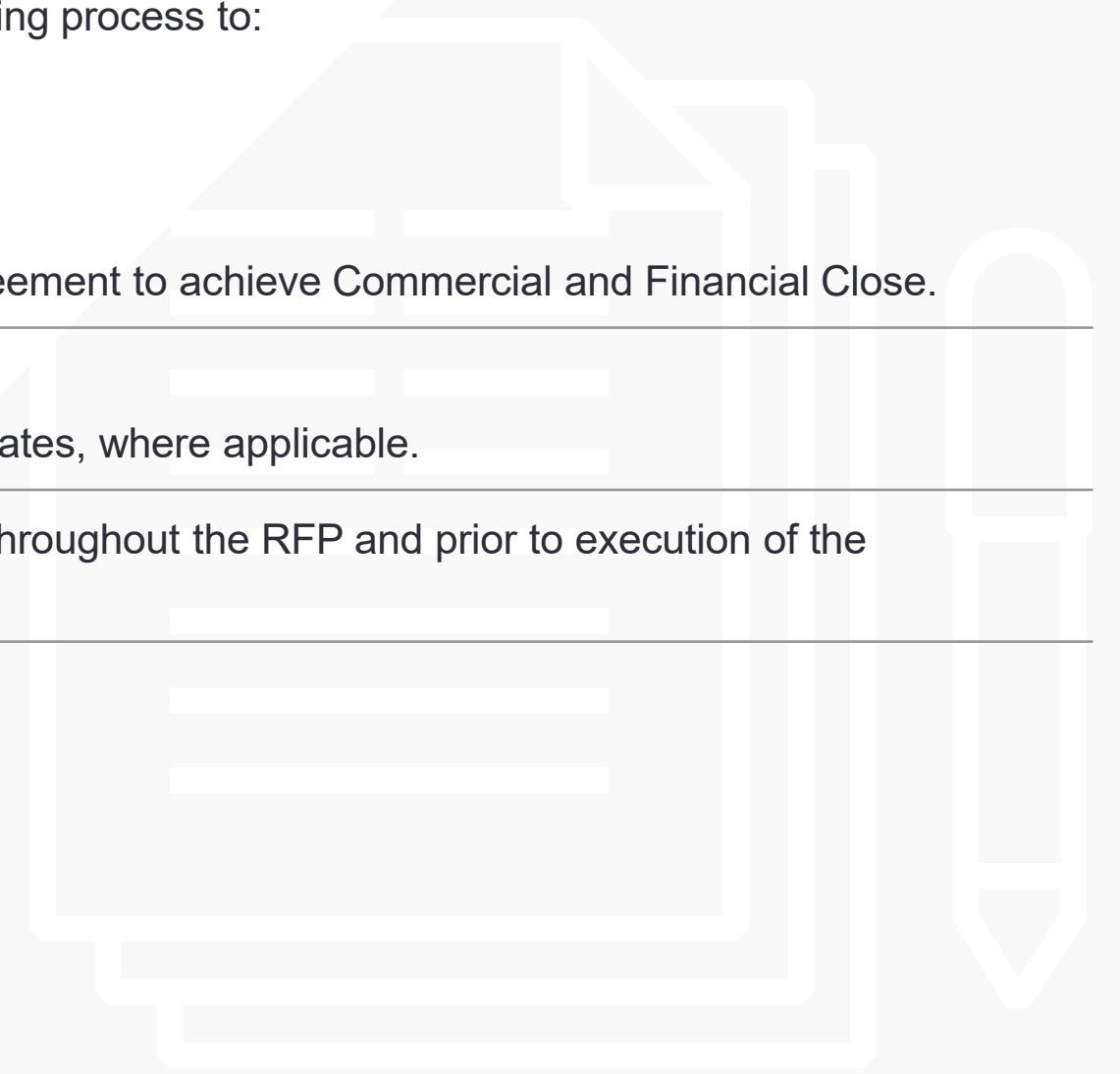
- The Preferred Proponent from the RFP process becomes the “Development Partner” and enters into a Development Phase Agreement with the Sponsors to commence the Development Phase.
- The Development Phase Agreement will be entered into with the main contracting parties that form the Development Partner’s team, on a joint and several basis.
- Near the end of the Development Phase, the Sponsors and the Development Partner will commence a P3 closing process to:
  - Finalize the estimate and convert to a fixed price;
  - Finalize open commercial and legal terms in the Project Agreement; and,
  - Raise financing, performance security and insurance.
- At the conclusion of the closing process, the Sponsors and Development Partner will enter into the Project Agreement to achieve Commercial and Financial Close.

### Implementation

- The Project Agreement will govern implementation activities during construction and operations.
- The Project Agreement entered into at the end of the Development Phase will reflect existing P3 contract templates, where applicable.

### Approval

- Government approvals, consistent with existing policies, will continue to apply and will be required as relevant throughout the RFP and prior to execution of the Development Phase Agreement and the Project Agreement.



## 02 Procurement process

### RECOMMENDED POSITION AND RATIONALE

#### Overview of Process

- A single-stage, competitive RFP procurement process will be employed, with the approach anchored in: P3-applicable criteria; jurisdictional precedents related to progressive procurement; and, elements unique to the Ontario context.
- The process will include an embedded screening process (i.e., “gate,” per below) to confirm that teams can deliver the full suite of services required during the Development Phase for projects of similar size and complexity.
  - Qualified participants that pass the gating process will be invited to attend CCMs.
- The full RFP – including the draft Development Phase Agreement, draft Project Agreement, output specifications and illustrative designs (ISDs) – will be issued during the RFP process, while ensuring adequate time for participants’ review in preparing submissions.
- Only one Development Partner will be selected to participate in the Development Phase.

#### “Gating” Concept/ Mechanism\*

- [Two] general approaches to “gating” are under consideration, with potential for modifications where necessary/appropriate, and on a project-by-project basis:
  - (1) Advanced Screening (Pre-Gate), Followed by Experience-Focused & Project-Focused Technical Evaluation
  - A “pre-gate” would be applied, requiring Proponents to submit administrative documentation, a brief project experience summary, review of “financial strength,” etc., in order to be qualified to proceed to CCMs and, ultimately, to provide a final technical submission that is:
    - Experience-focused/backwards-looking (e.g., organizational structure, responsibility matrix, teaming approach/experience, design team project experience, construction team experience, etc.), which would not constitute a tabulated component of the scored technical evaluation; and,
    - Project-focused/forward-looking (please see the **next slide** for requirements/evaluation criteria of the final technical submission).
  - (2) Structured Gating & Technical Evaluation
  - Proponents would be subject to a first gate requiring:
    - Administrative documentation, a brief project experience summary, review of “financial strength,” etc.; and,
    - An experience-focused/backward-looking submission (e.g., organizational structure, responsibility matrix, teaming approach/experience, design team project experience, construction team experience, etc.), which would not constitute a tabulated component of the scored evaluation.
  - Subject to the outcomes of the first-gate evaluation, qualified Proponents would participate in CCMs and provide a final technical submission that is project-focused/forward-looking (please see the next slide for requirements/evaluation criteria of the final technical submission).

\* *Note:* The approaches described in respect of the “gating” concept/mechanism should not be viewed as final/determinative – the timing and administration could be varied/subject to change.



## 02 Procurement process (continued)

### RECOMMENDED POSITION AND RATIONALE

<b>Team Composition</b>	<ul style="list-style-type: none"> <li>Parties to be named by a Proponent in its proposal submission include a Development Lead/Applicant Lead, Design Lead and a Construction Lead (amongst others).</li> <li>Optional parties to be named in the proposal submission include the Equity Provider and FM Provider.</li> </ul>
<b>Evaluation Approach</b>	<p>RFP evaluation will include financial/price and technical proposals:</p> <ul style="list-style-type: none"> <li>Financial/price proposals, received for the development phase, will have a maximum weight of [25%] of the total proposal score. The development fee will be scored as part of the financial evaluation, with consideration of a development fee cap and/or floor.</li> <li>Technical proposals will have a maximum weight of [75%] of the total proposal score. The final technical submission, which is project-focused/forward-looking, will be evaluated based upon the following core criteria/components*:                     <ul style="list-style-type: none"> <li>Overall approach to partnering, communications and integration (e.g., development phase partnering, risk allocation, detailed organization structure, resourcing strategy, design communications plan, etc.), with associated Key Individuals (KIs);</li> <li>Design development plan (e.g., detailed work plan for design development, design quality plan, etc.), with associated KIs;</li> <li>Construction management plan (e.g., detailed work plan for the construction team to support project outcomes, etc.), with associated KIs;</li> <li>Approval strategy (e.g., detailed work plan, during the design and construction phases, for SPA/permits/licenses/approvals, etc.), with associated KIs; and,</li> <li>Development Phase schedule and cost development plan (e.g., Development Phase schedule foundations, detailed design development schedule, detailed cost development/estimation plan, detailed work schedule, etc.), with associated KIs.</li> </ul> </li> </ul> <p><u>Note:</u></p> <ul style="list-style-type: none"> <li>The evaluation will also afford consideration to the ability to bring equity, debt and FM Providers onto the team, and, ultimately, the ability to understand and wrap construction risk.</li> <li>Interviews will be conducted at the sole discretion of IO, to verify submissions and validate/adjust evaluation.</li> </ul>
<b>Key Individuals (KIs)</b>	<ul style="list-style-type: none"> <li>KIs will largely be similar to those required in standard P3 arrangements, especially in respect of design and construction.</li> <li>Requirements may vary from project-to-project, with KIs expected to include, in general, a Development/Applicant Lead, Design Lead, Lead Architect, Construction Lead, Schedule Lead, Cost Estimation Lead, Risk Lead, Finance Lead, Approvals/Municipal Lead (zoning, site, permitting), Stakeholder Management Lead, Health &amp; Safety Lead and, for health care projects, a Functional Programmer and Clinical Planner.</li> </ul>
<b>Proposal Fees</b>	<ul style="list-style-type: none"> <li>A proposal fee will be offered to all Proponents in the RFP that submit a compliant proposal.</li> <li>Only fully-formed teams that pass the RFP gating process will be eligible to receive a proposal fee.</li> </ul>

\* Note: The technical evaluation criteria/components are presented without prejudice and should be considered draft/subject to change.

# 03 Design and technical

## RECOMMENDED POSITION AND RATIONALE

### Design Development

- Similar to a typical P3 process, the Functional Program and PSOS will be developed with a PDC consultant in advance of RFP launch. These will be used to steer design development activities during the Development Phase.
- The Development Partner will, in collaboration with the Sponsors, advance an iterative design targeting key design milestones, with pre-defined deliverables. Milestones may include [early, intermediate and advanced] design development, concluding with the project design, at the agreed level of completion, and fixed pricing.
- The Development Phase will end when the project design has advanced to allow the Development Partner to submit a fixed price bid for the implementation phase. The stage of design and the length of the Development Phase may vary depending on project specific risks and available budget (i.e. timing of price certainty vs. benefit of further de-risking over time).

### Development Phase Obligations

- The Development Partner’s obligations during the Development Phase will be governed through:
  - Identification of Key Individuals (KIs) who will lead the Development Phase with consequential Key Performance Indicators (KPIs) if such KIs are unavailable or not replaced with an equivalent or better KI. A persistent breach could lead to termination of the Development Phase.
  - KPIs for achieving pre-defined Development Phase obligations such as design milestone schedules, quality of submittals, participation in Sponsor engagements, and other items important to the Sponsors to demonstrate collaborative behaviour. The consequences for failing to achieve KPIs will be non-financial in the first instance and eventually trigger requirements for submissions or rectification plans, liquidated damage/financial deductions, and off-ramps.

### Contract Execution and Implementation

- The executed Project Agreement will include the Development Partner’s design and the PSOS. The Development Partner’s design will represent a contractual commitment on the approved details.
- While the Sponsors will have accepted the Development Partner’s design, all design risk, including inconsistencies with PSOS, will remain with Project Co.
- The Sponsor may make background information available to the Development Partner, the Development Partner will, however, be required to conduct its own due diligence and obtain necessary municipal, and other, permits and approvals.

### Enabling Works

- Enabling works will be determined on a project-by-project basis
- The Development Partner and its General Contractor can be tasked with enabling works, preferably under a fixed priced DB contract with monthly payments. A separate form of agreement would be appended to the Development Phase Agreement outlining the work and obligations.



# 04 Project controls

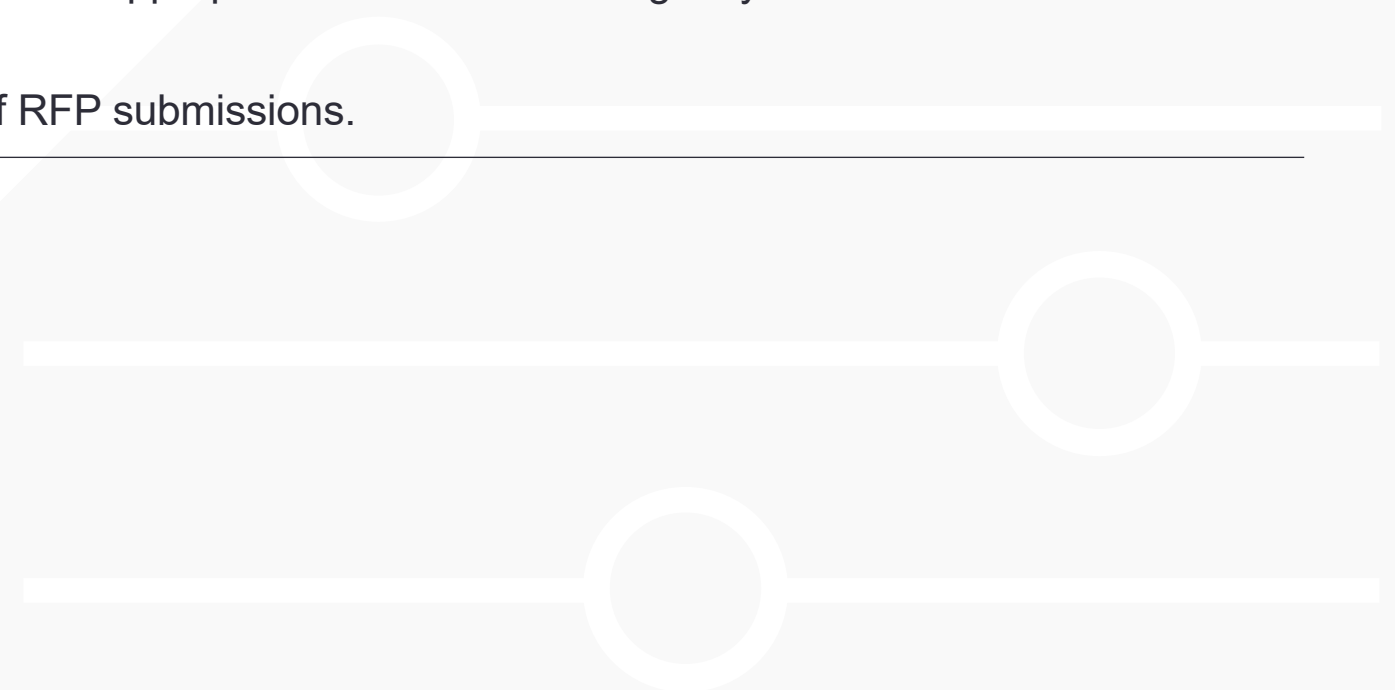
RECOMMENDED POSITION AND RATIONALE

**Variations and Change Management, Disputes**

- Design iterations will not be considered to be changes that trigger the variation procedures during the Development Phase.
- For health care projects, current change management processes during implementation of the MOH approval process will be applied.

**Risk Management**

- The Sponsors will disclose a proposed Risk Register (covering risks related to both design development and construction) predicated on the ISD with the RFP – Proponents will be asked to provide comments on the Risk Register (including suggested additions) in their bid submission.
- A single Risk Register comprised of Contractor-retained and Contractor/Sponsor shared risks will be jointly managed/maintained through the Development Phase. The Risk Register will cover items related to completion of the Development Phase and risks that parties will be exposed to during construction.
- The Development Phase Agreement will prescribe the risk management process to be followed during the Development Phase (including risk register metadata template, frequency of joint risk reviews, minimum standards to substantiate the calculation of risk impacts, Quantitative Risk Analysis (QRA) modelling requirements/frequency etc.).
- ‘Master’ QRA’s generated from the risk register detailing Contractor-retained and Contractor/Sponsor shared risks will accompany estimate and schedule submissions at major design checkpoints during the Development Phase.
- The Development Phase Agreement will include suggested terms of reference for regularly occurring joint risk reviews through the Development Phase.
- The Contractor-retained and Contractor portion of shared risks will be used to inform a final QRA and to derive an appropriate Contractor contingency allocation to be included in the fixed price for the construction contract.
- A Proponent critique of the proposed Development Phase risk management process will be sought as part of RFP submissions.



## 04 Project controls (continued)

### RECOMMENDED POSITION AND RATIONALE

#### **Schedule Management**

- Sponsors to prescribe level 3 Work Breakdown Structure (WBS) for Development Phase activities in RFP documents and sponsors ISD/indicative design and construction schedule to be released to Proponents in the RFP documents.
- The technical requirements for build of the Development Phase engineering/design schedule and the construction schedule will be included in the Development Phase Agreement/Project Agreement.
- Proponents will be required to submit a Development Phase schedule that will be evaluated at RFP, but will not be required to submit a construction phase schedule for evaluation purposes at this point.
- Proponent's Development Phase schedule submissions should be cost and labour-resource loaded, logically linked and demonstrate ability to meet the specified date for fixed price conversion whilst also meeting the requirements of the various design checkpoints within the Development Phase.
- The Sponsors will prescribe a number of allowances for certain activities to be included in Proponent Development Phase schedule submission (e.g. for Sponsor review of deliverables, value engineering cycles).
- In instances of delay in approval/agreement for a specific design package at any given design checkpoint (if considered appropriate given the criticality of the package), the Development Partner would be granted permission to continue to advance approved design, so as to limit any delay to the overall schedule.
- At RFP, Proponents will be required to submit a critique of the Sponsors indicative, construction schedule along with a narrative demonstrating critical path understanding.
- Development Partner progress will be regularly measured against the baseline Development Phase schedule accepted by the Sponsors, including earned value.
- At major design checkpoints, the Development Partner will provide indicative construction schedules for sponsor review – these schedules will become progressively more detailed as the Development Phase continues.
- At the point of construction fixed price conversion, the Development Partner will be required to produce a level 4 indicative construction schedule that maps to Fixed Price estimate – synonymous with 'Interim Baseline Works Schedule' under the typical P3 regime.



# 05 Pricing and payments

## RECOMMENDED POSITION AND RATIONALE

### Development Phase Pricing and Payments

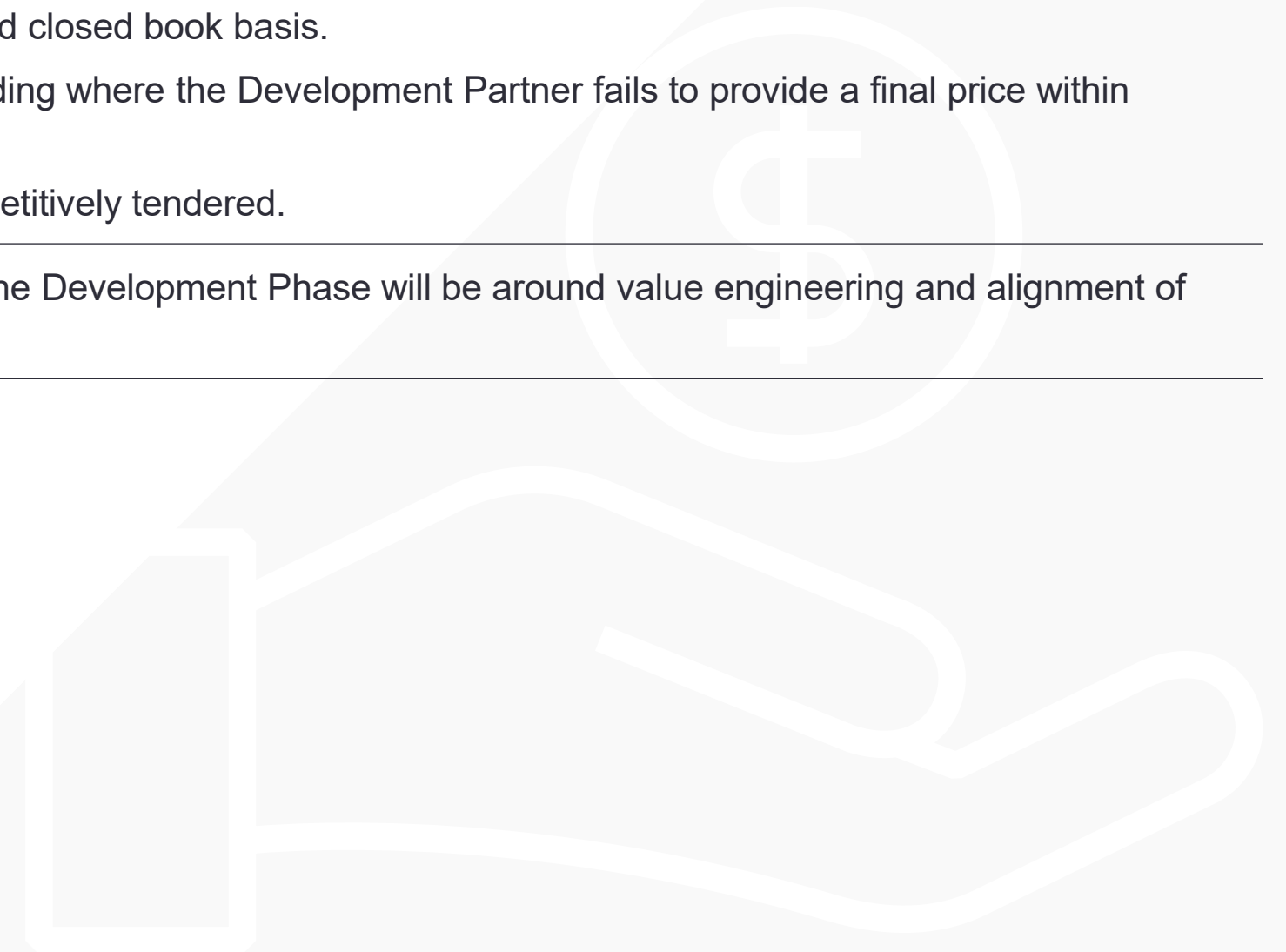
- Proponents will bid to a fixed fee for a pre-determined scope of work and deliverables spanning the Development Phase.
- The Development Phase scope of work will generally be well-defined for efficient pricing of a fixed fee.
- Development phase fees will be payable on a monthly basis (subject to the legislative holdback) and progress will be tracked against pre-defined design and construction drawing deliverables and milestones [early, intermediate and advanced].

### Construction and Maintenance Pricing

- The Development Partner will advance an iterative price estimate at key design milestones, [early, intermediate and advanced], concluding with the conversion to a fixed and committed construction price at the end of the Development Phase once construction drawings have been advanced to the agreed level of completion.
- The committed price can be on a fixed price lump-sum basis that is managed on an earned value and closed book basis.
- Off-ramps will be available to the Sponsors if they are not satisfied with the price development, including where the Development Partner fails to provide a final price within project budgets.
- Select cost components, such as M&E, certain types of equipment and potentially FM, may be competitively tendered.

### Budget Disclosure

- The budget will not be disclosed unless the project has a known budget constraint and the focus of the Development Phase will be around value engineering and alignment of scope and budget.



# 06 Project financing

## RECOMMENDED POSITION AND RATIONALE

### **Raise Equity Through a Right of First Offer Process**

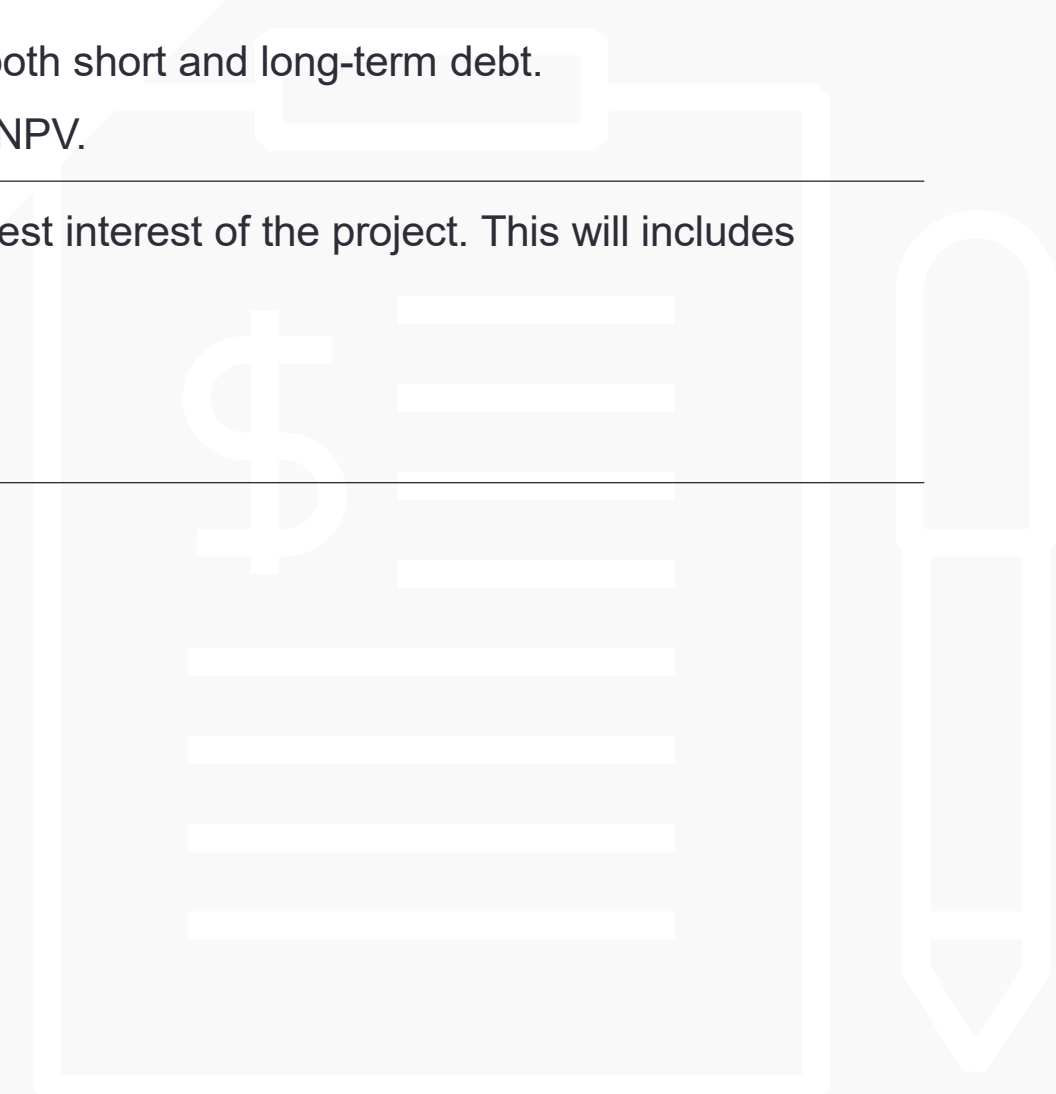
- Proponents will be required to outline plans for and experience in raising equity and debt financing as part of RFP submission.
- Proponent teams will not be required to propose an Equity Provider at the RFP phase.
- If the Development Partner proposes an Equity Provider at the RFP stage, the proposed Equity provider will have right of first offer to provide equity for the project. If the offer is deemed to be off-market, equity will be competitively sourced.
- Equity will be raised during the latter stages of the Development Phase with Commercial and Financial Close expected to coincide with the end of the Development Phase.
- Market rates will inform acceptance or rejection of the equity offer.

### **Raise Financing Through an Agency Approach**

- Project Co will be the borrower and the Development Partner will be mandated to raise financing on a best-efforts basis.
- An agent's services will be paired with a financial advisor/arranger who will be tasked with optimizing the financing structure, for both short and long-term debt.
- The intent is to replicate the financing competition mechanics that exist for a standard P3 arrangement so as to minimize project NPV.

### **Jointly Appoint an Agent and Financial Advisor to Ensure Optimal Financing and Value for Money**

- The agent and financial advisor will have joint reporting obligations to IO and the Development Partner, and will be acting in the best interest of the project. This will includes sizing equity to ensure that it is optimized.
- There is a preference for Project Co to pay the associated fees.





# 07 Performance security and off-ramps

## RECOMMENDED POSITION AND RATIONALE

### Performance Security: Bid Phase

- RFP requirements and submittals related to design and construction will be reduced, therefore proposal fees will be limited to up to [50%] of estimated pursuit costs.

### Performance Security: Development Phase

#### Letter of Credit:

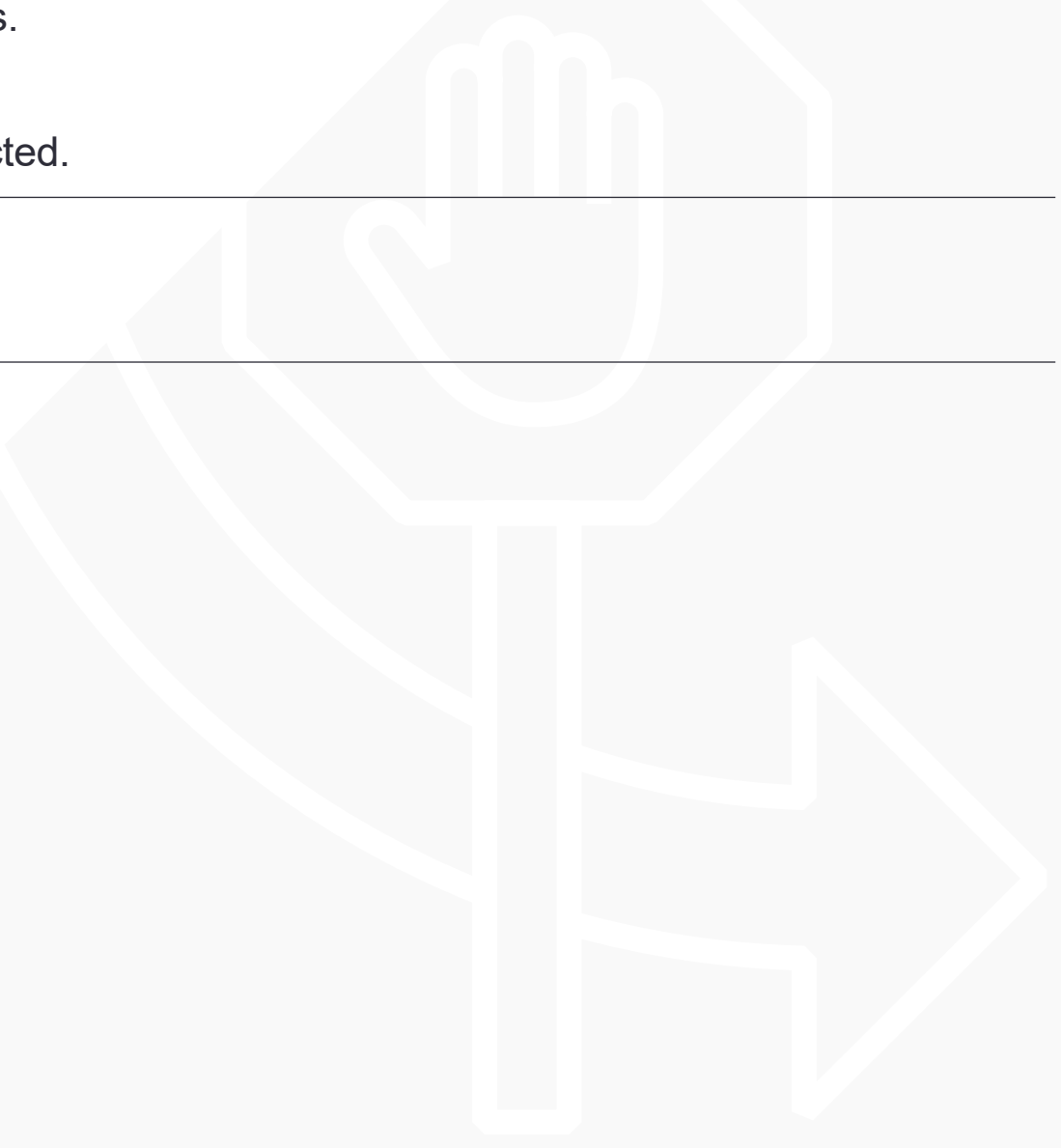
- An LC will be required to secure Development Partner obligations and to protect against non-cooperation during the Development Phase.
- The LC will be held for the duration of the Development Phase and will be released at conclusion of the phase. The LC can be drawn in circumstances where: (1) a Key Individual does not participate; (2) the Development Partner does not collaborate in accordance with their obligations; (3) the Development Partner fails to submit key deliverables; and, (4) the Development Partner breaches other obligations that result in a monetary loss to the Sponsors.

#### Enabling Works:

- Security related to Enabling Works will also be considered, dependent on the nature and scale of Enabling Works expected.

### Project Agreement Phase

- Project security is expected to largely reflect performance security packages required in standard P3 projects.
- Equity and Lenders will determine security packages, subject to prescribed minimum standards.



# 07 Performance security and off-ramps (continued)

RECOMMENDED POSITION AND RATIONALE

<p><b>Off-Ramp 1</b>  <b>Decision not to proceed at key milestones during the Development Phase</b></p>	<ul style="list-style-type: none"> <li>• Design and pricing submissions will be made at key milestones during the Development Phase.</li> <li>• At each of these milestones, off-ramps to terminate the Development Phase will be available to Sponsors should the Development Partner fail to submit compliant deliverables.</li> <li>• Development costs incurred up to the point of exercising an off-ramp will be payable to the Development Partner, however, no additional compensation, for example lost future profit, will be provided.</li> <li>• On termination, all IP will be transferred to Sponsors.</li> </ul>
<p><b>Off-Ramp 2</b>  <b>Development Partner material non-compliance with Development Phase obligations</b></p>	<ul style="list-style-type: none"> <li>• Development Partner obligations during the Development Phase will be defined in the Development Phase Agreement.</li> <li>• If the Development Partner does not fulfill its obligations, as characterized by material or sustained breaches of the Development Phase Agreement, an off-ramp to terminate the Development Phase will be available to Sponsors.</li> <li>• Development costs incurred up to the point of exercising an off-ramp will be payable to the Development Partner; however, no additional compensation, for example lost future profit, will be provided.</li> <li>• On termination, all IP will be transferred to Sponsors.</li> </ul>
<p><b>Off-Ramp 3</b>  <b>Termination for convenience</b></p>	<ul style="list-style-type: none"> <li>• Sponsors will retain general termination for convenience rights.</li> <li>• Development costs incurred up to the point of exercising an off-ramp will be payable to the Development Partner; however, no additional compensation, for example lost future profit, will be provided.</li> <li>• On termination, all IP will be transferred to Sponsors.</li> </ul>

**NOTE:** off-ramps have been established to provide discretion for the Sponsors to exit the Development Phase while providing fair compensation to the Development Partner.





# 08 Facilities maintenance

RECOMMENDED POSITION AND RATIONALE

**Overall Scope / Roles and Responsibilities**

- The FMOS will be released with the RFP and the FM Provider will enter into an agreement with the Development Partner [60-90] days into the Development Phase – the Sponsor will monitor the interactions with the FM Provider.
- The Development Phase Agreement will include terms that give the Sponsor ultimate decision rights regarding technical matters based on what is best for the project, overall asset life, innovation, energy, etc.

**Timing of FM Engagement**

- An FM Provider need not be identified at the RFP stage, Proponents will, however, be required to outline their approach to selecting the FM Provider. Proponents may choose to propose an FM Provider at the RFP stage; however, this will not be evaluated.
- The Development Partner will be required to propose an FM Provider within [60-90] days of the start of the Development Phase. Irrespective of whether an FM Provider was proposed at the RFP stage, the Sponsor maintains the right to consent to the FM Provider proposed. Proponents will be expected to incorporate the cost of FM Provider participation during the Development Phase into their proposed development fee, based upon their estimate of the cost of these services.
- Once on-boarded to the development team, the FM Provider will be involved in design development. There will be approximately three iterations of FM pricing [initial, second and final] at milestones that will be similar to those for construction pricing.
- As designs and construction drawings are being developed, the Sponsors will maintain a shadow bid model based on established cost benchmarks and prices informed by the FM advisor with input from an appointed quantity surveyor at each pricing iteration. In the event of pricing discrepancies (higher than shadow bid), the Sponsor will have the option to negotiate the pricing proposed or mandate a competitive procurement.
- The Sponsor will also have the right to challenge the price proposed for FM services where there are concerns regarding the quality of estimates.

# 08 Facilities maintenance (continued)

## RECOMMENDED POSITION AND RATIONALE

### Incentivizing Performance

- The current IO P3 DBFM template will be used, with the payment mechanism developed collaboratively through participation from all relevant parties to ensure alignment of incentives and foster joint accountability for overall asset performance.
- Concepts of Annual Service Payments (ASP), Monthly Service Payments (MSP), Availability, Performance Failures and associated deductions will remain.
- The payment mechanism is expected to be largely complete when released as part of the RFP package, with limited information to be populated dependent on final design. The final payment mechanism will be incorporated into the Project Agreement and form part of Commercial and Financial Close documents.

### Governance and Reporting, SC terms and conditions, Transition to FM

- A joint works FM committee with Development Co during the Development Phase is planned.
- Reporting will follow the current IO P3 template, with the Sponsor retaining the ability to amend as required.
- The provisions for commissioning and transitioning to the operating phase will be largely the same as for standard P3 projects.







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