

DISTRICT OF COLUMBIA OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS

NOTICE OF PROPOSED RULEMAKING

The Director of the District of Columbia Office of Public-Private Partnerships (OP3), pursuant to the authority set forth the Public-Private Partnership Act of 2014, approved March 11, 2015 (D.C. Law 20-228, D.C. Official Code § 2-271.01 *et seq.*) (“P3 Act”) and the District of Columbia Administrative Procedure Act, approved October 21, 1968 (82 Stat. 1204; D.C. Official Code § 2-501 *et seq.*), hereby gives notice of the intent to establish a new Chapter 48 (Public-Private Partnerships) of Title 27 (Contracts and Procurement) of the District of Columbia Municipal Regulations (27 DCMR).

The proposed rulemaking will establish the procedures for the operations of the District of Columbia Office of Public-Private Partnerships (DC OP3 or Office), including the procurement process for public-private partnerships (P3s) in the District of Columbia. The DC OP3 is charged with building collaborations between private sector businesses and District government in support of large-scale projects such as infrastructure development and enhancements. The Office was established by the P3 Act to extend the utilization of P3s and expand economic opportunities for the District. These rules, which are the product of extensive public outreach and stakeholder feedback, lay out a clear, streamlined, and predictable framework for how the DC OP3 will operate and the process by which P3s projects of all kinds will be procured in the District of Columbia. Transparency and fairness are prioritized to ensure the highest level of competition and to maximize the public interest in building infrastructure that is critical to the growth and economic development in all 8 Wards of the District.

This rulemaking outlines the process for the development, solicitation, evaluation, award, delivery, and oversight of solicited and unsolicited public-private partnership (P3) projects. Additional requirements will be outlined in the procurement documents for each project and further, non-binding guidance is provided in the Guidelines and Procedures published on the website of the District of Columbia Office of Public-Private Partnerships (DC OP3) at <http://op3.dc.gov>.

This rulemaking shall be submitted to the Council of the District of Columbia (Council) for a forty-five (45) day review period, excluding Saturdays, Sundays, legal holidays, and days of Council recess. Pursuant to § 301 of the P3 Act (D.C. Official Code § 2-274.01), the rulemaking shall be deemed approved if the Council does not approve or disapprove the proposed rules by resolution with this forty-five (45) day review period.

Final rulemaking action shall be taken in not less than thirty (30) days after the date of publication of this notice in the *D.C. Register*, or the completion of the forty-five (45) day Council review period for these rules, whichever is later.

The following rulemaking action is proposed:

A new Chapter 48, PUBLIC-PRIVATE PARTNERSHIPS, in Title 27 of the DCMR, CONTRACTS AND PROCUREMENT, is established to read as follows:

CHAPTER 48 PUBLIC-PRIVATE PARTNERSHIPS

4800 GENERAL PROVISIONS

- 4800.1 This chapter implements the provisions of the Public-Private Partnerships act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*) (P3 Act).
- 4800.2 This chapter outlines the process for the development, solicitation, evaluation, award, delivery, and oversight of solicited and unsolicited public-private partnership (P3) projects. Additional requirements will be outlined in the procurement documents for each project and further, non-binding guidance is provided in the Guidelines and Procedures published on the website of the District of Columbia Office of Public-Private Partnerships (DC OP3) at <http://op3.dc.gov>.
- 4800.3 All public and private entities involved in a P3 project shall be subject to all applicable District and federal laws unless otherwise stated in the P3 Act or this chapter.

4801 SOLICITED PROCUREMENTS: REQUESTS FOR INFORMATION

- 4801.1 **Generally:** The DC OP3 may issue a Request for Information (RFI) at the beginning of the P3 procurement process to obtain information and insight from the private sector regarding a potential P3 project.
- 4801.2 **Publication:** The DC OP3 will publish notice of RFIs in the DC Register, the DC OP3 website and any other publications deemed appropriate.
- 4801.3 **Schedule:** Responses to an RFI will be accepted for a period of time to be determined by the DC OP3, and the deadline for responses will be included in the RFI.
- 4801.4 **Use of Responses to Request for Information:** The DC OP3 and the District may use any information or concepts within the responses to an RFI where a stipend is paid according to § 4804.10.

4802 SOLICITED PROCUREMENTS: REQUESTS FOR QUALIFICATION

- 4802.1 **Generally:** The DC OP3 may issue a request for qualifications (RFQ). The RFQ provides for a process of pre-qualification for private sector proposers to submit

qualifications for a solicited project. The RFQ will be issued after the completion of the RFI process, if an RFI was issued.

4802.2 **Public Notice:** A notice of an RFQ for a P3 project will be published in the DC Register, posted on the DC OP3 website, and mailed to affected Advisory Neighborhood Commissions (ANCs). In addition, the notice of a RFQ will be published in all publications deemed necessary by the DC OP3 to achieve the optimal level of private sector response and public awareness.

4802.3 **Schedule:** The DC OP3 will determine the time limit for submittal of qualifications based on the complexity and specialization of the project. The deadline for responses will be included in the RFQ.

4802.4 **Minimum Required for Pre-qualification:** The DC OP3 will determine requirements for the pre-qualification of a private entity. At a minimum, in order to be pre-qualified to submit a bid under a request for proposals, a private entity shall demonstrate:

- (a) The availability of sufficient sources of funding, capital, securities or other financial resources necessary to carry out the P3 project if selected;
- (b) The availability and identification of key personnel that possess, either through its staff, subcontractors, a consortium or joint venture agreement, the managerial, organizational, technical capacity and experience working on projects of similar scope, scale and complexity as the type of project for which the proposer is submitting a bid;
- (c) It is qualified to lawfully conduct business in the District; and
- (d) No director, officer, partner, owner or other individual with direct and significant control over the policy or finances of the private entity has been convicted of corruption or fraud in any jurisdiction of the United States.

4802.5 **Other Requirements and Criteria for Pre-qualification:** The RFQ shall set forth any other requirements for pre-qualification and the criteria that the DC OP3 will use in determining which private entities qualify.

4802.6 **Certification of Pre-qualification:** The DC OP3 will determine if the pre-qualification process is appropriate for the P3 project for the District in regards to the project in question and, if that determination is in the affirmative, the DC OP3 will only issue a solicitation or Request for Proposals (RFP) to pre-qualified private entities.

4802.7 **Application Fee:** The DC OP3 may, if deemed appropriate, collect an application fee for prequalification not to exceed the actual direct cost of evaluation. The

specific amount of the fee will be stated in the RFQ. This fee, if collected, shall be deposited in the Public-Private Partnerships Administration Fund (the Fund) for the use by the DC OP3 for costs associated with the review of response to RFQs.

4802.8 **Modification and Cancellation of Request for Qualification:** The DC OP3 will retain the ability to modify or cancel the RFQ process at any time for any reason.

4802.9 **Use of Responses to Request for Qualification:** The DC OP3 and the District may use any information or concepts within the responses to an RFQ where a stipend is paid according to § 4804.10.

4803 **SOLICITED PROCUREMENTS: REVIEW OF DRAFT REQUEST FOR PROPOSALS**

4803.1 **Generally:** The final step in the solicitation phase is the issuance of a Request for Proposals (RFP). Before issuing an RFP, the DC OP3 will develop a draft RFP for public comment. In addition, by law the draft RFP must be approved by the Council before it is formally issued.

4803.2 **Public Review of Draft Request for Proposals:** The first step in the RFP process is the development of a draft RFP by the DC OP3 for public comment. DC OP3 will publish the draft RFP on its website for public comment and will hold at least one public hearing on the proposed RFP. The hearing will be subject to the Open Meetings Act (D.C. Law 18-350; D.C. Official Code § 2-571 *et seq.*) and will be held at an accessible evening or weekend time and in an accessible location near the proposed P3 project. The DC OP3 will provide at least 30 days' notice of the public hearing to affected ANCs and will publicize the hearing by placing a notice in the DC Register at least 15 days before the hearing.

4803.3 **Approval of Proposed Request for Proposals by the Council:** By law, each RFP must be approved by the Council before the RFP is issued by the DC OP3. The Council approval process will follow one of two tracks depending on the value and duration of the project. Each approval process starts with the Mayor submitting a resolution to the Council to approve the RFP. The two review tracks are outlined below.

- (a) **Proposals for Projects over \$50 million or 10 years:** Proposals for possible P3 projects that the DC OP3 estimates will cost \$50 million or more (full life cycle cost) or extend for a contract term of 10 years or more will be deemed approved by the Council 45 calendar days after the Mayor submits the approval resolution, unless the Council votes to disapprove the resolution during that time period. The Council may also actively vote to approve the resolution at any time during the 45-day period. The 45-calendar day review period begins on the first day (excluding Saturdays,

Sundays and holidays) following the receipt by the Office of the Secretary of the Council of the proposed resolution.

- (b) **Proposals for Projects less than \$50 million or 10 years:** Proposals for possible P3 projects that are anticipated by the DC OP3 to cost less than \$50 million (full life cycle cost) or extend for a contract term less than 10 years will be deemed approved by the Council 10 calendar days after the Mayor submits the approval resolution, unless during that 10-day period a Councilmember introduces a resolution to approve or disapprove the proposed RFP. If a Councilmember introduces such a resolution the 10-day Council review period is extended to 45 calendar days and the RFP will be deemed approved by the Council at the end 45 calendar day period, unless the Council votes to disapprove the resolution during that time period. The Council may also actively vote to approve the resolution at any time during the 45-day period. The 10-day and 45-day time periods begin on the first day (excluding Saturdays, Sundays and holidays) following the receipt by the Office of the Secretary of the Council of the proposed resolution.
- (c) **Expiration of Approval:** The Council's approval of an RFP expires two years after the date of approval. If the DC OP3 determines that a P3 agreement cannot be entered into within the two-year period, the Mayor may submit to the Council a resolution requesting an extension of the time period. The resolution must be submitted at least 60 days before the end of the two-year period. If the Council does not approve or disapprove the proposed extension resolution within 30 days (excluding Saturdays, Sundays, legal holidays and days of Council recess) after receipt, the proposed resolution is deemed disapproved.
- (d) **Substantive Changes Requiring Approval:** Approved RFPs that require substantive change after approval will be resubmitted to the Council for re-approval. Those RFPs disapproved by the Council pursuant to § 110 of the P3 Act (D.C. Official Code § 2-273.05) may be resubmitted by the DC OP3 for approval with updates. Notice of non-substantive changes that are made to an RFP will be published in the DC Register and/or delivered to pre-qualified bidders if the RFQ process is utilized under § 4802.

4804 SOLICITED PROCUREMENTS: SOLICITATION THROUGH REQUEST FOR PROPOSALS

4804.1 **Generally:** After the RFP has been approved by the Council, the DC OP3 will formally issue the RFP to solicit proposals from the private sector.

4804.2 **Public Notice:** Each RFP will be posted on the DC OP3 website. A notice of the issuance of the RFP will also be published in the DC Register and mailed to all

affected ANCs. Notice of the issuance may also be published on websites or in printed publications deemed appropriate by the DC OP3.

4804.3 **Schedule:** The deadline to respond with a proposal will be stated in the RFP. Potential proposers will be given at least 30 days to respond, unless the DC OP3 determines that a shorter response period is appropriate. If the DC OP3 establishes a shorter response period, it shall describe the reason for the shorter response period in the RFP.

4804.4 **Requests for Proposals Requirements:** Each RFP will contain, at a minimum, the following information regarding the proposed P3 project:

- (a) A detailed description of the scope of the proposed P3 project;
- (b) The technical requirements, material terms and conditions applicable to the procurement and any resulting contract; and
- (c) The criteria for evaluation and selection of a proposal, which shall indicate the relative weight given to each criterion.

The DC OP3, working with the Owner Agency, may include more specific response requirements to address the unique aspects of the project.

4804.5 **Evaluation and Selection Criteria Requirements:** Each RFP issued by the DC OP3 will include a set of evaluation criteria by which proposals submitted by the private sector will be scored. A relative scoring weight will be assigned in the RFP to each criterion.

At a minimum, the following elevation criteria will be included in each RFP:

- (a) Cost;
- (b) Delivery time;
- (c) Financial commitment required of public entities;
- (d) Capabilities, related experience, facilities or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
- (e) Value-for-money and public sector comparator analysis of the proposal;
- (f) Innovative methods, approaches, or concepts demonstrated by the proposal;
- (g) Scientific, technical or socioeconomic merits of the proposal;

- (h) Potential contribution of the proposal to the mission of the District;
- (i) How the proposal benefits the public; and
- (j) Other factors as the DC OP3 deems appropriate to obtain the best value for the District.

The DC OP3, working with the Owner Agency, will include more specific evaluation criteria to address the unique aspects of the project in question.

4804.6 **Format for Responses and Executive Summaries:** All responses to an RFP must follow the guidance and format outlined in the RFP, including that the proposal has an executive summary and identifies those aspects of the proposal that are confidential or proprietary according to § 4804.12.

4804.7 **Evaluation of Responses to Request for Proposals:** The DC OP3 will evaluate all responses to an RFP that are deemed to be responsive and meet the minimum requirements of the RFP. The evaluation of proposals will be based on the criteria stated in the RFP.

For most RFPs, the evaluation of responses to an RFP will be divided between two committees matching the two required packets outlined in the Guidelines. The two review committees will consist of:

- (a) **Technical Review Committee:** The technical review committee will review all technical aspects of the proposal including: proposed project scope, innovative use of technology, engineering and design, operation and maintenance of the project. Members of this committee will include technical staff from the Owner Agency and technical staff from associated District agencies.
- (b) **Financial Review Committee:** The financial review committee will review all financial aspects of each proposal including financing to be provided by the private partner, federal sources, and external sources and any fiscal obligations of the District to the project as proposed. Members of this committee will include financial staff from the Owner Agency, financial staff from associated District agencies, and a representative from the Mayor's Office of Budget and Finance.

In some instances where the DC OP3 deems it appropriate, a single committee will review both technical and financial aspects of each proposal. This will be stated in the RFP and separate packets for technical and financial aspects of proposals will not be required. The Director and Deputy Director of the DC OP3, as well as the Director (or his or her designee) of the Owner Agency will serve on both committees.

4804.8 **Selection of Preferred Bidder:** Based on the results of the evaluation committees, the DC OP3 will declare the proposer with the highest overall score the Preferred Bidder. The point of contact provided on the proposal will be notified by the DC OP3. The DC OP3 may also select a secondary bidder to be engaged in the event that an agreement is not reached between the District government and the preferred bidder. If it has been determined that a secondary bidder will also be selected, that secondary bidder will also be notified.

4804.9 **Publication of Responsive Executive Summaries:** Upon the closing of the response period, the DC OP3 will publish executive summaries of all responsive proposals on the DC OP3 website. The executive summary of each proposal will include the information outlined in the Guidelines and the following information:

- (a) The scoring for each proposal; and
- (b) The identity of the proposer including all listed members of the proposal team.

4804.10 **Payment of Stipends:** The DC OP3 may pay a stipend to an unsuccessful proposer in the following situations:

- (a) The DC OP3 cancels the procurement process fewer than 30 days before the date the bid or proposal is due; or
- (b) An unsuccessful proposer submits a proposal that is responsive and meets all requirements established by the DC OP3 for the P3 project.

Each RFP will state whether the DC OP3 is offering a stipend as part of the procurement process. If a stipend is being offered, the RFP will also state the amount of the stipend and the specific terms and conditions under which the stipend will be paid.

Stipends will generally be used to generate meaningful competition and to compensate bidders for novel concepts or information that is utilized in a P3 agreement.

In consideration for paying the stipend fee, the District may use any ideas or information contained in the proposals in connection with any contract awarded for the project, or in connection with a subsequent procurement, without any obligation to pay any additional compensation to the unsuccessful proposers.

Notwithstanding the other provisions of this section, an unsuccessful proposer may elect to waive the stipend, and in such cases, the District shall not use ideas and information contained in the proposer's proposal; provided, that this restriction shall not prevent the District from using any idea or information if the

idea or information is also included in a proposal of an proposer that accepts the stipend.

4804.11 **Use of Responses to Request for Proposals:** The DC OP3 and the District may use any information or concepts within the responses to an RFP where a stipend is paid according to § 4804.10.

4804.12 **Confidential Information Included as Part of a Solicited Proposal:** The DC OP3 and Owner Agency understand the need for some information provided by private entities to remain confidential. In order to protect confidential or proprietary information, the proposer must identify those portions of its proposal, or other submitted materials, that it considers to be confidential or proprietary. For the confidential or proprietary information of a proposer to be exempt from public disclosure, the proposer must do all of the following when the proposal is submitted to the DC OP3:

- (a) Invoke exclusion on submission of the information or other materials for which protection is sought;
- (b) Identify, with conspicuous labeling, the data or other materials for which protection is sought;
- (c) State the reasons why protection is necessary; and
- (d) Fully comply with any applicable District law with respect to information that the proposer contends should be exempt from disclosure.

The DC OP3 will review information that a proposer designates as confidential or proprietary to determine if that designation is proper under applicable law. Where the proposer cannot justify the protection of information, DC OP3 may ask the proposer to revise its proposal accordingly. If an agreement cannot be reached between the proposer and the DC OP3 regarding the designation of information as confidential or proprietary, the proposer may withdraw its proposal from the procurement and all unused fees paid by the proposer will be returned to the proposer.

The DC OP3 and Owner Agency will not release or disclose any part of the proposal other than the executive summary and information required to be disclosed under §§ 108(f) and 114(a) of the P3 Act (D.C. Official Code §§ 2-273.03(f) and 2-273.09(a)) before the award of the P3 agreement and at the conclusion of any protest, appeal or other challenge to the award, absent an administrative or judicial order requiring such a disclosure. After the final award of the P3 agreement the Freedom of Information Act shall apply to the proposal except for statutory exclusions such as proprietary information.

4805 UNSOLICITED PROCUREMENTS: SUBMISSION REQUIREMENTS

4805.1 The DC OP3 may accept unsolicited proposals for P3s.

4805.2 **Time Periods for Acceptance of Unsolicited Proposals:** The DC OP3 will accept unsolicited proposals during limited time periods to ensure that the proposals can be fully reviewed within the time limits stated in the P3 Act. The time periods during which the DC OP3 will accept unsolicited proposals will be published in the Guidelines in the DC Register, the DC OP3 website and any other publications deemed appropriate.

4805.3 **Discussions with DC OP3 before Submission of Unsolicited Proposal:** Private entities are encouraged to contact the DC OP3 to arrange a meeting to discuss their ideas and concepts for unsolicited proposals before developing or submitting an unsolicited proposal. These meetings will be useful for all parties to determine the viability and desirability of a P3 project well before a proposal is written. This informal discussion process will aid the DC OP3 and private entities to maintain an environment of open communication needed to achieve the goals of the District P3 program.

4805.4 **Structure and Format of Unsolicited Proposals:** An unsolicited proposal must follow the format outlined in the Guidelines and must include a signature of the authorized corporate officer.

4806 UNSOLICITED PROCUREMENTS: PRELIMINARY EVALUATION

4806.1 **Preliminary Evaluation of Unsolicited Proposals:** An unsolicited proposal will be screened in a two-step process that includes a preliminary evaluation and a comprehensive evaluation.

4806.2 **Preliminary Evaluation Criteria:** The DC OP3 will only undertake a preliminary evaluation of a received unsolicited proposal if the proposal:

- (a) Addresses a need identified in a District or regional planning document;
- (b) Is independently developed and drafted by the proposer without District supervision;
- (c) Shows that the proposed project could benefit the District;
- (d) Includes a financing plan to allow the project to move forward pursuant to all applicable District budget and finance requirements;

- (e) Includes sufficient detail and information for the DC OP3 to evaluate the proposal in an objective and timely manner under the comprehensive evaluation process outlined in § 4807; and
- (f) Adheres to the format outlined in the Guidelines, including that the proposal has an executive summary and identifies those aspects of the proposal that are confidential or proprietary according to § 4807.20.

4806.3 **Preliminary Evaluation Fee:** Private entities interested in submitting an unsolicited proposal are required to pay a non-negotiable Preliminary Evaluation Review Fee in an amount provided in the Guidelines at the time of submitting the proposal to the DC OP3 for review. This review fee will be deposited into the Fund to cover the costs of the preliminary evaluation only. Payment should be made by check or money order made out to the account listed in the Guidelines. If the fees paid to the DC OP3 exceed the DC OP3’s total cost for the preliminary review, the DC OP3 will reimburse the remaining funds to the private entity at the end of the review period.

4806.4 **Preliminary Evaluation Results:** Within 90 days after receiving an unsolicited proposal, the DC OP3 will complete its preliminary evaluation and report the result to the proposer. The result will be either “favorable” or “unfavorable”. If the result is unfavorable, the DC OP3 will return the unsolicited proposal to the proposer without further action. A preliminary evaluation resulting in an unfavorable determination cannot be appealed by the proposer. If the result of the preliminary evaluation is favorable, the unsolicited proposal will proceed to the comprehensive evaluation stage.

4807 UNSOLICITED PROCUREMENTS: REQUEST FOR ALTERNATIVE PROPOSALS AND COMPREHENSIVE EVALUATION

4807.1 **Comprehensive Evaluation of Unsolicited Proposal:** If the result of the preliminary evaluation is favorable, the unsolicited proposal will enter the comprehensive evaluation phase.

4807.2 **Unsolicited Proposal Clarification:** During the Comprehensive Evaluation Review process the DC OP3 may communicate with the Original Unsolicited Proposer for clarification of the proposal. This process will not be an opportunity for changes to the unsolicited proposal; only for clarification of proposal aspects to allow an evaluation by the DC OP3.

4807.3 **Notification of the Unsolicited Proposer:** The DC OP3 will notify the Original Unsolicited Proposer that the unsolicited proposal has been deemed favorable. The DC OP3 will also notify the proposer of the alternative proposals process outlined in § 4807.4 and of the proposer’s ability to submit a modified proposal as part of process outlined in § 4807.7.

4807.4 **Public Notice and Alternative Proposals:** The DC OP3 will publish the executive summary of Original Unsolicited Proposer’s proposal and any non-proprietary aspects of the unsolicited proposal on the DC OP3 website. As part of its publication of the unsolicited proposal, the DC OP3 will also publish a request for alternative proposals (RFAP) soliciting other private parties to submit alternate unsolicited proposals. The DC OP3 will also publish notice in the DC Register and in any other publication or on any website that the DC OP3 deems appropriate.

4807.5 **Schedule:** The DC OP3 will allow alternative unsolicited proposals to be submitted in response to the RFAP for at least 30 days after the notice is published in the DC Register. In most cases, the response period will be longer than 30 days in order to increase the competitive environment for the project. The response period will be expressly stated in the RFAP.

4807.6 **Requirements of Alternate Unsolicited Proposals:** An alternative unsolicited proposal must meet all the requirements of the original unsolicited proposal. That includes the completion of the unsolicited proposal form and any other requirements included in the public notice issued under § 4807.4.

Each alternative unsolicited proposer will be required to pay the preliminary evaluation fee described in § 4806.3 and the comprehensive evaluation fee described in § 4807.13.

4807.7 **Updated Submittals by the Original Unsolicited Proposer:** During the RFAP response period, the original unsolicited proposer may submit an amended proposal based upon the RFAP. The amended proposal may only update the original proposal and not constitute a completely new proposal. The original unsolicited proposer will not be required to pay an additional preliminary evaluation fee if it submits an amended proposal.

4807.8 **Comprehensive Evaluation:** After the end of the RFAP response period, the DC OP3 will evaluate the original unsolicited proposal and any alternative unsolicited proposals.

4807.9 **Comprehensive Evaluation Criteria:** The DC OP3 will evaluate the original unsolicited proposal and any alternative unsolicited proposals under the same criteria outlined in the RFAP including but not limited to the general criteria stated in § 4807.15.

4807.10 **Comprehensive Evaluation Period:** The DC OP3 will establish a time period for the comprehensive evaluation of the original unsolicited proposal and any alternative unsolicited proposals. The time period will be shared with all unsolicited proposers no more than 10 business days after the end of the RFAP response period. The DC OP3 may, at any time, revise the time period for review as needed.

4807.11 **Proposer Presentations:** The DC OP3 and Owner Agencies may communicate with unsolicited proposers or require them to give one or more oral presentations to clarify their proposal and answer questions that will aid in the understanding and evaluation of the proposal.

4807.12 **Evaluation Committees:** The DC OP3 will evaluate all responses to an RFAP that are deemed to be responsive and meet the minimum requirements of the RFAP. The evaluation of proposals will be based on the criteria stated in the RFAP, including the general criteria stated in § 4807.15.

For most RFAPs, the evaluation of responses to an RFAP will be divided between two committees matching the two required packets outlined in the Guidelines. The two review committees will consist of:

- (a) **Technical Review Committee:** The technical review committee will review all technical aspects of the proposal including: proposed project scope, innovative use of technology, engineering and design, operation and maintenance of the project. Members of this committee will include technical staff from the Owner Agency and technical staff from associated District agencies.
- (b) **Financial Review Committee:** The financial review committee will review all financial aspects of each proposal including financing to be provided by the private partner, federal sources, and external sources and any fiscal obligations of the District to the project as proposed. Members of this committee will include financial staff from the Owner Agency, financial staff from associated District agencies, and a representative from the Mayor's Office of Budget and Finance.

In some instances where the DC OP3 deems it appropriate, a single committee will review both technical and financial aspects of each proposal. This will be stated in the RFAP and separate packets for technical and financial aspects of proposals will not be required.

The Director and Deputy Director of the DC OP3, as well as the Director (or his or her designee) of the Owner Agency will serve on both committees.

4807.13 **Comprehensive Evaluation Review Costs:** The original unsolicited proposer and any alternative unsolicited proposers will be required to pay a comprehensive evaluation fee. The fee will set by the DC OP3 based on all additional direct costs reasonably anticipated by the DC OP3 for the comprehensive evaluation. The amount the fee will be set forth in the public notice described in § 4807.4. Each alternate unsolicited proposer will be required to submit the fee to the DC OP3 with its alternative unsolicited proposal. The original unsolicited proposer must submit the fee to the DC OP3 by the end of the RFAP period (or with the

submission of its amended proposal, if it submits an amended proposal). No Unsolicited Proposal will be reviewed without payment of the Comprehensive Evaluation Review fee.

These fees will be used to cover the costs of the comprehensive evaluation. If the fees paid to the DC OP3 exceed the DC OP3's total cost for the unsolicited review process, the DC OP3 will reimburse the remaining funds equally to all proposers at the end of the review period.

If any unsolicited proposer does not wish to pay the comprehensive evaluation fee, it may withdraw its proposal without penalty.

4807.14 **Use of Unsolicited Proposals:** The DC OP3 and the District may use any information or concepts within unsolicited responses where a stipend is paid according to § 4804.10.

4807.15 **Selection of a Preferred Bidder:** Based on the results of the evaluation committees, the DC OP3 may declare the proposer with the highest overall score the Preferred Bidder. The DC OP3 will select a preferred bidder and potentially a secondary bidder, only if the unsolicited proposal meets the requirements stated in the RFAP, which will include, at a minimum, the following:

- (a) Cost;
- (b) Delivery time;
- (c) Financial commitment required of public entities;
- (d) Capabilities, related experience, facilities or techniques of the proposer or unique combinations of these qualities that are integral factors for achieving the proposal objectives;
- (e) Value-for-money and public sector comparator analysis of the proposal;
- (f) Innovative methods, approaches, or concepts demonstrated by the proposal;
- (g) Scientific, technical or socioeconomic merits of the proposal;
- (h) Potential contribution of the proposal to the mission of the District, including how the proposal benefits the public;
- (i) The proposal must not duplicate an existing infrastructure project or services in a competitive way nor closely resemble a pending competitive proposal for a P3 or other procurement; and

- (j) Other factors as the DC OP3 deems appropriate to obtain the best value for the District.

4807.16 **OCFO Certification:** For the proposal to be selected, the Chief Financial Officer of the District of Columbia must also certify:

- (a) The availability of any funds, debts, or assets that the District will contribute to the project;
- (b) That no provision of the proposal would violate the District Anti-Deficiency Act of 2002; and
- (c) That the project is not likely to have a significant adverse impact on the District's bond ratings.

4807.17 **OAG Certification:** For the proposal to be selected, the Attorney General of the District of Columbia must certify that:

- (a) Proper indemnifications, including project insurance and bonding are included in the proposal; and
- (b) There are no interstate compact issues if the project involves multiple jurisdictions.

4807.18 **Notice of Selection of Preferred and Secondary Bidders:** When a Preferred Bidder has been selected, the point of contact provided on the proposal will be notified by the DC OP3. If it has been determined that a secondary bidder will also be selected, that secondary bidder will also be notified. The DC OP3 will provide public notice of this selection and intent to commence negotiations.

4807.19 **Communication during the Procurement Process:** While the DC OP3 encourages communication during the procurement process, including informal conversations regarding possible P3 projects and clarifications about the process, the point of contact listed in the procurement documents will serve as the sole official coordinator of communication with the party making the inquiry. To be relied upon by all parties, all official communication must be written.

4807.20 **Confidential Information Included as Part of an Unsolicited Proposal:** The DC OP3 and Owner Agency understand the need for some information provided by private entities to remain confidential. In order to protect confidential or proprietary information, the proposer must identify those portions of its proposal, or other submitted materials, that it considers to be confidential or proprietary. For the confidential or proprietary information of a proposer to be exempt from public disclosure, the proposer must do all of the following when the proposal is submitted to the DC OP3:

- (a) Invoke exclusion on submission of the information or other materials for which protection is sought;
- (b) Identify, with conspicuous labeling, the data or other materials for which protection is sought;
- (c) State the reasons why protection is necessary; and
- (d) Fully comply with any applicable District law with respect to information that the proposer contends should be exempt from disclosure.

The DC OP3 will review information that a proposer designates as confidential or proprietary to determine if that designation is proper. Where the proposer cannot justify the protection of information, DC OP3 may ask the proposer to revise its proposal accordingly. If an agreement cannot be reached between the proposer and the DC OP3 regarding the designation of information as confidential or proprietary, the proposer may withdraw its proposal from the procurement and all unused fees paid by the proposer will be returned to the proposer.

The DC OP3 and Owner Agency will not release or disclose any part of the proposal other than the executive summary and information required to be disclosed under §§ 109(b) and 114(a) of the P3 Act (D.C. Official Code §§ 2-273.04(b) and 2-273.09(a)) before the award of the P3 agreement and at the conclusion of any protest, appeal or other challenge to the award, absent an administrative or judicial order requiring such a disclosure. After the final award of the P3 agreement the Freedom of Information Act shall apply to the proposal except for statutory exclusions such as proprietary information.

4807.21 **Termination of the Process:** The DC OP3 may terminate the unsolicited proposal procurement process at any time. In the event of such a termination, the DC OP3 will return the unused funds paid by unsolicited proposers for the comprehensive evaluation process equally to all proposers.

4808 RULES TO ENSURE ETHICAL CONDUCT

4808.1 **Generally:** The DC OP3 is committed to ensuring that all procurements for P3 projects are conducted in a fair, competitive and ethical manner without actual or apparent conflicts of interest.

4808.2 **Ethical Duty:** All parties responsible for the proper administration of the P3 procurement process on behalf of the District, both public and private, shall maintain a position of strict impartiality and refrain from any activity that would imply support of or opposition to a particular private entity, proposer, or operator of a P3 agreement. This requirement extends to all consultants and contractors engaged by the District.

Ethical Obligations under the Comprehensive Code of Conduct: The DC OP3 will comply with and enforce all provisions of the District government's Code of Conduct, as defined in § 101 of the Board of Ethics and Government Accountability Establishment and Comprehensive Ethics Reform Amendment Act of 2011, effective April 27, 2012 (D.C. Law 19-124; D.C. Official Code § 1-1161.01), and Chapter 18 of the District Personnel Manual (6B DCMR, Chapter 18) where applicable, including the following provisions:

- (a) **Duty of Loyalty:** District employees associated with any P3 procurement shall place loyalty to the law and ethical principles above any potential private gain.
- (b) **Financial Conflicts:** No District employees associated with any P3 procurement shall hold a financial interest that conflicts with the conscientious performance of the employee's duty.
- (c) **Private Gain:** No District employees associated with any P3 procurement shall use the employee's public office or position for private gain, whether for the employee's own personal gain, the gain of a family member or friend, or the gain of a private entity.
- (d) **Nonpublic Information:** No District employee associated with any P3 procurement shall engage in a financial transaction using nonpublic information acquired or allow the improper use of such information to further any private interest.
- (e) **Outside Employment:** No District employee associated with any P3 procurement shall engage in any outside employment or other activity, including seeking or negotiating for employment, incompatible with the responsibilities assigned to them under the P3 Act or that would capitalize on the employee's title or position.
- (f) **Gifts from Outside Sources:** No District employee associated with any P3 procurement shall solicit or accept any gift from a prohibited source or given because of the employee's official position unless the item is excluded from the definition of a gift or falls within one of the exceptions set forth in 6-B DCMR § 1803.
- (g) **Post-Employment Conflicts of Interest:** A former District employee associated with any P3 procurement shall not act on a particular matter that would create a conflict of interest if the employee participated personally and substantially in that matter as a government employee.

- (h) **Government Property:** No District employee associated with any P3 procurement shall use government property, or allow its use, for other than authorized purposes.
- (i) **Disclosure of Prior Employment:** As a means to evaluate real or potential conflicts of interest, each employee associated with any P3 procurement shall be required to disclose to the employee's employing agency upon appointment, such previous employment relationships, including full disclosure of any ongoing economic benefits to the employee from previous employment relationships.

Additional Obligations: The provisions in this section highlight several of the relevant obligations in the Comprehensive Code of Conduct. Reference to these particular obligations in no way limits the applicability of other District government ethics regulations, nor implies in any way that such other regulations will not be strictly enforced by the DC OP3.

4808.4 **Reporting Conflicts and Violations:** The DC OP3 requires District government employees and the employees of private entities associated with any P3 procurement to report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and all other federal and District laws and regulations to the appropriate authorities.

- (a) **District Employees:** District employees associated with any P3 procurement shall report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and these guidelines immediately upon discovery to the employee's supervisor, the Board of Ethics and Government Accountability, or the appropriate authorities.
- (b) **Private Entity Employees:** Employees of private entities associated with any District P3 procurement shall report actual or apparent conflicts of interest and credible violations of the District Code of Conduct and these guidelines immediately upon discovery to the DC OP3, the Board of Ethics and Government Accountability, or the appropriate authorities.

4808.5 **Mitigating Conflicts and Violations:** Upon receiving the report of an actual or apparent conflict of interest or credible violation of the District Code of Conduct or these guidelines, the appropriate authority must take steps to avoid, mitigate or correct the issue, including having the affected employee recuse him or herself or resign; disqualifying a contractor at any point during a procurement; rescinding or terminating a contract subsequent to contract award; cancelling a pending solicitation and initiating a new procurement. The analysis of these issues and recommendations on steps taken to mitigate or correct an issue shall be in writing.

4809 PUBLIC-PRIVATE PARTNERSHIP AGREEMENTS

4809.1 **Generally:** After the DC OP3 selects a preferred proposer through either a solicited or unsolicited procurement process, the Owner Agency will negotiate with the preferred proposer to enter into a P3 agreement as the Owner Agency will be the designated public entity for all agreements.

4809.2 **Requirements for the Public-Private Partnership Agreement:** Each P3 agreement must include the following elements:

- (a) An agreement term length clearly defined to include the estimated construction and operational period, as needed, not to exceed 99 years from the date of full execution of the agreement;
- (b) A complete description of the P3 facility to be developed and the functions and responsibilities to be performed by the District and the private entity;
- (c) Risk mitigation plans and responsibilities for facility operations and maintenance for both the private entity and the Owner Agency;
- (d) Type of property interest, if any, that the private entity will have in the project facility during both the construction and operations phases;
- (e) Terms regarding the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, and ownership of the P3 facility;
- (f) The rights that the District and the private entity have, if any, in revenue generated as a result of the agreement;
- (g) The minimum quality standards and key performance indicators applicable to the P3 project, including performance criteria, reporting requirements, incentives, cure periods, performance points systems, monitoring rights of the Owner Agency and the DC OP3 and penalties for failure to achieve these standards;
- (h) A maintenance plan for the full life cycle of the P3 project;
- (i) A hand-back plan that includes requirements regarding state of good repair of the facility;
- (j) Any compensation and/or revenue structure of the private entity, including the extent to which, and terms upon which, the private entity may charge fees to individuals and entities for the use of the P3 facility. Under the P3 Act, no new fees may be imposed nor may existing fees be amended unless authorized by a subsequent act of the Council;

- (k) A schedule for an annual independent audit report to be furnished by the private entity to the DC OP3 and Owner Agency covering all aspects of the agreement and the financial condition of the private party;
- (l) A requirement that the private entity maintain performance and payment bonds, or other security and risk-mitigation tools deemed suitable by the DC OP3 and Owner Agency;
- (m) Insurance requirements for any facility to be operated by the private entity. The insurance must be in an amount that ensures coverage of tort liability for the District and the private entity, and its employees;
- (n) Grounds for termination of the P3 agreement by the Owner Agency or the District government in general and the financial impact of that termination;
- (o) Grounds for termination of the P3 agreement by the private entity and the financial impact of that termination;
- (p) Procedures for amending the P3 agreement;
- (q) Provisions for the termination of the P3 agreement and the disposition of the P3 facility upon termination;
- (r) All rights and remedies available to the District government for material breach of the agreement by the private entity, up to and including material default;
- (s) Identification of funding sources to be used to fully fund the capital, operation, maintenance and other expenses under the P3 agreement;
- (t) Certification of compliance with applicable District and federal laws;
- (u) A plan for the sharing of refinancing gains between the private entity and the District in the event that the private partner generates a large financial benefit from the refinancing or restructuring of the P3 project; and,
- (v) Any additional provisions determined to be appropriate by the DC OP3 and Owner Agency.

4809.3

Negotiation: After the issuance of a notification that a preferred bidder and a secondary bidder have been selected as described in §§ 4804.8 or 4807.15, the DC OP3 and Owner Agency will commence negotiations with the preferred proposer.

- 4809.4 **Engagement of Secondary Bidder:** If negotiations with the preferred bidder fail to result in a P3 agreement after a reasonable period of time and good faith efforts by all parties as determined by the DC OP3 and Owner Agency, the DC OP3 and Owner Agency, in joint agreement, may terminate the negotiation with the preferred bidder and choose to terminate the solicitation or begin negotiations with the secondary bidder.
- 4809.5 **Facilities Plan Approval:** The DC OP3 and the Owner Agency will have the right to review and approve the private partner’s plans for the development, operation, maintenance and financing of the P3 project facility before entering into any P3 agreement. Those plans, once approved, will become part of the P3 agreement. Any material change in any of these aspects of the facility during the term of the agreement will require approval by the DC OP3 or the Owner Agency.
- 4809.6 **Prohibition Regarding Non-Compete Provisions:** The P3 agreement may not contain a non-compete provision that would prevent or inhibit any public entity from performing its government function.
- 4809.7 **Access and Right to Inspect:** During the term of the P3 agreement, the DC OP3 and Owner Agency shall have the right to access and inspect the P3 project facility at any time upon reasonable notice.
- 4809.8 **External Funding:** The DC OP3, with the Owner Agency, may apply for and accept funds from the District or federal government, as well as other sources of financial support to fund P3 projects or otherwise advance the cause of innovative project delivery in the District.
- 4809.9 **Projects of Regional Scope:** The DC OP3 and the Owner Agency may enter into P3 agreements with other local and state government agencies that are regional in scope as long as that regional aspect of the project is expressed in the request for proposal submitted to the Council pursuant to § 4803.3.
- 4809.10 **Sovereign Immunity:** In no way shall a P3 agreement or any element of a P3 agreement be construed as a waiver of the sovereign immunity of the District government. Nor will a P3 agreement be viewed as a grant of sovereign immunity to any private entity.
- 4809.11 **Remedies:** A provision may be included in a P3 agreement providing that, in addition to any remedy available to the District, and any cure provisions within the agreement, in the event of a material default by the private partners, the District may elect to assume the responsibility and duties of the operator in the P3 project in partial or full capacity, and in this instance, the District or a designated public entity shall succeed to all of the rights, titles and interests in the P3 project.

The District Government may terminate, with cause, the P3 agreement and exercise any other rights and remedies that may be available to it under the law or

in equity. If the District or a designated public entity elects to assume the responsibility and duties of a P3 project pursuant to this section, the District may develop or operate the P3 project, impose previously approved user fees, impose and collect lease payments and comply with any service contracts as if it were the operator.

The assumption of the operation of the P3 project shall not obligate the DC OP3 or the District government to pay any obligation of the operator from sources other than revenue from the project.

4809.12

Compliance with Federal and District Laws: Under any P3 agreement, the private sector partner will be required to comply, to the extent applicable, with all federal and District laws governing infrastructure projects. Some of these applicable laws include, but are not limited to, the following:

- (a) §§ 202 (Council contract review) and 415 (anti-collusion) and titles VII (bonding) and X (appeals) of the Procurement Practices Reform Act of 2010, effective April 8, 2011, (D.C. Law 18-371; D.C. Official Code § 2-351.01 *et seq.*);
- (b) The First Source Employment Agreement Act of 1984, effective June 29, 1984 (D.C. Law 5-93; D.C. Official Code § 2-219.01 *et seq.*);
- (c) The Living Wage Act of 2006, effective June 8, 2006 (D.C. Law 16-118; D.C. Official Code § 2-220.01 *et seq.*), or the rate established by the use of a project labor agreement, notice of which must be provided by the DC OP3 and Owner Agency before soliciting bids or proposals for a P3;
- (d) The Small, Local, and Disadvantaged Business Enterprise Development and Assistance Act of 2005, effective October 20, 2005 (D.C. Law 16-33; D.C. Official Code § 2-218.01 *et seq.*);
- (e) Subchapter II of Chapter 28 of Title 47 of the D.C. Official Code (Clean Hands Before Receiving a License or Permit);
- (f) The Green Building Act of 2006, effective March 8, 2007 (D.C. Law 16-234; D.C. Official Code § 6-1451.01 *et seq.*);
- (g) The Anacostia Waterfront Environmental Standards Act of 2008, effective March 26, 2008 (D.C. Law 17-138; D.C. Official Code § 2-1226.31 *et seq.*);
- (h) The Davis-Bacon Act of 1931, approved March 3, 1931 (46 Stat. 494; 40 U.S.C. § 3141 *et seq.*); and,

- (i) The Hotel Development Projects Labor Peace Agreement Act of 2002, effective April 2, 2003 (D.C. Law 14-266; D.C. Official Code § 32-851).

4809.13 **Repayment of Fees Paid by the Original Unsolicited Proposer:** If a P3 agreement is entered into with a proposer who is not the original unsolicited proposer, the DC OP3 may require, as a condition of entering into the P3 agreement, that the “winning” proposer repay the preliminary evaluation and comprehensive evaluation Review Fees as well as any stipend authorized under § 4804.10 to the original unsolicited proposer. The District will not pay, or provide for the payment of, any additional proposal costs of the original unsolicited bidder.

4809.14 **Monitoring of P3 Agreement Performance:** The DC OP3 and Owner Agency will provide a performance monitoring plan for the agreement. The performance monitoring plan will provide detail on how the Owner Agency, with assistance from the DC OP3 as needed, will monitor the performance of the private entity for the full term of the agreement. This plan will include required skills for monitoring, monitoring schedules, performance schedules with possible performance-points systems anticipated changes in public budgeting due to this monitoring.

4810 **FINAL APPROVAL OF THE PUBLIC-PRIVATE PARTNERSHIP AGREEMENT**

4810.1 **Generally:** Before executing a P3 agreement, the DC OP3 must submit a report to the Council and provide public notice of the report. In addition, the agreement itself must be submitted to the Council for its review and approval.

4810.2 **Council Report Requirements:** The P3 Act requires that, before entering into a P3 agreement, the DC OP3 and Owner Agency must submit to the Council a report containing details of the planned P3. The report will include the following information:

- (a) The name of the private partner and the names of all members of the private partner;
- (b) Significant terms of the P3 agreement;
- (c) Overall project cost;
- (d) Total estimated cost to the District for the full life cycle of the project;
- (e) Results of the value-for-money analysis and public sector comparator;
- (f) Estimated time for project construction;

- (g) Method to be used to deliver the project;
- (h) A list of the District agencies participating in the project;
- (i) A list of the private entities that responded to the RFP or RFAP;
- (j) A description of how the proposals were scored during the evaluation process; and
- (k) A description of how the private entity was selected according to the criteria and methodology for evaluation of responses to the RFP or RFAP.

The DC OP3 will also post the summary on its website.

4810.3 **Council Approval of the Public-Private Partnership Agreement:** The P3 agreement also must be approved by the Council pursuant to § 451 of the District’s Home Rule Act, approved December 24, 1973 (87 Stat. 803; D.C. Official Code § 2-104.51). The P3 Agreement will be submitted to the Council with the project report.

4811 RESERVED RIGHTS

4811.1 The DC OP3 reserves the following rights as allowed by law:

- (a) To reject any and all proposals, at any stage of the procurement process and under either the solicited or unsolicited procurement processes for any reason at any time;
- (b) To terminate the review of any and all proposals, at any stage of the procurement process and under either the solicited or unsolicited procurement processes for any reason at any time;
- (c) To negotiate with a proposer, either solicited or unsolicited, at any time during the procurement process, without being bound to any provision in the proposal;
- (d) To request additional information or clarification regarding any proposal at any time;
- (e) To waive minor errors, omissions, or irregularities in a response to any requests and the right to determine if such occurrence is minor in nature;
- (f) To issue addenda to and/or cancel any procurement;

- (g) To revise, supplement, or withdraw all or any part of these Guidelines as needed; and
- (h) To modify the process and submission requirements for reviewing any proposal in connection with a re-lease, re-tendering, transfer or other disposition of a project pursuant to the provisions of an existing P3 agreement.

4812 DISCLAIMERS

- 4812.1 Neither the District of Columbia government, nor any agency, officer, employee, or agent of the District of Columbia government, shall be liable for, or reimburse, the costs that may be incurred by proposers either solicited or unsolicited, whether selected or not as the private sector partner, for negotiations, in developing and submitting proposals or in negotiating the P3 agreement.
- 4812.2 Any and all information made available to proposers is made for convenience purposes only and is without representation or warranty of any kind.
- 4812.3 Neither the District of Columbia government, nor any agency, officer, employee, or agent of the District of Columbia government, shall be liable to any proposer for the disclosure of all or a portion of a response to a request, nor unsolicited proposal submitted pursuant to these guidelines.

4899 DEFINITIONS

- 4899.1 For the purposes of these guidelines, the term:
 - (a) **“Alternative Unsolicited Proposer”** means any proposers responding to the request for alternative unsolicited proposals under the unsolicited proposal procurement method.
 - (b) **“Capital Improvement Plans”** means the approved capital construction plans of a public entity.
 - (c) **“Confidential or Proprietary Information”** means trade secrets and commercial or financial information where disclosure would impair the competitive position of a proposer, including cost breakdowns, profit, indirect cost rates, intellectual property, and similar information.
 - (d) **“DC OP3, or Office”** means the Office of Public-Private Partnerships established by § 102 of the P3 Act (D.C. Official Code § 2-272.01).
 - (e) **“Original Unsolicited Proposer”** means the proposer who is the first to submit an unsolicited proposal to the DC OP3 regarding a particular P3 project.

- (f) **“Owner Agency”** means the agency within the District government that will be the qualified public entity of the P3 agreement and project.
- (g) **“P3 Act”** means the Public-Private Partnerships Act of 2014, effective March 11, 2015 (D.C. Law 20-228; D.C. Official Code § 2-271.01 *et seq.*)
- (h) **“Private Entity”** means a natural person, corporation, limited liability company, partnership, joint venture, or other private business entity.
- (i) **“Proposer”** means a private entity submitting a proposal in response to a request for proposals or request for alternative proposals issued by the Office or an unsolicited proposal for a P3.
- (j) **“Public Entity”** means a District government agency, department, board, commission, or instrumentality; or a similar governmental organization of a different government jurisdiction.
- (k) **“Public Sector Comparator”** means a risk-adjusted estimate of the total cost for the lifetime of a project, including all capital, operating, financing, and ancillary costs, if a P3 project were to be financed, built, and operated through a traditional government procurement method.
- (l) **“Public-Private Partnership”** means the method in the District for delivering a qualified project using a long-term, performance-based contractual agreement between a public entity and a private entity or entities where appropriate risks and benefits can be allocated in a cost-effective manner between the public and private entities in which:
 - (i) A private entity performs functions normally undertaken by the government, but the public entity remains ultimately accountable for the qualified project and its public function; and
 - (ii) The District may retain ownership or control in the project asset and the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, and maintained over its life cycle.
- (m) **“Qualified Project”** means the planning, acquisition, financing, development, design, construction, reconstruction, rehabilitation, replacement, improvement, maintenance, management, operation, repair, leasing, or ownership of:
 - (i) Education facilities;

- (ii) Transportation facilities, including streets, roads, highways, bridges, tunnels, parking lots or garages, public transit systems, and airports;
 - (iii) Cultural or recreational facilities, including parks, libraries, theaters, museums, convention centers, community centers, stadia, athletic facilities, golf courses, or similar facilities;
 - (iv) A building or other facility that is beneficial to the public interest and is developed or operated by or for a public entity;
 - (v) Utility facilities, including sewer, water treatment, storm water management, energy producing or transmission, telecommunications, information technology, recycling, and solid waste management facilities;
 - (vi) Improvements necessary or desirable to any District-owned real estate;
 - (vii) Any other facility, the construction of which shall be beneficial to the public interest as determined by the Office.
- (n) **“Risk Register”** means the full accounting of all reasonable projects risks that will require a mitigation plan or structure within the P3 agreement.
 - (o) **“Submitter Agreement”** means the signed statement by a proposer that they understand and agree to all the public release of proposal information as per § 114 (4) of the P3 Act (D.C. Official Code § 2-272.01).
 - (p) **“Value-for-Money Analysis”** means a comparison of the risk-adjusted cost estimates over the lifetime of a proposed P3 project, including all capital, operating, financing, and ancillary costs, with a public cost comparator.

The DC OP3 encourages all interested stakeholders to provide input regarding both of these documents through <http://drafts.dc.gov>. Alternatively, comments can be sent electronically to op3@dc.gov, or in writing, not later than thirty (30) days after publication of this notice in the *D.C. Register*, with Judah Gluckman, Deputy Director and Counsel, District of Columbia Office of Public-Private Partnerships, 1350 Pennsylvania Avenue, N.W., Suite 533, Washington, DC 20004. Additional copies of this proposal are available, at cost, by writing to the above address, and are available electronically, at no cost, on the Office’s website at <http://op3.dc.gov/>.

During the comment period, interested persons will also be afforded the opportunity to submit data and views orally to DC OP3. Such requests can be made by emailing op3@dc.gov or calling (202) 724-2128. In addition, the DC OP3 may initiate such opportunities if the DC OP3

believes a person possesses information that is not publicly available and that would be useful in the rulemaking process. The time, location, names and affiliations (if any) of attendees, a written summary of significant oral comments, and any written material provided shall be made available to the public as part of the record of this rulemaking at <http://op3.dc.gov> prior to the issuance of a final rulemaking in this matter.