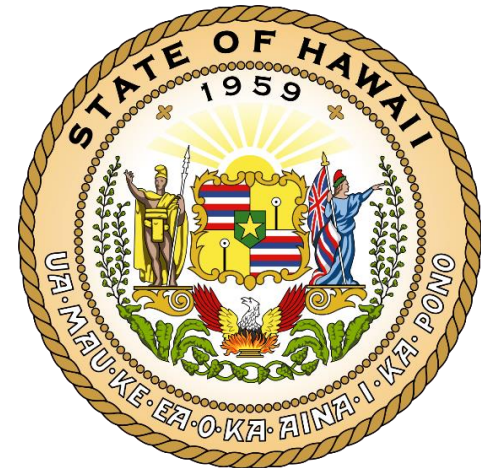


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Ambitions*



# ***Hawaii State Department of Accounting and General Services Innovative Project Delivery Workshop – Day 2***

*August 15, 2017*

# Agenda

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	Topic
<b>Day 2</b>	
	Recap Day 1 and Housekeeping
<i>Module 3:</i>	Best Practices and Requirements for Establishing an Appropriate Enabling Framework
<i>Module 4:</i>	Key Public Sector Considerations
	General Discussion and Q&A



# Recap of Day 1

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- ✓ Wide spectrum of P3 modalities and no one size fits all
- ✓ Funding vs. Financing
- ✓ VFM and Project Screening
- ✓ Transaction Considerations and Risk Allocation
- ✓ Diverse examples of IPD/P3 in all sectors (Wrap-up this morning)

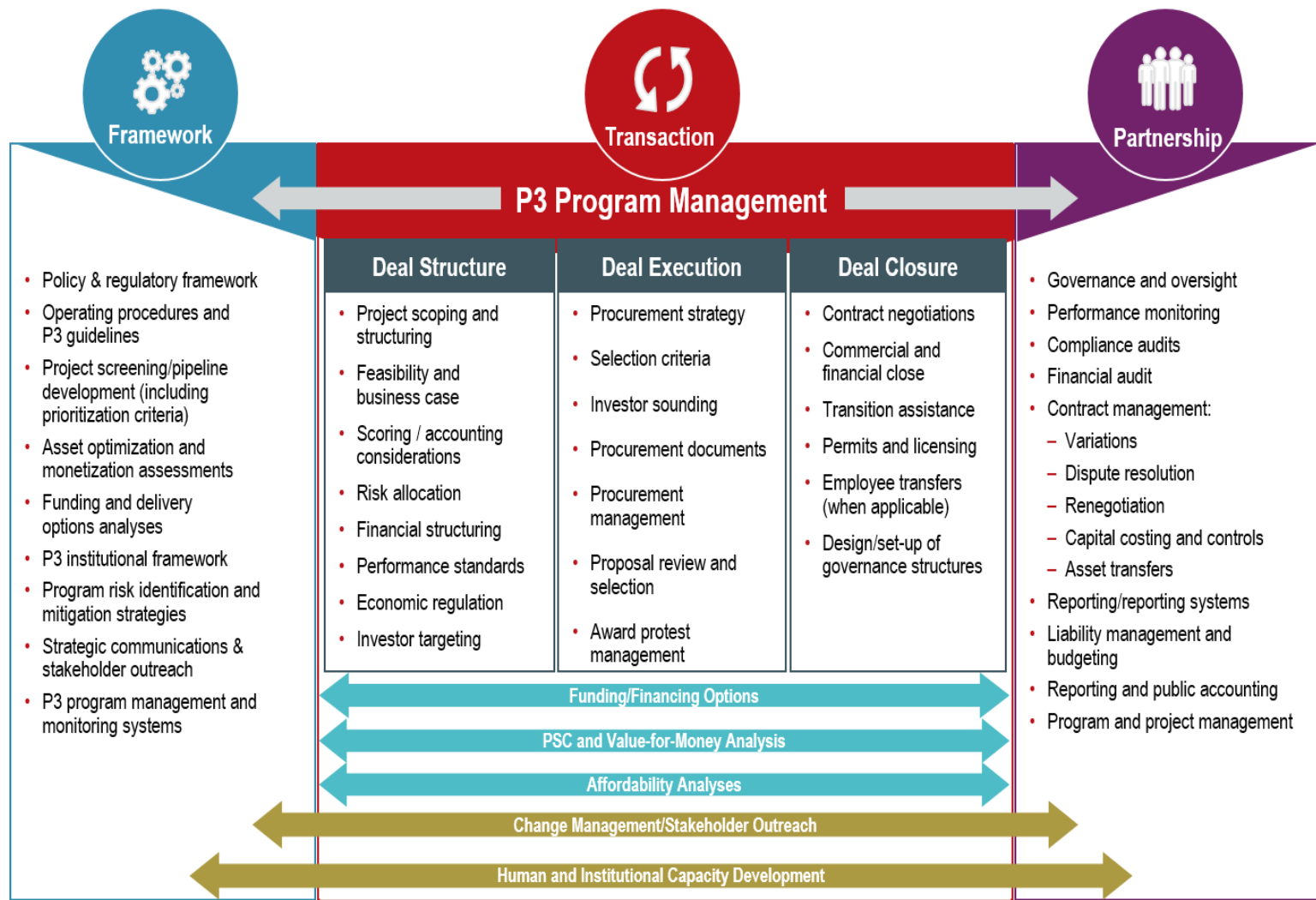
## Infrastructure & Service Delivery Spectrum of Options



## Module 3: Best Practice and Requirements for an Enabling Framework

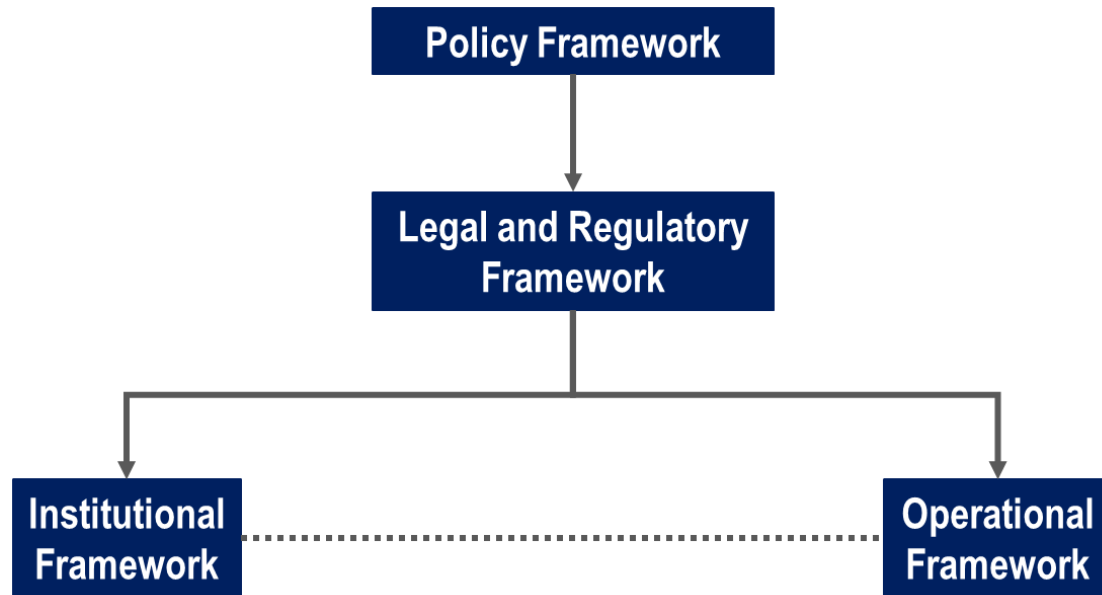


# IPD Life-Cycle



# Enabling Framework Components

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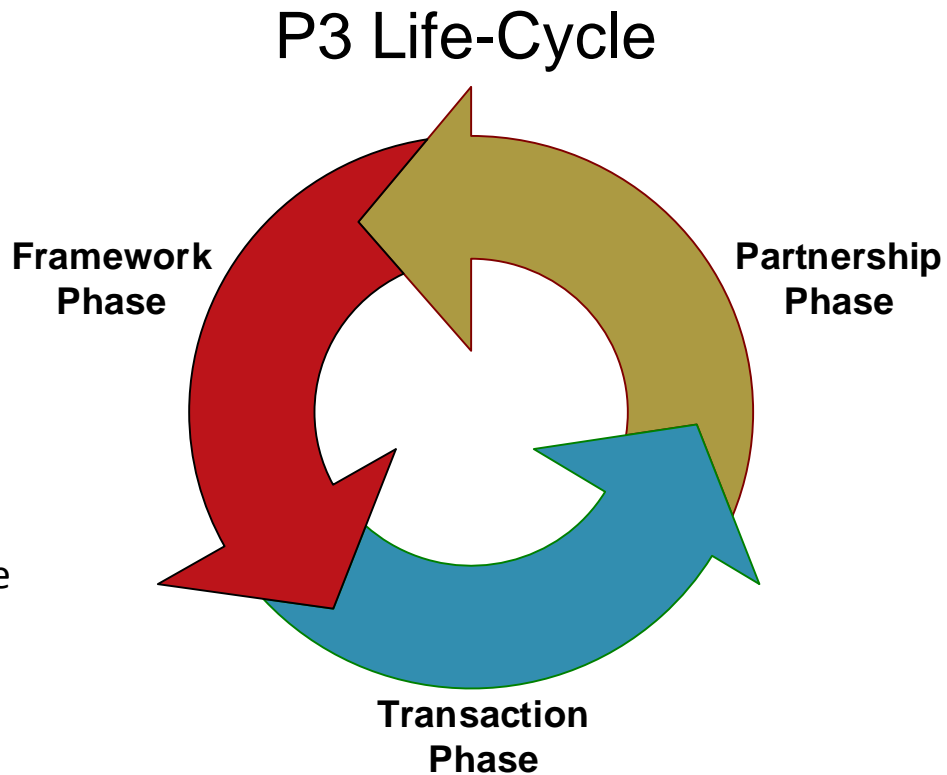


## Policy Framework

# Policy Framework

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- Defines why and under what conditions that public authorities will leverage Innovative Project Delivery and other forms of P3
- Policy framework is typically articulated in a policy statement that lays out the objectives of an IPD approach i.e.:
  - “IPD is part of the State’s commitment to delivering infrastructure across a broad range of sectors in the timeliest and most cost-effective manner”
  - “IPD is a tool to enable improved government facilities, more effective delivery of government services, economic development, and more resources available for public purposes”
- Policy statement should also define broader parameters for application and commitment to key objectives (like “balanced and sustainable structures that deliver value-for-money for tax payers over the life of the project”)







## Legal and Regulatory Framework

# Legislative and Regulatory Framework

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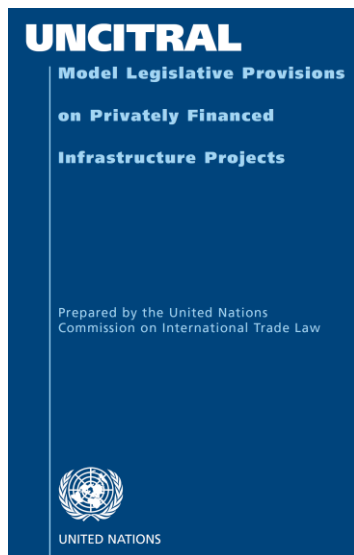
- An appropriate enabling legislative framework is important for buying-down risk and optimizing VfM.
- A number of best practice toolkits exist on the national and international level.
- While legislative frameworks are tailored to the needs of specific jurisdictions, there are some best practice parameters that should always be considered
- Diverse strategies for enabling legislation: **Multi-Sector versus Sector-Specific legislation**

## 1. General framework

- General guiding principles for a favorable legislative framework
  - Transparency
  - Fairness
  - Long-term sustainability of regulation

## 2. Scope of authority to award IPD

- Law should **identify the public authorities empowered to award and enter into IPD agreements** for the implementation of privately financed infrastructure projects.
- Application for **new and existing** public facilities and systems.
- The law should **identify the sectors** or types of infrastructure in respect of which IPD may be granted.
- The law should specify the extent to which IPD might be executed across **multiple jurisdictions** via P4/ joint powers, etc.



# Legislative and Regulatory Framework

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## 3. Administrative coordination

- Institutional mechanisms should be established to coordinate activities of public authorities responsible for issuing approvals, licenses, permits or authorizations required for the implementation of privately financed infrastructure projects

## 4. Authority to regulate infrastructure services

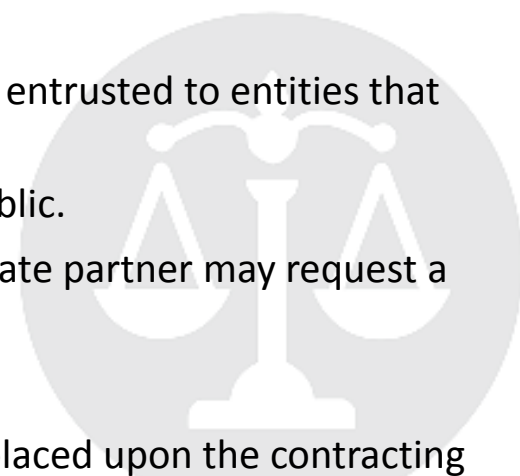
- The authority to regulate infrastructure services should not be entrusted to entities that directly or indirectly provide infrastructure services.
- The rules governing regulatory procedures should be made public.
- Law should establish transparent procedures whereby the private partner may request a review of regulatory decisions

## 5. Project risks

- No unnecessary statutory or regulatory limitations should be placed upon the contracting authority's ability to agree on an allocation of risks that is suited to the needs of the project.

## 6. Government financial supports

- Law should clearly state which public authorities may provide financial or economic support to the implementation of privately financed infrastructure projects and which types of support they are authorized to provide.



# Legislative and Regulatory Framework

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## 7. Selection and Award Process

- The law should provide for the selection of the private partner through transparent and efficient competitive procedures adapted to the particular needs of privately financed infrastructure projects.
- **Pre-selection criteria and procedures (RFQ)**
- **Procedures for requesting proposals (RFP)**
  - Allowable procedures
  - Content of the final request for proposals
  - Clarification Criteria
  - Evaluation and selection criteria
- **Final Negotiations and Contract Award**
  - Financing conditions
- **Award without Competitive Procedures**
- **Unsolicited Proposals**
- **Confidentiality**
- **Protests and Appeals**



# Legislative and Regulatory Framework

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- **8. Legislative framework and project agreement**
  - **General provisions on the project agreement**
    - **Organization of the private partner** (i.e., requirement of selected bidder to establish a special purposes independent legal entity).
    - **Financial arrangements**
      - User Fees
      - Budget-based payments
    - **Security interests** (right of private partner to secure any financing required for the project with a security interest in any of its property, with a pledge of shares of the project company, with a pledge of the proceeds and receivables arising out of the IPD, or with other suitable security, without prejudice to any rule of law that might prohibit the creation of security interests in public property.)
    - **Assignment** (need for consent of contracting authority)
    - **Transfer of controlling interest in Private Partner**
    - **Lender Rights**
    - **Construction and Operational Baseline Requirements**





# Legislative and Regulatory Framework

## 9. Duration, extension and termination of the project agreement

## 10. Consequences of expiry or termination of the project agreement

- Transfer of assets to the contracting authority or to a new private partner
- Financial arrangements upon termination
- Wind-up and transitional measures

## 11. Dispute Resolution

## 12. Other



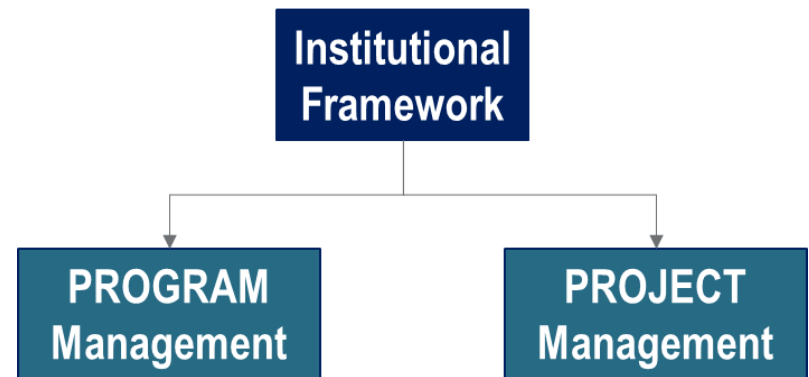
There are plenty of recent examples of well-developed (and not-so-well-developed) multi-sector enabling statutes that Hawaii can leverage should it choose to create broad-based enabling legislation for IPD

# Institutional Framework

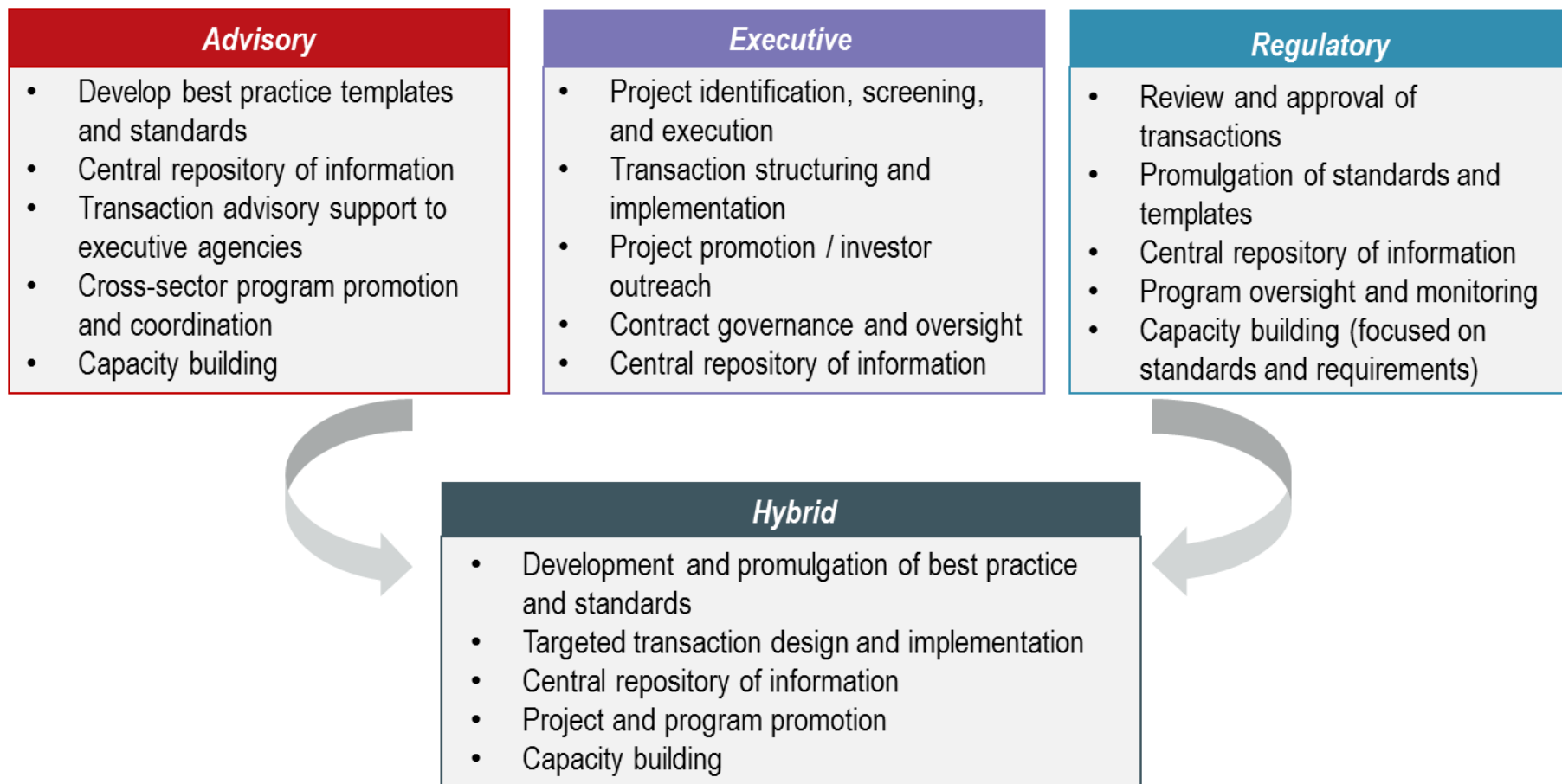
# Institutional Framework

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- Organizational structure for oversight and implementation of P3 program and transactions
- Can be centralized or decentralized and may involve a wide variety of governance and oversight structures.
- Critical to identify management and reporting structure (for approvals, authorizations, etc.)
- Need to clearly identify who is in charge of:
  1. Enabling framework i.e., broader program issues, state financial supports, etc.)
  2. Project execution
  3. Project and Program oversight
- Importance of distinguishing between promotion and executive functions.
- No one-size-fits-all formula to creating the optimal institutional framework for P3

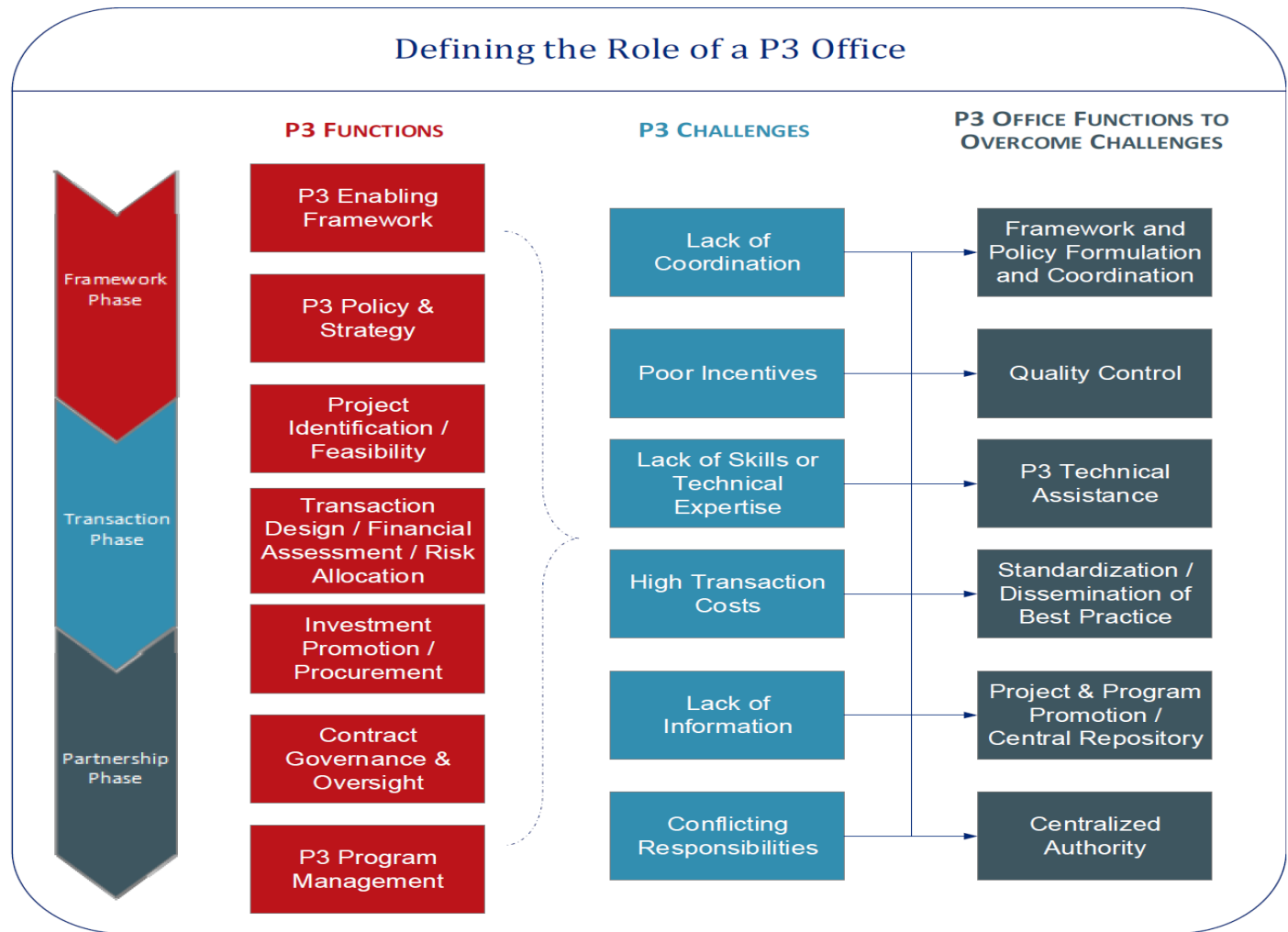


# Types of P3 Offices



# Role of IPD Office

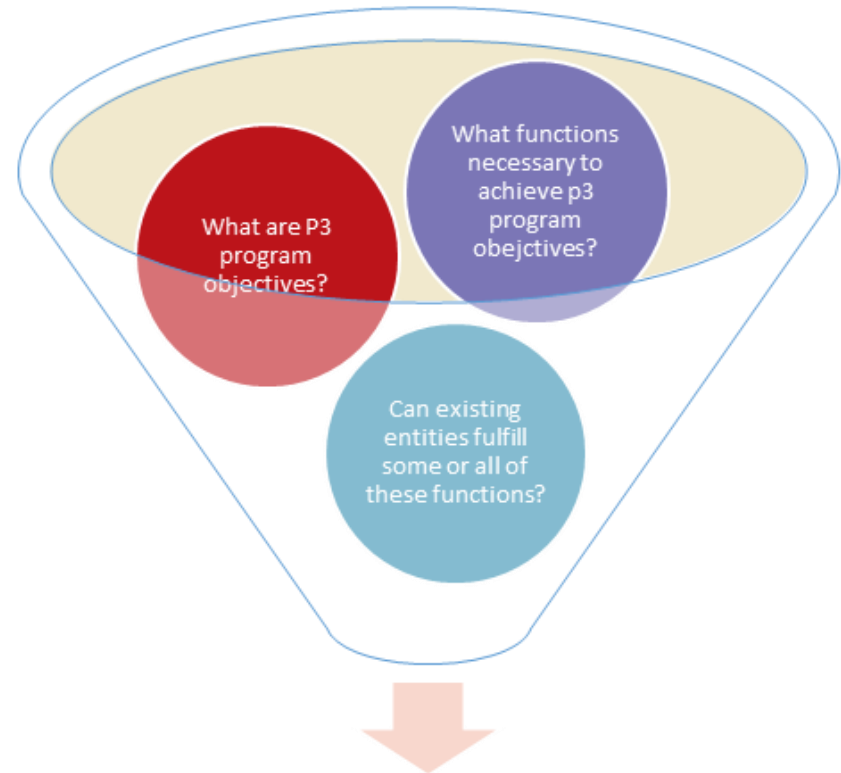
- Despite efforts to establish standardized institutional arrangements, no single “one-size-fits-all” formula
- Governments suffer from different institutional weaknesses in IPD activities and, therefore, IPD offices in different jurisdictions will require unique structures and competencies





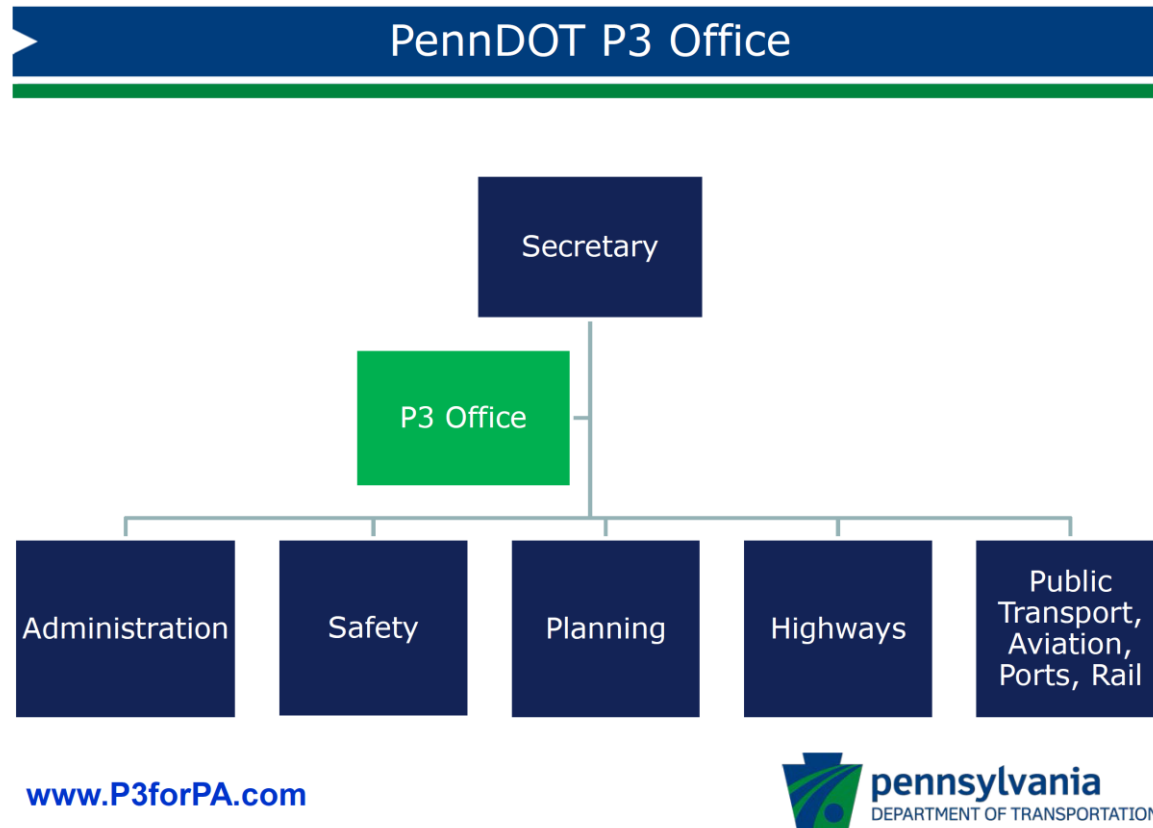
# P3 Office Start-up and Design Considerations

- P3 Office's responsibilities and functions
- Office's level of authority
- Office's appropriate location within government



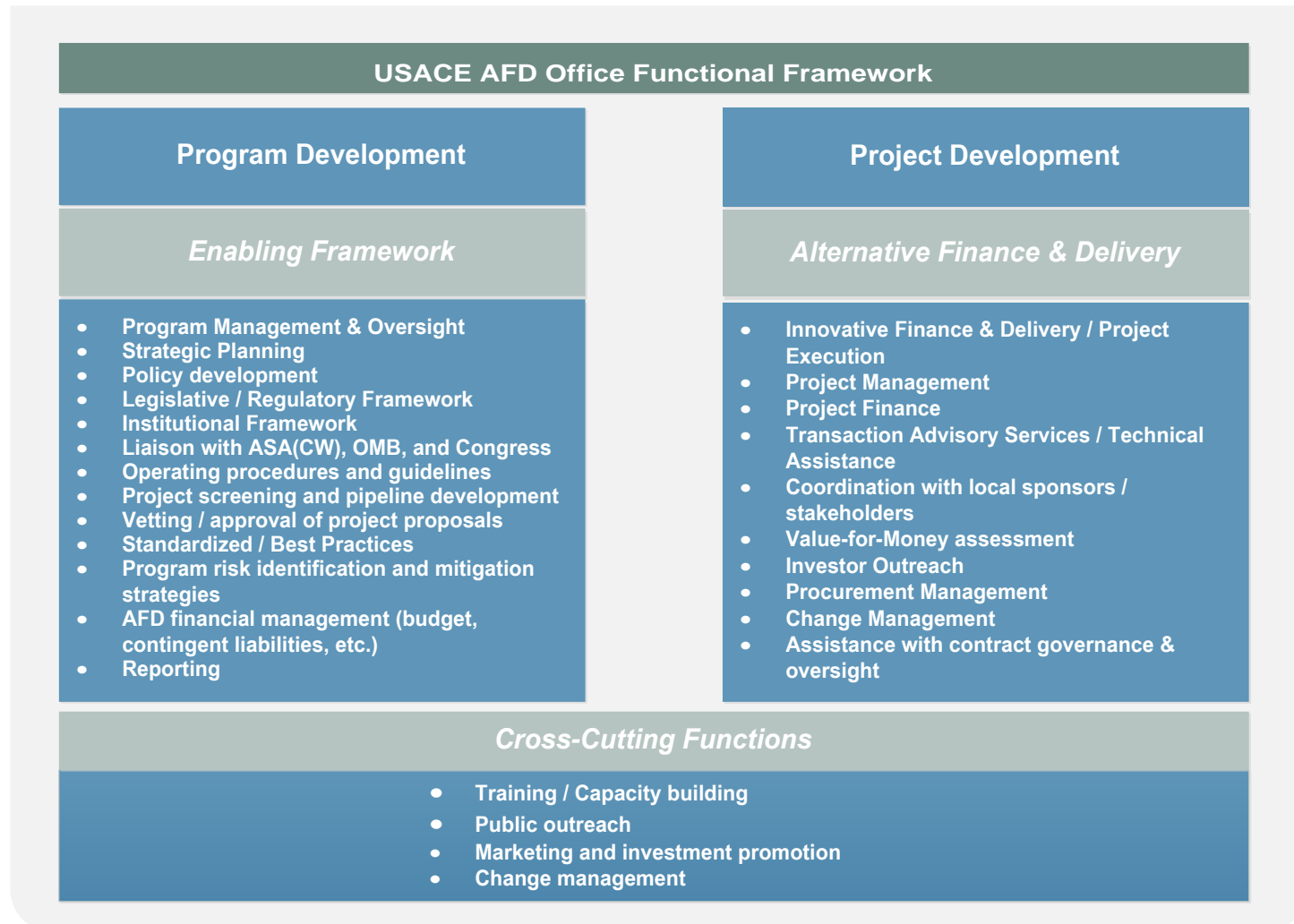
**Determine role of P3 office**

# Sample P3 Office Structure: Pennsylvania



P3 Office coordinates P3 projects for entire department. However, it is a separate P3 Transportation Partnership Board that reviews and approves potential P3 Transportation Projects for procurement.

# Proposed Institutional Framework for USACE P3



# Operational Framework

# Operational Framework

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- **How** will P3 transactions be managed and executed?



## Guidelines and Procedures

For the Public-Private Partnerships Act of 2014

The Honorable Muriel Bowser  
Mayor

Rashad M. Young  
City Administrator

Seth W. Miller Gabriel  
Director, Office of Public-Private Partnerships

Published October 21, 2016

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### 1.0 Introduction

- 1.1 Purpose of these Guidelines
- 1.2 Modification of Guidelines
- 1.3 Organization of these Guidelines
- 1.4 Regulations
- 1.5 Defined Terms
- 1.6 Relationship between the DC OP3 and Other District Agencies
- 1.7 Public is Engaged in the P3 Process
- 1.8 Funding of Project Development
- 1.9 Application of Other Laws
- 1.10 Conflict of Interest, Open Meeting and FOIA Requirements

### 2.0 Project Identification

- 2.1 Outline of the Solicited Project Identification Process
- 2.2 Identified Solicited Projects

### 3.0 Project Screening for Solicited Proposals

- 3.1 Stage One: Initial Screening
- 3.2 Stage Two: Detailed Screening
- 3.3 Creation and Publication of P3 Project Pipeline
- 3.4 Project Prioritization



# Guidelines

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## **4.0 Project Development**

- 4.1 Project Development Tasks
- 4.2 First-Level Project Value-for-Money Analysis
- 4.3 Draft Public Sector Comparator
- 4.4 Statement of Intent to Procure as a Public-Private Partnership

## **5.0 Project Procurement – Solicited Projects**

### **5.1 Request for Information**

- 5.1.1 Public Notice
- 5.1.2 Schedule
- 5.1.3 Industry Conference and One-on-One Meetings
- 5.1.4 Use of Responses to Request for Information

### **5.2 Pre-Qualification / Request for Qualification**

- 5.2.1 Public Notice
- 5.2.2 Schedule
- 5.2.3 Minimum Required for Pre-qualification
- 5.2.4 Other Requirements and Criteria for Pre-qualification
- 5.2.5 Certification of Pre-qualification
- 5.2.6 Collaborative Review and Feedback
- 5.2.7 Application Fee

- 5.2.8 Modification and Cancellation of Request for Qualification
- 5.2.9 Use of Responses to Request for Qualification

### **5.3 Review of Draft Request for Proposals**

- 5.3.1 Public Review of Draft Request for Proposals
- 5.3.2 Approval of Proposed Request for Proposals by the Council

### **5.4 Solicitation through Request for Proposals**

- 5.4.1 Public Notice
- 5.4.2 Schedule
- 5.4.3 Requests for Proposals Requirements
- 5.4.4 Evaluation and Selection Criteria Requirements
- 5.4.5 Format for Responses and Executive Summaries
- 5.4.6 Evaluation of Responses to Request for Proposals
- 5.4.7 Selection of Preferred Bidder
- 5.4.8 Publication of Responsive Executive Summaries
- 5.4.9 Payment of Stipends

# Guidelines

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5.4.10 Use of Responses to Request for Proposals

5.4.11 Confidential Information Included as Part of a Solicited Proposal

## **6.0 Project Procurement – Unsolicited Projects**

6.1 Time Periods for Acceptance of Unsolicited Proposals

6.2 Discussions with DC OP3 before Submission of Unsolicited Proposal

6.3 Structure and Format of Unsolicited Proposals

6.4 Preliminary Evaluation of Unsolicited Proposals

6.4.1 Preliminary Evaluation Criteria

6.4.2 Preliminary Evaluation Fee

6.4.3 Preliminary Evaluation Results

6.5 Comprehensive Evaluation of Unsolicited Proposal

6.5.1 Unsolicited Proposal Clarification

6.5.2 Notification of the Unsolicited Proposer

6.5.3 Public Notice and Alternative Proposals

6.5.4 Schedule

6.5.5 Requirements of Alternative Proposals

6.5.6 Updated Submittals by the Original Unsolicited Proposer

6.5.7 Comprehensive Evaluation

6.5.8 Comprehensive Evaluation Review Costs

6.5.9 Use of Unsolicited Proposals

6.5.10 Selection of a Preferred Bidder

6.5.11 Office of the Chief Financial Officer (OCFO) Certification

6.5.12 Office of the Attorney General (OAG) Certification

6.5.13 Notice of Selection of Preferred and Secondary Bidders

6.5.14 Communication during the Procurement Process

6.5.15 Confidential Information Included as Part of an Unsolicited Proposal

## **7.0 Rules to Ensure Ethical Conduct**

7.1 Ethical Duty

7.2 Ethical Obligations under the Comprehensive Code of Conduct

7.2.1 Duty of Loyalty

7.2.2 Financial Conflicts

7.2.3 Private Gain

7.2.4 Nonpublic Information

7.2.5 Outside Employment

7.2.6 Gifts from Outside Sources

7.2.7 Post-Employment Conflicts of Interest

7.2.8 Government Property

# Guidelines

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7.2.9 Disclosure of Prior Employment

7.2.10 Additional Obligations

7.3 Reporting Conflicts and Violations

7.3.1 District Employees

7.3.2 Private Entity Employees

7.4 Mitigating Conflicts and Violations

## **8.0 The Public-Private Partnership Agreement**

8.1 Requirements for the Public-Private Partnership Agreement

8.2 Negotiation

8.3 Engagement of Secondary Bidder

8.4 Facilities Plan Approval

8.5 Prohibition Regarding Non-Compete Provisions

8.6 Access and Right to Inspect

8.7 External Funding

8.8 Projects of Regional Scope

8.9 Sovereign Immunity

8.10 Remedies

8.11 Compliance with Federal and District Laws

8.12 Repayment of Fees Paid by the Original Unsolicited Proposer

8.13 Monitoring of P3 Agreement Performance

## **9.0 Final Approval of the Public-Private Partnership Agreement**

9.1 Council Report Requirements

9.2 Council Approval of the Public-Private Partnership Agreement



# Change Management

# Key Considerations for Change Management

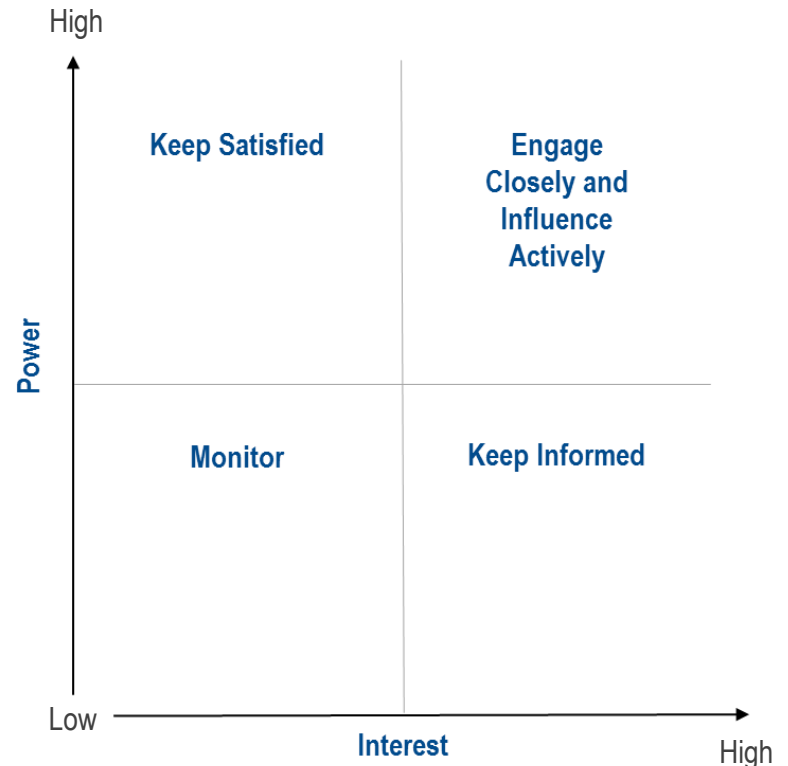
## ***Stakeholder Management & Strategic Messaging***

- Importance of stakeholder management
- Identify Key Stakeholders (Stakeholder Matrix) and assess level of interest
- Develop Strategic Messaging/Communications Plan (terminology matters)
- Distinguishing the transaction from the use of proceeds/savings

## ***Transaction Governance and Authorization Structure***

- Importance of clear decision making parameters to mitigate procurement risk
- Leveraging relevant precedents
- Enabling market valuation

### Sample Stakeholder Matrix





Module 3: Best Practice and Requirements for an Enabling Framework

# QUESTIONS AND DISCUSSION

## Module 4: Key Public Sector Considerations relating to Innovative Project Delivery



# Structuring Successful & Sustainable Transactions

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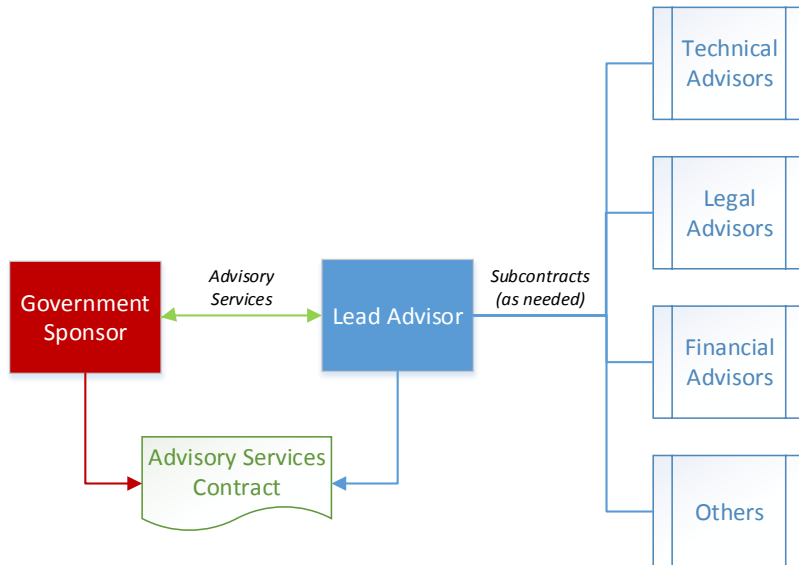
- Wide variety of legal financial, operational, and technical factors to consider in structuring transactions
- Steep learning curve for P3 program and transaction development
- Many of the skills needed across the IPD life-cycle are not readily available in the public sector, so best practice suggests leveraging advisors and experts to assist in ensuring that early deals are fair, balanced and sustainable over the term of the contract
- Best-in-class investors, operators and construction partners will insist on well-designed and structured transactions that reflect industry best practice.



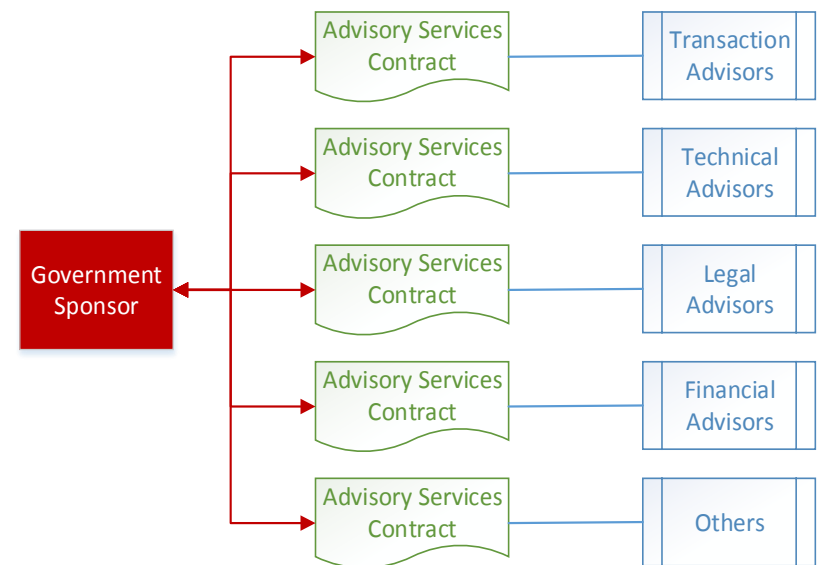
# Managing Advisors

- Different approaches to managing third party experts and advisors:

## Single Lead Advisor Structure



## Multiple Advisor Structure

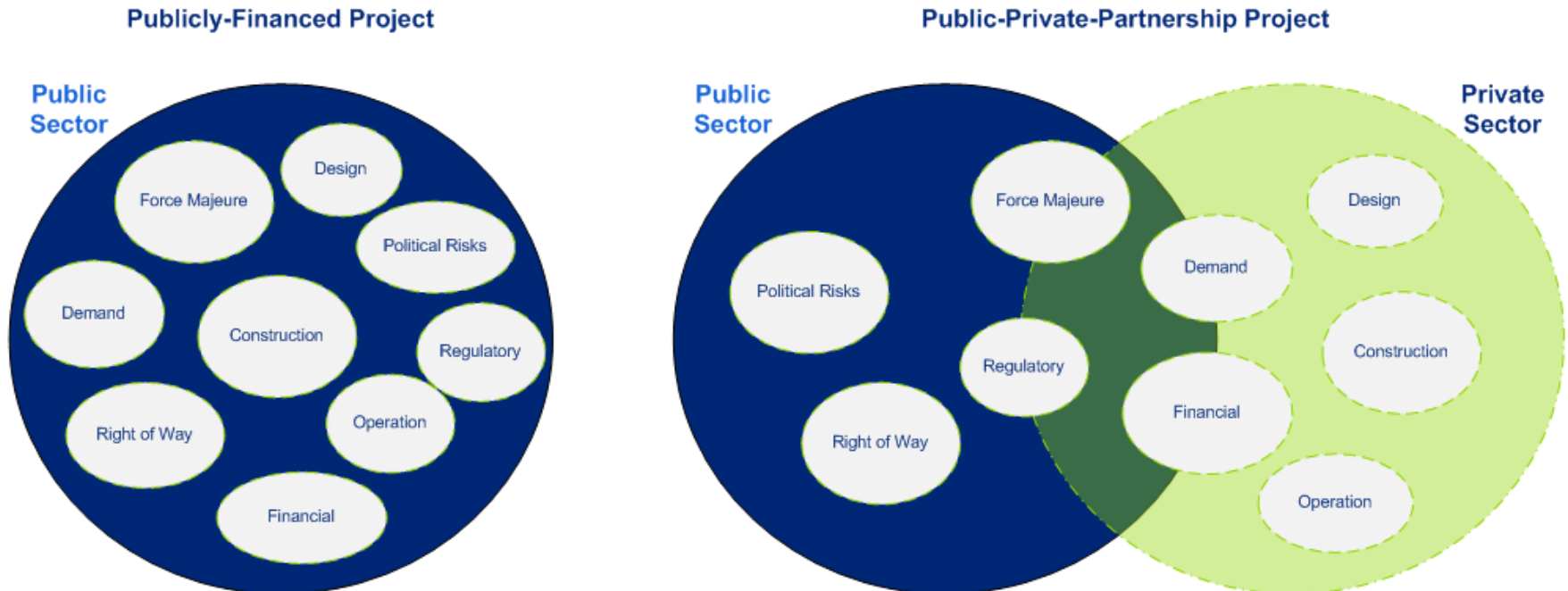


- Decision as to optimal structure depends on abilities of government sponsor
- Importance of selecting the “right” advisors
- Budgeting and compensation strategies

# Risk Sharing

- Key Consideration: Recognizing and understanding retained risks and responsibilities

## Risk Distribution in PPP



- Funding and appropriations
- Termination and compensation considerations
- Management and budgeting for contingent liabilities

# Program and Contract Governance and Oversight

## Contract Governance & Oversight

### Performance and Compliance Monitoring & Enforcement

- Construction Phase
- Operational Phase
- Wrap-Up / Asset Transfer

### Contract Management

- Relationship Management
- Regulation / compliance
- Dispute Resolution
- Renegotiations / Amendments

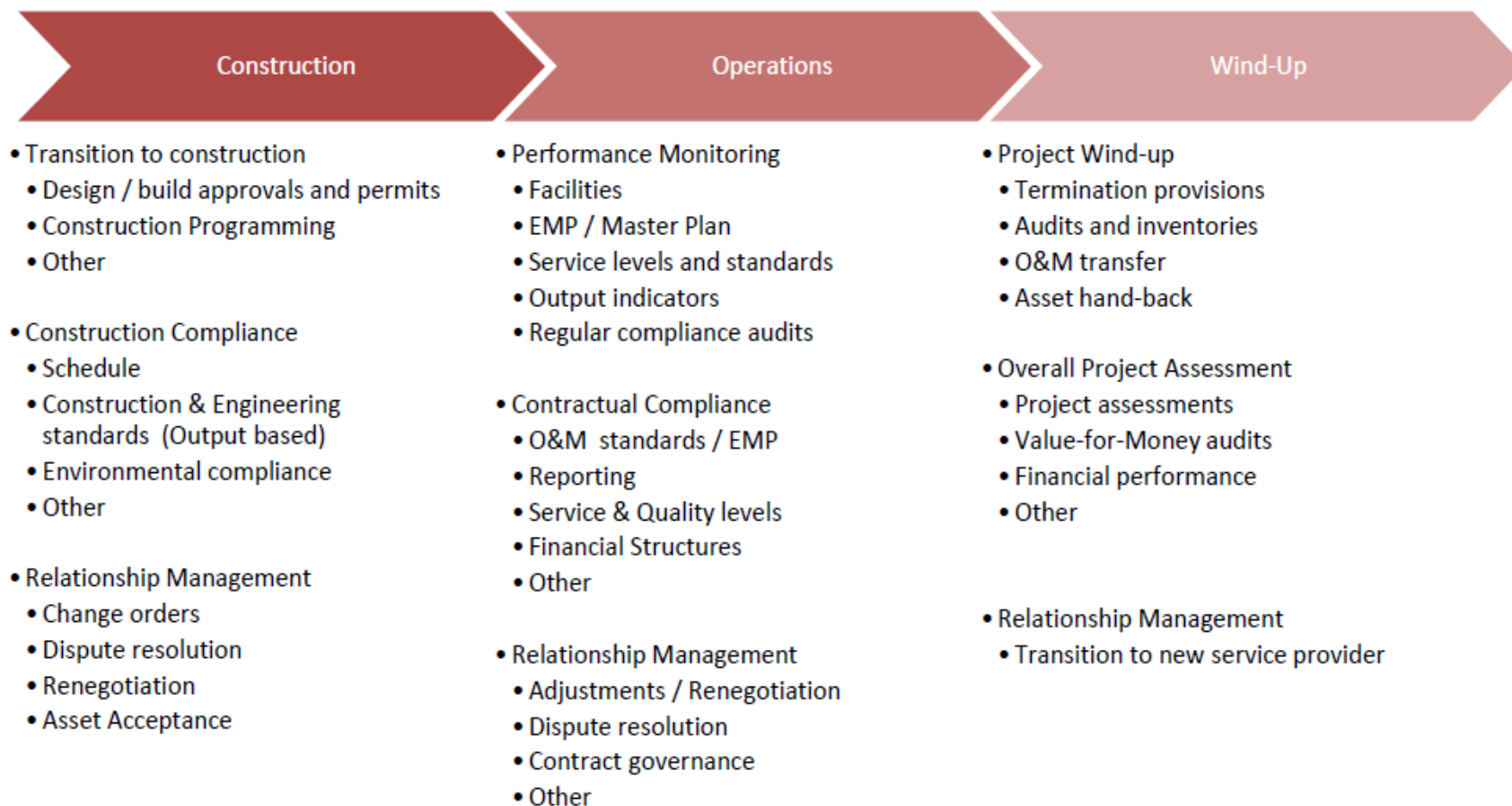
### Project & Program Assessment

- Appraisal of benefits and VfM
- Audits
- Manage contingent liabilities and government obligations
- Refinement of best practices

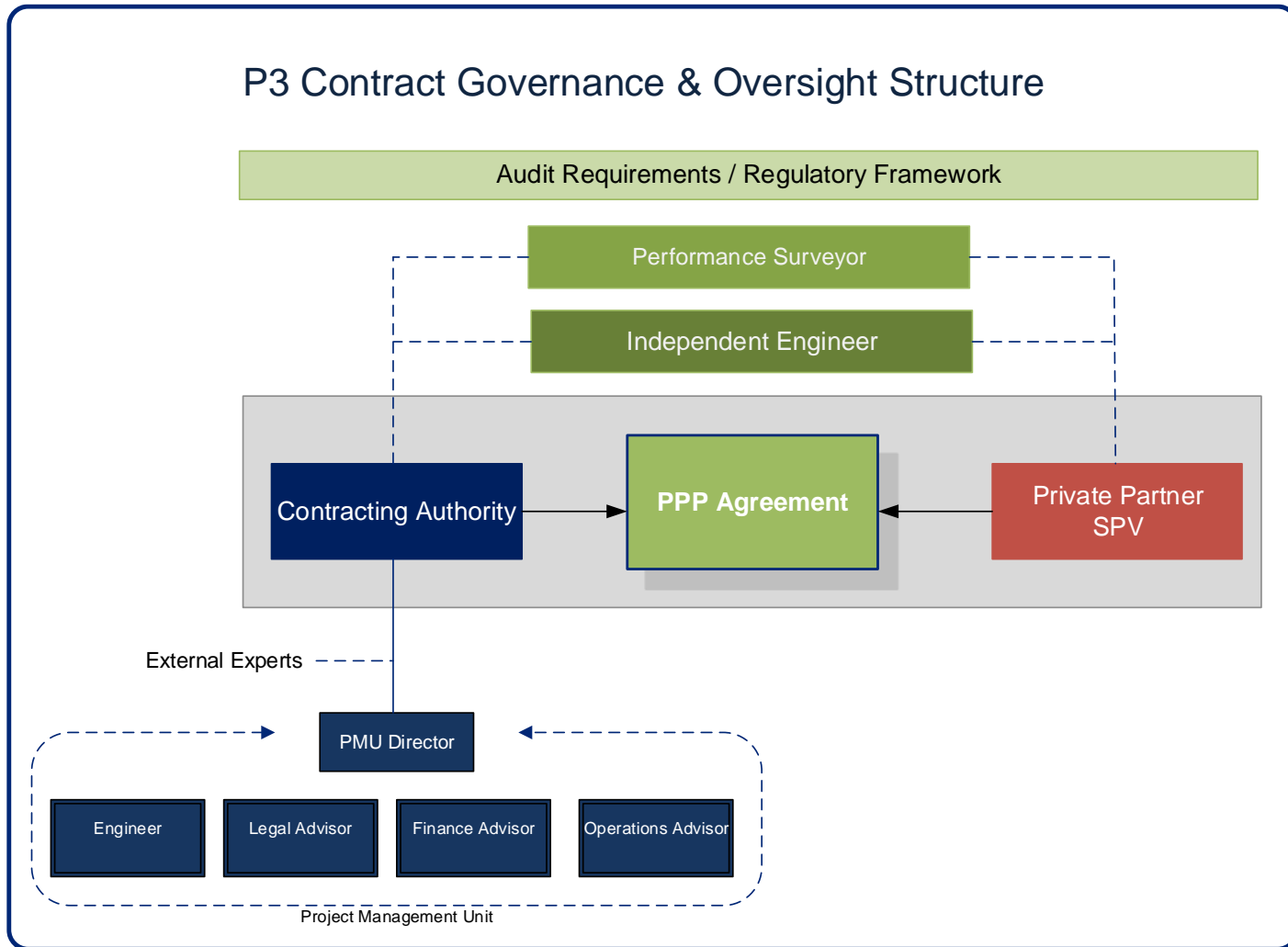
- During contract execution, a wide variety of issues will need to be managed. They can occur during the construction period, operation period, and/or during contract close-out (wrap-up). Public authorities need to have processes and procedures in place for addressing these issues.
- Oversight responsibilities change according to the phase of the contract (construction, operations, wrap-up)
- Common use of independent engineers (sometimes lenders' representatives) for oversight



# Contract Governance and Oversight



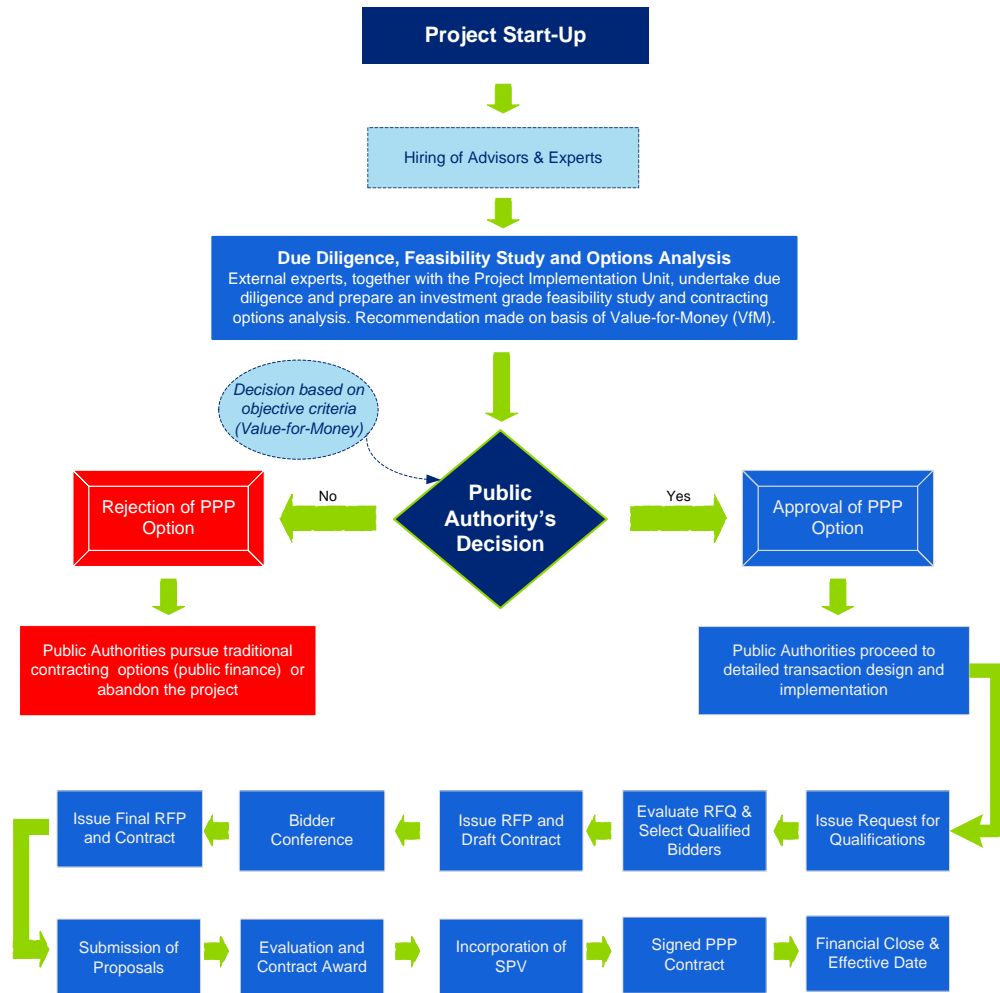
# Program and Contract Governance and Oversight



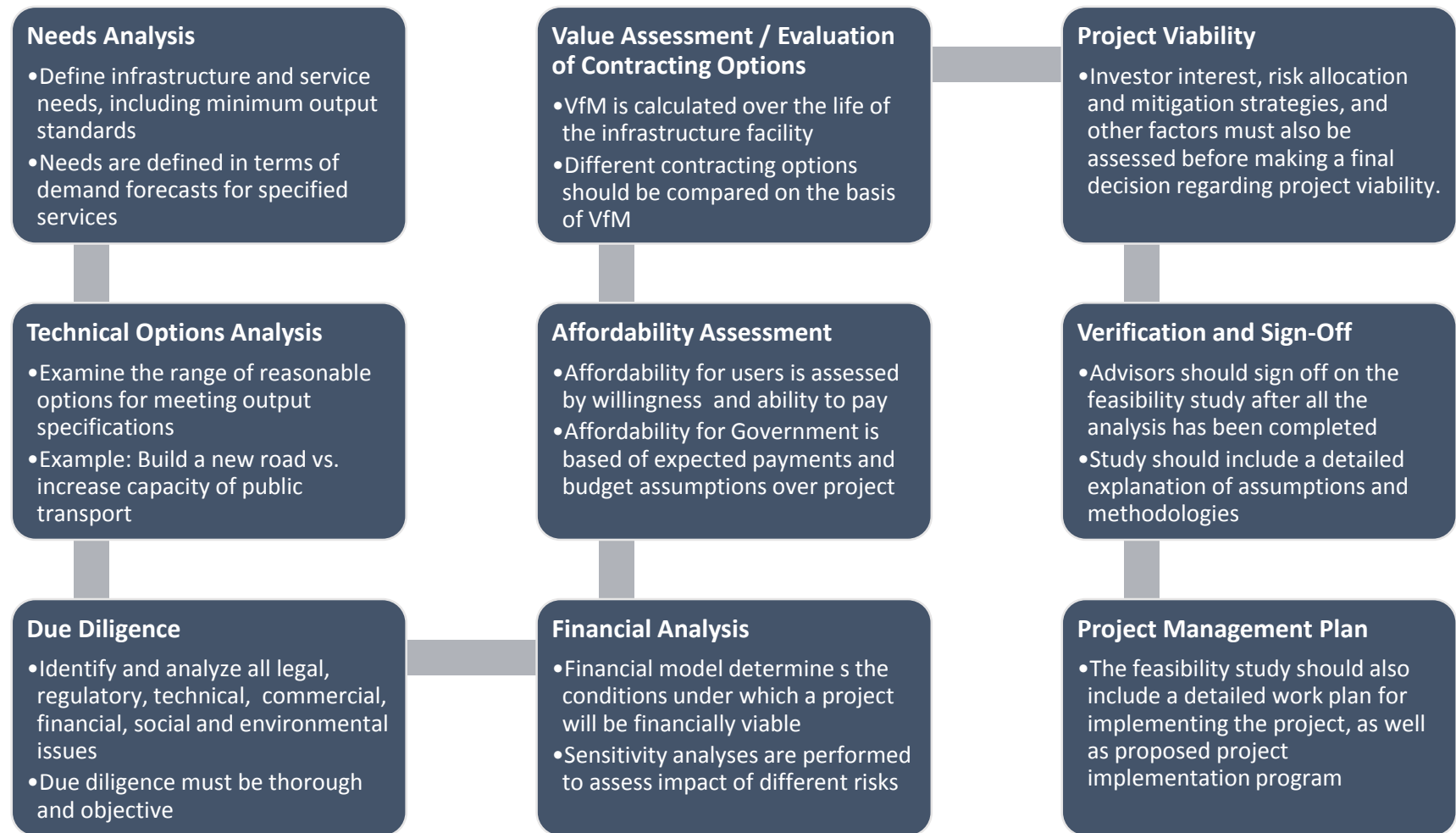
# Procurement Strategy and Management

- How alternative finance and delivery procurements differ from traditional procurement

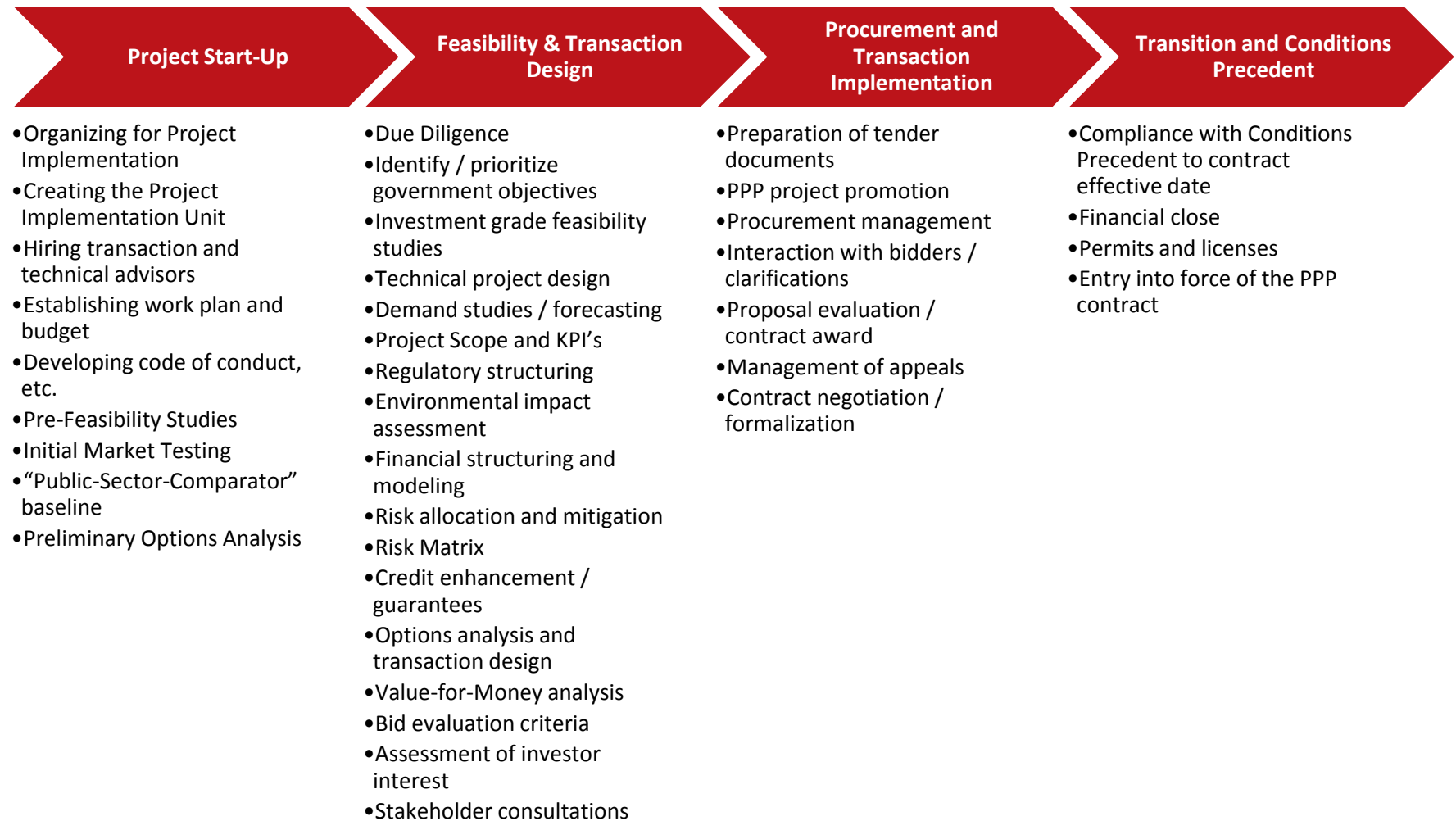
## PPP Process Flow



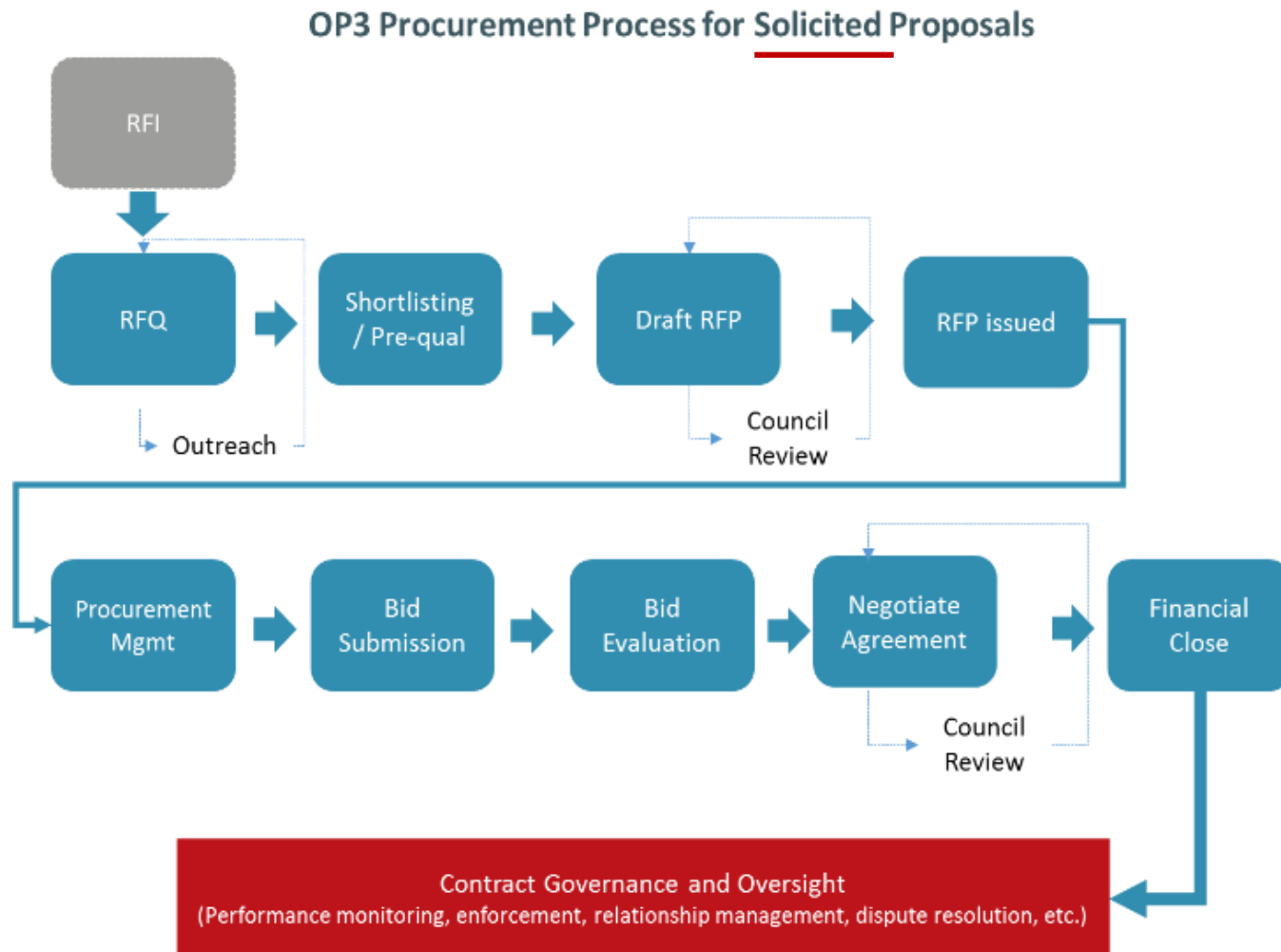
# Identifying and Analyzing IPD/P3 Projects



# Transaction Implementation Process



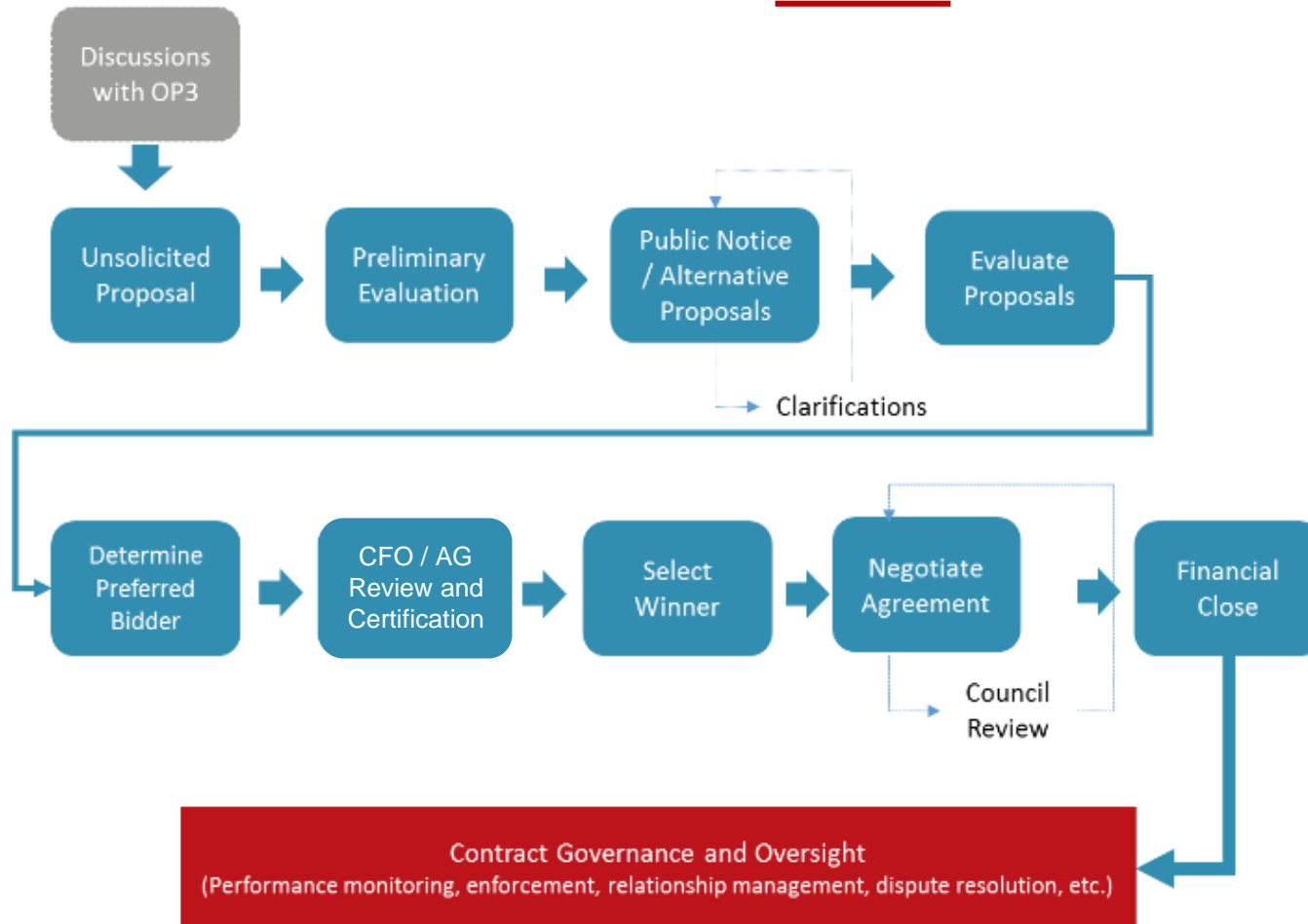
# Sample Procurement Process Established by DC OP3





# Sample Procurement Process Established by DC OP3

## DCOP3 Procurement Process for Unsolicited Proposals



# Key Considerations

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- Procurement Strategy and Management
  - Importance of pre-defining Authorizations and Approvals
  - Upset limits (usually for social sector projects)
  - The role of competition / attracting interest and selecting the ideal partner
  - Other considerations (stipends, alternative technical concepts (ATC), innovative financial proposals (IFP), etc.)
- Labor issues
- Other public financial considerations funding

Module 4: Key Public Sector Considerations relating to Innovative Project Delivery

# QUESTIONS AND DISCUSSION

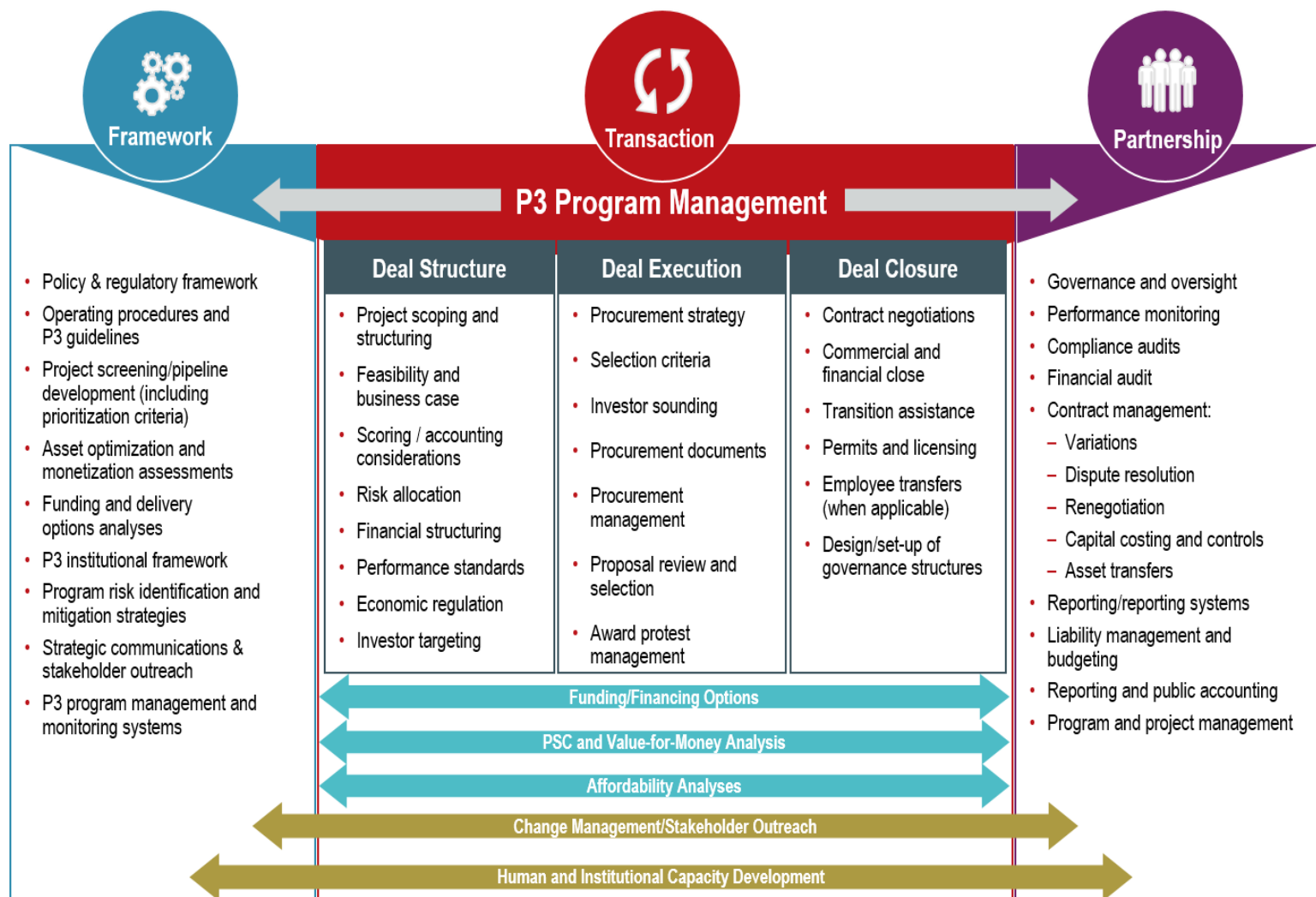
# Final Thoughts

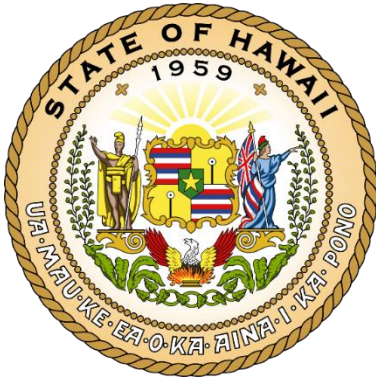
- IPD is another tool in the toolbox for delivery of public infrastructure and services
- When done correctly, IPD can provide tax-payers with timelier and more cost-effective infrastructure and services, while also ensuring that public assets are adequately maintained over the life of the contract
- IPD have demonstrated their value by accelerating infrastructure delivery and reducing life-cycle costs (on average from 15%-25% versus traditional delivery)
- Nevertheless, IPD are extremely complex instruments that involve contingent liabilities for the state and consequently must be evaluated, structured and implemented with great care.
- Hawaii would benefit from organizing itself to enable IPD in accordance with best-practice and may wish to incorporate IPD into its standard project review and approval process
- Hawaii would benefit from broad-based enabling legislation (which may now be even more important in light of proposed national infrastructure plan).

## Infrastructure & Service Delivery Spectrum of Options



# IPD Life-Cycle





*Thank you*

**Jill Jamieson**

Managing Director

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