



JTC Public-Private Partnership (P3) Work Group

Meeting 2

October 20, 2023
9:00 am – 12:00 pm



**CDM
Smith**



Agenda

- 9:00 am** **Preview of Meeting and Objectives**
 - Allegra Calder, BERK Consulting
- 9:10 am** **Close-out of Questions from Meeting 1**
 - Jeff Doyle, CDM Smith
- 9:20 am** **Challenges and limitations of advancing a P3 project in Washington under RCW 47.29**
 - Anthony Buckley, Director, WSDOT P3 Office
- 9:45 am** ***Introduction:* Work Group's desired objectives for a revised P3 law/program**
 - Allegra Calder, BERK Consulting
- 10:00 am** **Top issues to consider in a revised P3 law in Washington**
 - Jeff Doyle, CDM Smith
 - Allegra Calder, BERK Consulting
- 10:45 am** **Short break**
- 11:00 am** ***Moderated discussion:* Work Group's desired objectives for a revised P3 law/program**
 - Allegra Calder, BERK Consulting
- 12:00 pm** **Adjourn**



Introductions

Work Group membership

Work Group Member	Representative or Designee
Joint Transportation Committee Executive Committee Members (or designees)	Co-Chair, Sen. Marko Liias Co-Chair, Rep. Jake Fey Sen. Curtis King Rep. Ed Orcutt
Office of the Governor	Debbie Driver , Senior Policy Advisor - Transportation
Secretary of Transportation (or designee)	Anthony Buckley , Director of Innovative Partnerships, WSDOT
State Treasurer (or designee)	Jason Richter , Treasurer's Office
Representative of a national nonprofit organization specializing in public-private partnership program development	Lisa Buglione , AIAI
Representative of the construction trades	Jennifer Ziegler , National Construction Alliance
Representative from an organization representing general contractors	Geoff Owen , Kiewit Construction, Association of General Contractors of Washington



Meeting Objectives



Meeting roadmap reminder

The meeting information provided below is a roadmap of what is planned for coverage. Detailed agendas, presenters, activities, action items, and expected outcomes are developed approximately three weeks in advance of the scheduled meeting.

MEETING 1

September 21, 2023
1 – 3 pm, Virtual



Establish common understanding

- Introductions by Work Group members, overview of the P3 study directive, Work Group meeting schedule, deliberation process, and ground rules.
- Overview of the fundamentals of P3s and key issues for Work Group consideration.
- *Washington's experience with P3s, including a higher-level overview of RCW 47.29, Washington's current P3 law (moved to Meeting 2).*

MEETING 2

October 20, 2023
9 am – Noon, In-Person



Review of P3 challenges and key issues

- Washington's experience with P3s
- Washington's ability to deliver large, complicated or innovative transportation projects under current laws and processes.
- Essential elements of a successful P3 enabling statute.
- Challenges and barriers to broader uses of P3s in Washington.

MEETING 3

December 8, 2023
9 am - Noon, In-Person



P3 statutory provisions and deliberation

- Review of P3 statutory framework and draft legislative language.
- Discussion of key issues to be resolved.
- Viability of select transportation projects under draft P3 enabling statute.
- Process and schedule for implementation plan development (2024) final report.

Meeting Objectives

- **Confirm and articulate the State's objectives for a P3 program**
- **Discussion of four questions:**
 - **Finance:** Should an updated Washington P3 allow private finance and, if so, under what conditions?
 - **Project governance:** Should Washington revise its P3 project approval process? If so, how and following what principles or limitations?
 - **Operations:** Should Washington clarify the P3 law to allow operations to be contracted out to the private sector? If so, under what conditions?
 - **Maintenance:** Should Washington's P3 law allow long-term maintenance of assets to be provided by the private sector funded through availability payments and/or project generated revenues?



Close-out of Q&A from September meeting





Key questions from Work Group meeting 1

1. Explain and share an example of Value for Money (VfM), including how one can tell when “traditional delivery” is less viable?
2. Explain and share an example of availability payments (including what happens when payments are missed/not appropriated)?
3. What are some examples of P3 failures?
4. What is a range of project size and/or costs that makes sense for a P3?
5. What is the ideal starting point for a P3 (e.g., right of way acquisition)?
6. How can and/or do P3s impact state credit ratings?
7. What is the cost of operating a P3 office?



Challenges and limitations of advancing a P3 project in Washington under RCW 47.29

Anthony Buckley, WSDOT P3 Office

A blurred photograph of a multi-lane highway with an overpass, viewed from a low angle. The image is heavily blurred to convey a sense of motion and speed. The colors are muted, with a blue tint.A small, solid green square located to the left of the main text.

Introduction: Desired objectives from a new P3 law/program



2012 study identified the following reasons for a new P3 law

The 2012 JTC P3 study cited the following rationale for a Washington P3 program:

- Increase procurement flexibility
- Attract new sources of capital
- Accelerate or enable new new construction where public funds are not available
- Provide new approach to long-term planning and programming of capital maintenance expenditures



Top issues to consider in a revised P3 law in Washington



1. Finance

Questions: Should an updated Washington P3 law allow private finance and, if so, under what conditions?

See: **page 26** of Briefing Book 2 for funding and finance-related issues in Washington's current statute

Key P3 provisions that are allowed – and unallowed – under Washington law

ALLOWED under WA laws (P3, D/B, Alt Contracting)

- WSDOT select projects for P3 development
- Design/Build contracting
- Progressive Design/Build contracting
- General Contractor/Construction Manager contracting
- Use any revenue made available for the project, including federal funds, loans, etc.
- Value for Money (VfM) analysis
- Performance-based payments

NOT AUTHORIZED/ PROHIBITED in WA laws

- WSDOT is not authorized to select projects to become tolled facilities (legislature alone approves imposition of tolls on state facilities)
- Private or quasi-private entity setting toll rates on state facilities
- Privately-issued debt used for P3 project development

Might be allowed, but law is unclear

- Availability payment structures?
- Equity investments in P3 project financing?
- Gain-sharing provisions to share any excess revenue collections?
- Contracting out maintenance/operations?



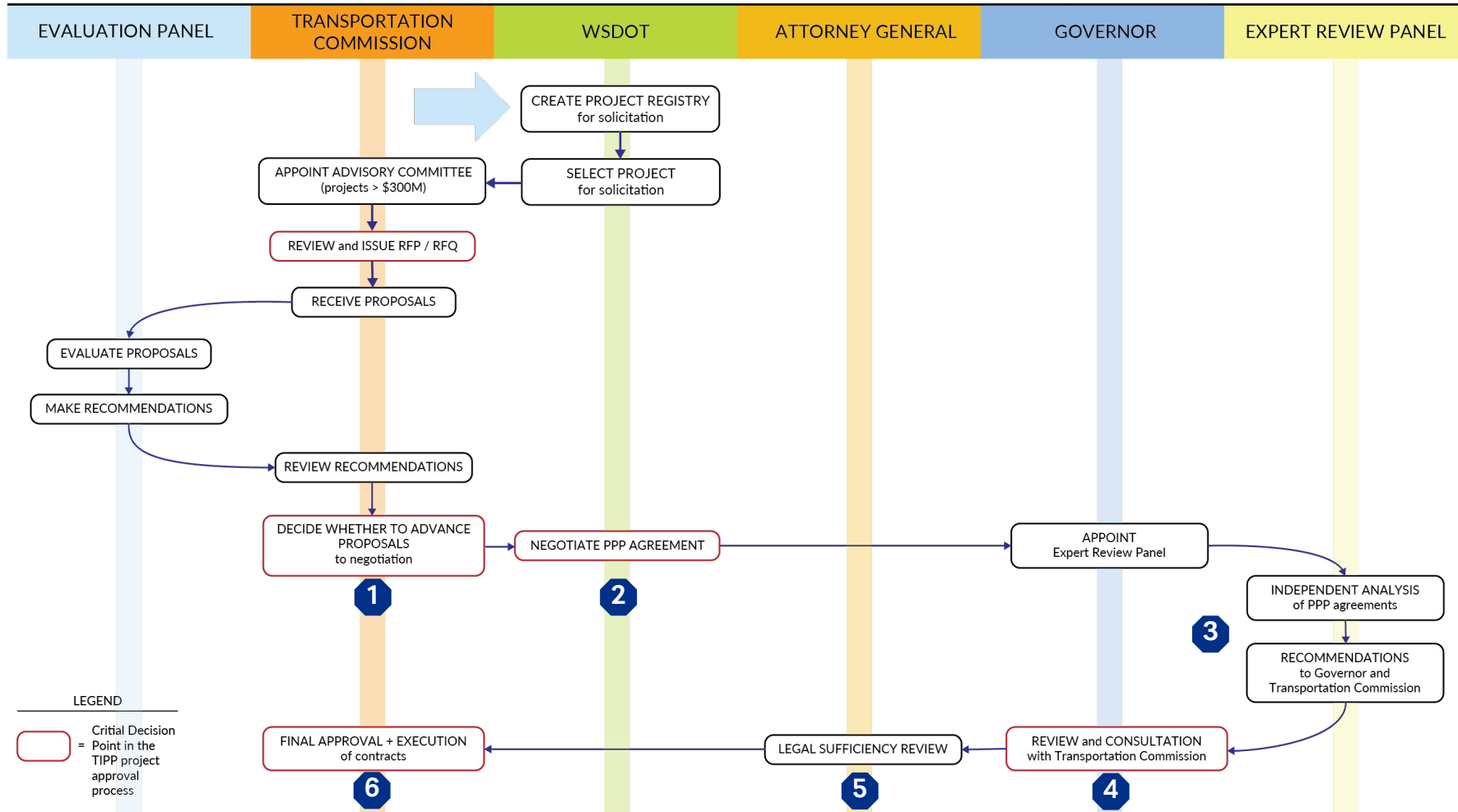
2. Project Governance

Questions: Should Washington revise its P3 project approval process? If so, how and following what principles or limitations?

See: **page 28** of Briefing Book 2 for project approval issues in Washington's current statute

Understanding Washington's P3 project approval process

TIPP Project Agreements: Approval Process



Touch-points after evaluation of proposals in response to WSDOT RFP, there are six distinct review and approval steps:

- 1 Commission decides whether to advance proposals to negotiation
- 2 WSDOT negotiates agreement
- 3 Expert panel reviews agreement and makes recommendation
- 4 Governor and Commission each reviews agreement
- 5 AG reviews agreement
- 6 Commission provides final approval



3. Operations

Questions: Should Washington clarify the P3 law to allow operations to be contracted out to the private sector? If so, under what conditions?

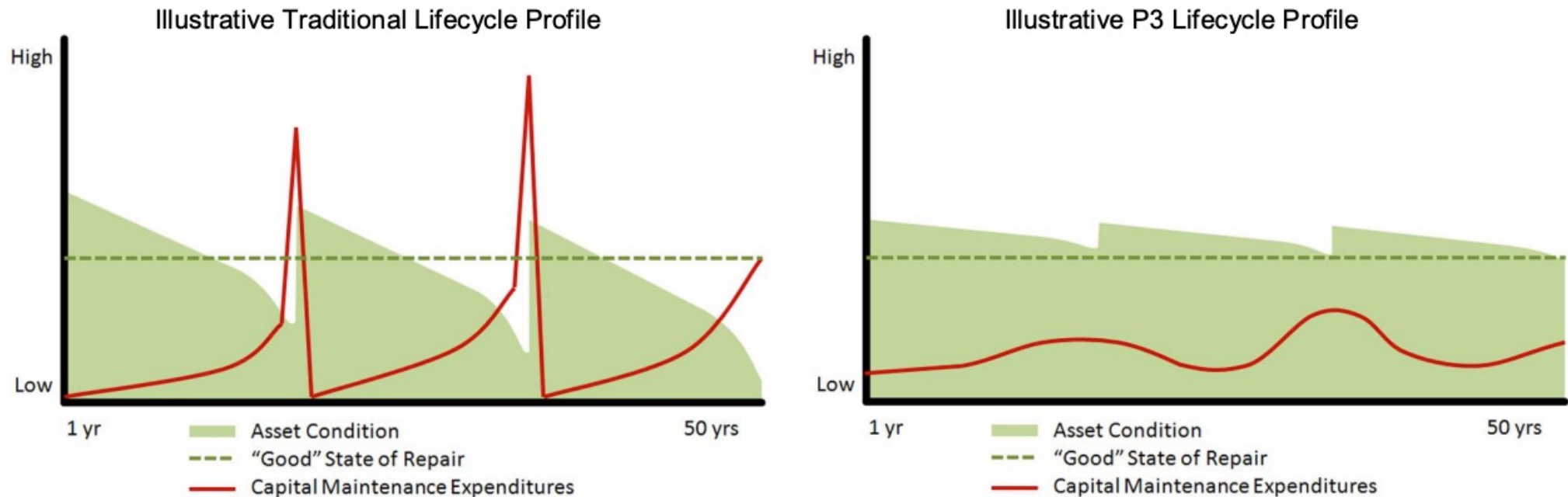
4. Maintenance

Questions: Should Washington's P3 law allow long-term maintenance of assets to be provided by the private sector funded through availability payments and/or project generated revenues?

See: **page 23** of Briefing Book 2 for potential operations and maintenance issues in Washington's current statute

Effect of lifecycle operations and maintenance provisions in a P3 project

Figure 2.3 Illustrative Lifecycle Cost Comparison





Short Break





Moderated discussion: Work Group's desired objectives for a revised P3 law/program

Work Group discussion

- **Confirm and articulate the State's objectives for a P3 program**
- **Discussion of questions:**
 - **Finance:** Should an updated Washington P3 allow private finance and, if so, under what conditions?
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Adjourn

