



Infrastructure Project Certification - Principles and Framework

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1.1 PURPOSE

This document sets forth the West Coast Infrastructure Exchange's (WCX) project certification principles and framework for infrastructure investment partnerships (IIPs) and performance-based infrastructure solutions (PBIS) see definitions in Section 1.7 (Definitions).

1.2 BACKGROUND

In November 2012, California, Oregon, Washington and British Columbia formed the West Coast Infrastructure Exchange (WCX). The WCX was launched to create and develop innovative ways to finance and facilitate the development of the infrastructure needed to improve the region's economic competitiveness, support jobs and families and enhance our shared quality of life.

Over the next 30 years, the West Coast region's public infrastructure needs will reach one trillion dollars, and meeting this need will require innovative financing methods, including private sector investment. Yet, the private sector is hesitant to invest in public infrastructure projects because decision making regarding such investments is seen as unpredictable and consistent standards and processes are not always followed. Also, public infrastructure projects are perceived to carry substantial political risk as the capacity to plan and implement a project with a new approach can be difficult for the public sector owner without substantial technical assistance and political support.

1.3 WCX MISSION

The West Coast Infrastructure Exchange (WCX) will seek to promote near-term job creation and long-term economic competitiveness by improving and accelerating infrastructure development, as we look to make \$1 trillion in infrastructure investments along the West Coast in the next 30 years in a time of fiscal uncertainty and climate change. It will do this by:

- (a) Identifying public project development and delivery methods that yield more measurable value for the public dollar while meeting public policy, accountability and transparency objectives;
- (b) Creating and advancing new mechanisms for project finance, including those that could be attractive to private investors that have traditionally not invested in public infrastructure;
- (c) Connecting investors to opportunities by providing consistent, comprehensive and high-quality data;
- (d) Helping investors and project sponsors identify, understand and mitigate risk;



- (e) Sharing and developing best practices as well as strengthening public sector capacity and expertise in these new approaches; and
- (f) Ensuring that an estimated \$1 trillion in future West Coast infrastructure investment considers climate risk factors.

To accomplish this mission, WCX will conduct screening and certification of projects' adherence to these standards. In addition, WCX intends to provide the following services:

- (a) connect jurisdictions to share best practices, templates, tools and guidance;
- (b) provide tools and guidance to improve outcomes to enable a disciplined approach to project and procurement selection and reduction in transaction costs through the use of templates and reliable processes already tested in jurisdictions with mature markets for private investment in public infrastructure;
- (c) help project decision makers understand alternate approaches of funding and delivering projects and the corresponding benefits and costs and to screen for use where public benefits would be achieved; and
- (d) facilitate projects by considering private and public needs within the contractual and stakeholder framework.

1.4 DISCUSSION

The WCX established a Business Standards Committee to develop a set of best practices to address these concerns including a framework and set of principles that projects should follow to achieve success. The Business Standards Committee members include representatives from the private and public sectors from multiple jurisdictions, including:

- Sarah Clark, CEO and President, Partnerships British Columbia (Chair)
- John Williams, CEO, Impact Infrastructure, LLC
- Laurie Weir, Senior Portfolio Manager, and David Merwin, Investment Officer, Targeted Investment Programs, CalPERS
- Margaret Tobin, Executive Director, NY Works Task Force
- Lois Scott, CFO, City of Chicago and Chicago Infrastructure Trust
- Chris Taylor, Executive Director, West Coast Infrastructure Exchange

A draft version of this document was released for comment in September 2013 and comments were received from over 20 parties representing a broad spectrum of stakeholders including investors, public



sector agency officials, contractors, labor unions, NGOs and others. The comments received informed this final version of the document. The WCX plans to certify public infrastructure investment opportunities based on their adherence to these best practices, with a goal of increasing both private and public sector confidence in initiating, investing in and/or executing certified projects.

1.5 PRINCIPLES

The principles of the WCX are as follows:

- (1) **Predictable, Replicable Transactions with fair, transparent and consultative competitive selection processes:** Create consistent practices, methods, and to the extent possible, contracting authorities in each jurisdiction and across the WCX participants so that all participants realize the benefits and efficiencies of a unified market.
- (2) **Innovation** – By using performance criteria, rather than prescriptive design specifications as the basis for procurement solicitations, project Sponsors will be able to benefit from innovative solutions that are developed by bidders which may result in lower costs and/or increased value for the public.
- (3) **Balanced Risk and Return:** Optimize the allocation of risks and the returns for risks taken – both public and private - for all parties in the transaction
- (4) **Accountability:** Each party to an infrastructure project should be accountable to their governance requirements.
- (5) **Effective Governance:** Each infrastructure project should establish clear roles, responsibilities and decision making structures.
- (6) **Transparency:** Operating, financial, and governance information about infrastructure projects should be readily transparent to permit accurate public understanding and market comparison.
- (7) **Long Term Vision:** Infrastructure projects should have long-term strategic vision that at its core emphasizes sustained public sector value, private sector viability, and political support from the sponsoring jurisdiction.
- (8) **Design Excellence:** The physical project should integrate an appreciation for how people will use the project, flexibility for future changes to functional requirements, how it will be maintained, and how it will fit into the existing community over the project's anticipated lifespan.

- (9) **Systems Integration:** Infrastructure project planning, design and delivery should consider the systems they will impact and be designed to address broader problems versus fixing individual components that do not collectively solve the underlying problem(s).
- (10) **Quality and Effectiveness in Procurement:** Establish expertise necessary to analyze, procure, and manage complex procurements.
- (11) **Sustainability:** Projects should establish consistent application and evaluation of sustainability, including life cycle risks/benefits and costs e.g. climate and other environmental risk, operating costs etc., into the procurement and long term monitoring and reporting of performance of infrastructure assets.

1.6 PROJECT STANDARDS FRAMEWORK

1.6.1 Legal

Policies related to IIPs and PBIS initiatives should be approved and adopted on the project sponsorship level per requirements of applicable policy, enabling legislation and procurement rules. If not already required, an RFQ/RFP process should supplement the procedures set forth.

1.6.2 Purpose/Rationale for Projects

Every potential project sponsor should provide and quantify in risk adjusted monetary units public benefit, including but not limited to:

- Improving customer service, safety, reliability and convenience;
- Expanding capacity of government including the ability to measure, track and report value created and performance achieved;
- Achieving long-term operational and financial efficiencies;
- Capturing benefits associated with innovation and technology that may not be currently deployed by the project sponsor;
- Improvements to the environment that are not captured by market forces such as reductions in greenhouse gases and pollutants and improvement to water quality or ecosystem;
- Public health benefits; and

Connectivity or network benefits resulting from linking of assets that result in increased productivity.

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1.6.3 Economic and Financial Structure

The economic value, financial structure and Value for Money analysis of the IIPs or PBIS should reflect the life cycle of the asset including the value of transferred risks and assets condition at the end of term. This analysis will assume optimized public and private financing benefits, if any, can inure to the sponsoring government. The project sponsor will strive to use proceeds over a time horizon for costs, benefits, and risks consistent with the transaction term and the asset's expected useful life. The project agreement should be structured to transfer these risk and responsibilities to the private sector in a manner that incentivizes the creation of the intended lifecycle efficiencies.

1.6.4 Transaction Attributes

Financial benefits and costs related to the economic value of the project and public benefits (social, environmental, economic and governance) associated with the partnership should be evaluated in monetary units adjusted for risk and optimized to deliver maximum public and financial benefits. Qualitative aspects can be ranked between options against the goals and objectives of the project.

1.6.5 Risk Allocation

The structure of the IIP and PBIS should seek to allocate risk to the appropriate party who can best manage that risk on a cost effective basis. Examples could include property acquisition by the public sector and design integration by the private sector.

1.6.6 Consideration of Resilience and Climate Risks

Planning and execution of long term infrastructure investments should address resilience to future conditions. In other words, the increased risk of flooding, drought, higher water levels, hotter temperatures, seismic events and other external events as appropriate, should be factored into decisions about where and what type of infrastructure should be built.

1.6.7 Community Labor Standards

Projects executed through IIPs or PBISs should adopt labor standards as would be afforded under the traditional public procurement and operations model, providing comparable wages, benefits, and worker protections, including the right to organize and collectively bargain, as well as ensuring that contractors have a history of compliance with community health and safety, wage and working hour standards. All projects should follow the relevant labor requirements of the sponsoring jurisdiction, including working with labor

representatives to provide continued employment opportunities for the existing workforce and to maintain wages and benefits where relevant

1.6.8 Term

The contract term should generally be limited to the duration that achieves the economic goals of the project sponsor and the majority of the benefits. An analysis to determine the optimal duration should be undertaken, which considers such things as lifecycle of the asset components, public benefits and cost of risk transfer etc. Renewal periods, if applicable, should be expressly considered to encourage optimal private investment and public benefits including risk transfer. Prior to renewal of any contract, an independent assessment should be completed to document the benefits, risks, and trade-offs of continuing the contract compared with a wide range of reasonable and feasible alternatives. The project sponsors demonstrate that the contract/project continues to be consistent with the initial transaction attributes (1.6.4) and will continue to operate so as to optimize the public benefits upon which the contract was originally executed.

1.6.9 Non-Performance Provisions

Contracts should clearly define each party's responsibilities and the consequences associated with non performance. This would include payment deductions for non-performance as well as default and termination provisions in each case.

Termination provisions including opportunities to remedy should be reasonable and fair to both parties. Payout for default and convenience should be clear and proportionate to contributions made and risk absorbed. Reasonable and appropriate remedies should be addressed for either party.

1.6.10 Objective Analysis

Sponsors shall engage knowledgeable advisors if not available in house, who are not paid based on the success of the transaction, to advise government on such things as (1) valuation range including risk adjusted financial returns on investment and ancillary/public benefits, (2) alternative procurement strategies and alternative project designs, (3) engineering and architectural design requirements (4) process integrity, and (5) contract performance monitoring/reporting requirements.

1.6.11 Funding for Planning and Implementation

The initiative must make provisions for sufficient upfront and annual funding to assure that the sponsoring government has the capacity to hire qualified staff and advisors and to provide proper regulatory and reporting oversight. For example, the annual budget should

include funding for day-to-day interface with the partner, independent performance monitor, legal counsel to assess ongoing issues, risk management, audit and compliance reviews.

1.6.12 Stakeholder Engagement:

Sponsors should ensure that robust stakeholder engagement is implemented through the definition, planning and implementation phases of a project. For example this would include engagement with end users, affected associations, labor representatives, market sounding with potential bidders, neighborhoods etc.

1.6.13 Transparency

Transparency, accountability, efficiency, performance, and public purpose should be the corner stone of competitive selection processes, and the ensuing infrastructure transactions must be responsive to jurisdictional requirements.

1.6.14 Open, competitive process

A transparent, objective, competitive process should be used to award long-term contracts. The selection process should assure that only well qualified firms (in terms of operational and financial capacity) will be considered as long-term partners to finance or operate public facilities or deliver services. Bidders should be vetted to minimize counterparty risk. These competitive processes should support achieving the goals of the Sponsor.

Unsolicited proposals involve concepts that may have been developed outside of formal planning, vetting and policy processes, and as such may not define a “new need” of government. The review of such proposals must be considered against Sponsor priorities and objectives to determine if the proposed project is a priority for the Sponsor. If the answer is yes, any contract award should be subject to a competitive, transparent process. For novel or private initiatives requiring innovative solutions where there is limited knowledge and experience and a smaller pool of qualified and interested parties, the government could explore, where allowed by procurement rules, cost-effective procurement strategies that include a competitive, negotiated process where proponents present their best structural ideas to government officials and are provided the opportunity to offer value based on their terms. The process should define why the project is being considered and what specific benefits are likely to accrue to the taxpayers.

1.6.15 Public Reports

Sponsors should be responsible for delivering a public report on the entire process including the benefits of project and outcomes of procurement process and the extent to

which the objectives and benefits of the project are achieved.

1.7 DEFINITIONS

Economic Value – describes the full economic value (adjusted for risk) of the project regardless of who accrues the benefits, costs and risks. It includes the direct (user and stakeholder) costs and benefits, the financial costs and benefits, the public sector costs and benefits (Value for Money) as well as externalities of the project.

Infrastructure Investment Partnerships (IIPs) are specific detailed agreements to invest private capital and/or public funding and to allocate risk benefits and cost between multiple parties engaged in the development, expansion and/or retrofit of environmental, social, transportation and other public infrastructure, and/or ecosystem goods and service projects.

Performance Based Infrastructure Solutions (PBIS) are agreements to provide capital assets in which the investment, risk, responsibility, and rewards associated with the provision of the assets are shared between government and private sector participants. Such projects generally include some or all of design, construction, financing, operation, and maintenance together into a single contractual undertaking which allocate risk to the party within the partnership best equipped to control/manage it. Typically the ownership of the asset that is being procured remains with the Sponsor.

Project Finance is the long-term financing of infrastructure and industrial projects based upon projected cash flows of the project rather than the balance sheets of its sponsors. Usually, a project financing structure involves a number of equity investors, and banks or other lending institutions that provide loans and/or arrange placements with lenders to the operation. In traditional financing such as a real estate deal they are most commonly non-recourse loans or bonds, which are secured by the project assets and paid entirely from project cash flow, rather than from the general assets or creditworthiness of the project sponsors, a decision in part supported by financial modeling.. In the case of a PBIS structure the financing is secured against the project revenues (eg toll facility) or the Sponsor's credit worthiness (availability/performance contract).

Project Company is the special purpose entity formed to assume the responsibilities and represent the interests of the parties entering into a project financing arrangement. This entity is responsible for fulfilling terms of the project agreements governing the arrangement which may include including planning, design, financing, construction, commissioning operations, maintenance, revenue collection and reporting obligations as applicable.

Partners are the two or more entities, all counterparties, associated in a business enterprise including infrastructure related initiatives (including IIPs and PBIS) that share proportionately in the profits [benefits] and losses [risks]. The parties can be either public or private entities or combinations of the two bound by contract with performance measurement and reporting obligations

Project Sponsors are typically the owners of the asset, identify what the project is proposed to achieve and define what the project will deliver. In the case of infrastructure projects, they are the agencies that have a vested interest in the project from kickoff to closure. Project sponsors provide clear direction including linkage to overall strategy, required resources, delivery as well as budget and scope compliance, provide project feedback and formal reporting, stakeholder outreach, while they champion work at the executive level to secure buy-in.

Project Owners are those entities for whose direct benefit the building or construction work exists on its completion.

Operator is the owner or operator of a contract or grant for the use of land, infrastructure, or commercial premises.

Value for Money Analysis is a subset of Economic Value that is also commonly referred to as value for taxpayer dollars. VFM describes the benefits to the public expected to be realized through a particular procurement method, and can be quantitative and/or qualitative in nature. Quantitative value for money is achieved through lower cost of a particular procurement method, whereas qualitative value is achieved when a particular procurement method better supports the goals and objectives of a project without necessarily costing less.