The Commonwealth of Virginia

Implementation Manual and Guidelines
For the
Public-Private Education Facilities and Infrastructure Act of 2002

June 2015
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PREFACE

While the Virginia Office of Public-Private Partnerships (VAP3) reviewed and revised the Guidelines for procurements under the Public-Private Transportation Act (PPTA) in 2014, the Virginia Department of Transportation (VDOT) began to investigate the consolidation of existing offices and facilities in Hampton Roads and the prospect of co-locating in new facilities with the state police and emergency services. Because such a project might be developed and procured through the Public-Private Education Act (PPEA), we began to look at processes that guide non-transportation project procurements in Virginia and at best practices delivering "social infrastructure" from other states.

The VAP3 team discovered that guideline changes to make the PPTA process more open and transparent, to improve accountability by a series of public discussions and decisions and to stimulate competition also could prompt greater and more efficient use of the PPEA by state transportation agencies. Despite significant differences in the PPTA and PPEA laws, we asked how we could make the PPEA guidelines more congruent with the PPTA guidelines that now have been adopted by VDOT and the Department of Rail and Public Transportation (DRPT) and added into law by the 2015 Virginia General Assembly.

These PPEA Guidelines allow the strengths of public engagement, risk management and value for money analysis to illustrate for a transportation agency (a responsible public entity) the potential for a public-private partnership. The process informs decisions by the required legislative commission early to move into project development and, subsequently, into a PPEA procurement. That emphasis on building a stakeholder consensus on a PPEA project before moving to procurement moderates the risk to potential private partners of one all-or-nothing review by the legislative commission at the end of the process. That consensus on project scope and broad business terms is in place before private teams invest millions of dollars in time and resources preparing proposals.

A congruent set of guidelines for all P3 procurements in Virginia at some point may suggest that the PPEA and PPTA laws, themselves, might be combined so that all state transportation agencies have equal opportunities to develop public-private partnership procurements for priority projects. A consistent, disciplined process that attracts efficiencies and new resources to address Commonwealth infrastructure needs is the real goal.

J. Douglas Koelemay

Director, Virginia Office of Public-Private Partnerships
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EXECUTIVE SUMMARY

The Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) grants Responsible Public Entities (RPEs) the authority to create Public-Private Partnerships (P3) for the development of a wide range of projects for public use. The PPEA defines Responsible Public Entity to include any Public Entity that has the power to develop or operate an applicable Qualifying Project as defined by the PPEA. Public Entities determine there is a need for the project and that private involvement may deliver the project to the public in a more timely and cost-effective fashion.

The 2015 PPEA Implementation Manual and Guidelines (PPEA Manual and Guidelines), developed by Virginia Office of Public-Private Partnerships (VAP3), provide a P3 Project Delivery Framework (Framework) that identifies, evaluates, develops, procures and delivers Qualifying Projects in a consistent, transparent, timely, and cost effective manner. In this guidance any project advanced using the PPEA is generally referred to as a P3 project.

The Framework, shown in Figure 1, formalizes the process to enhance delivery of Qualifying Projects in the Commonwealth. It is designed to highlight the multiple decision points; salient points of transparency and public engagement opportunities, and the competitive nature of the procurement process.

The PPEA Manual and Guidelines are organized into chapters that provide specific details and address roles and responsibilities. The document reflects the processes and decision points inherent in a P3 project for both Solicited Projects (initiated by the RPE) and Unsolicited Proposals (submitted by Private Entities) to develop or operate a Qualifying Project.

Chapter 1 is the introduction to the PPEA Manual and Guidelines and includes descriptions of the: purpose; project objectives; Framework; organizational structure; pre-procurement funding and public engagement.

Chapter 2 lists the types of projects defined as Qualifying Projects in the PPEA and describes the project identification and screening phase for potential P3 projects and the steps related to both Solicited Projects and Unsolicited Proposals.

Chapter 3 describes the project development phase including a number of key tasks, which could take place to prepare the project for procurement depending on the characteristics and scope of the project.

Chapter 4 describes the project procurement phase that includes issuing a Request for Qualifications (RFQ), short-listing qualified Offerors, issuing a Request for Proposals (RFP), establishing the basis for award, and selecting a Preferred Proposer.
Figure 1: P3 Project Delivery Framework (Framework)

- **Selected P3 Projects**
  - High-Level Screening with Recommendations
  - RPE
  - Detail-Level Screening with Recommendations
  - P3 Advisory Commission
  - P3 Project Procurement
  - Submit Detailed Proposals to P3 Advisory Commission
  - P3 Advisory Commission
  - Selection of Preferred Proposer
  - Final Finding of Public Interest
  - RPE
  - Appropriating Body reviews CA
  - Comprehensive Agreement Executed
  - Final Contract Documents posted on P3 Website

- **Unselected P3 Proposals**
  - Policy Review with Recommendations
  - RPE
  - Initial Finding of Public Interest
  - RPE Oversight Body
  - Draft and final Procurement Documents posted on P3 Website for review and comment

- **Project Fact Sheet (identification and screening phase) Briefing Focus:**
  - RFI results (as appropriate)
  - Schedule
  - Draft Procurement documents
  - Risk Analysis, Cost Benefit Analysis and Opportunity Cost Analysis
  - Estimated project cost
  - Potential public subsidy (as appropriate)
  - Potential economic benefits
  - Preliminary Major Business Points
  - Initial Finding of Public Interest

- **Project Fact Sheet (development phase) Briefing Focus:**
  - RFI results (as appropriate)
  - Schedule
  - Draft Procurement documents
  - Risk Analysis, Cost Benefit Analysis and Opportunity Cost Analysis
  - Estimated project cost
  - Potential public subsidy (as appropriate)
  - Potential economic benefits
  - Preliminary Major Business Points
  - Initial Finding of Public Interest

- **P3 Advisory Commission accepts or declines to review Detailed Proposals**

- **Other parties to be notified and briefed upon request after the RPE Oversight Body decision:**
  - Chairs of General Assembly Committees
  - Regional Planning Bodies specific to the Qualifying Project
  - Interested members of General Assembly
  - Special interest groups
  - Regulatory Agencies
  - General Public

- **NO**
  - Returned to RPE or Proposer

- **Project Development Phase**

- **Project Procurement Phase**

- **Project Identification and Screening Phase**
1 INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002 (§56.575.1 - §56.575.18 of the Code of Virginia), (PPEA), is intended to facilitate the timely development and/or operation of Qualifying Projects and to encourage investment in the Commonwealth of Virginia (Commonwealth) by Private Entities. This legislative framework enables the Commonwealth, local governments, and certain other Public Entities, as defined in the PPEA, to enter into Public-Private Partnerships (P3s) to facilitate the development and/or operation of education facilities, technology infrastructure, and other public infrastructure and government facilities. The PPEA allows a Private Entity to develop a project for public use if a Responsible Public Entity (RPE) determines that there is a need for the project and that private involvement may provide the project to the public in a more timely or cost-effective manner. P3 projects, under the PPEA will bring private funding and may bring private sector expertise and efficiencies to the development and/or operation of Qualifying Projects.

The PPEA Manual and Guidelines, outline the role and specific guidance the VAP3 provides to RPEs during the delivery of PPEA projects if they choose to adopt this PPEA Manual and Guidelines. This document is organized into chapters, which include: Project Identification and Screening; Project Development; and Project Procurement. Each chapter concludes with a summary of key action items and the entity(ies) responsible for each item. The purpose of the PPEA Manual and Guidelines is to define consistent, transparent, and efficient processes relevant to the development of P3s, and to encourage private sector innovation and investment addressing educational and public use facility needs of the Commonwealth.

1.1 APPLICABILITY OF THE PPEA MANUAL AND GUIDELINES

The PPEA requires the RPEs to develop and/or adopt guidelines for the acceptance and review of both Solicited Projects and Unsolicited Proposals. Before an RPE can identify and initiate a Solicited Project or accept an Unsolicited Proposal for consideration, the PPEA requires an RPE to adopt and make publicly available guidelines that are reasonable, encourage competition and guide the selection of projects by the RPE (56-575.3:1.A.). RPEs may adopt and use this PPEA Manual and Guidelines, which is publicly available on the VAP3 website – www.P3virginia.org. The PPEA also requires that the guidelines establish a specific schedule for review of a Solicited Project or an Unsolicited Proposal by the RPE; a process for alteration of that schedule by the RPE if it deems changes are necessary; and the type and amount of information necessary for adequate review in each phase.

The processes outlined herein will focus on P3 procurements for transportation agencies of the Commonwealth; however, they can also be used by other RPEs, including local governments and authorities, if adopted in accordance with the PPEA and regulations of the respective RPE. This PPEA Implementation Manual and Guidelines can also be used by Private Entities interested in submitting Unsolicited Proposals to RPEs that have adopted them.

Each P3 project is unique and certain elements set forth in this PPEA Manual and Guidelines may not apply in all circumstances or may be subject to change. Therefore, the RPE Administrator, in coordination with the VAP3 Director, retains flexibility to modify the development, procurement and implementation processes contained herein to address the specific needs of a particular P3 project, provided the process modifications are in accordance with the PPEA. The public, private entities (industry) and other stakeholders will be notified of modifications to project development, procurement and implementation processes set forth in this PPEA Manual and Guidelines by means of a statement issued with the Request for Qualifications (RFQ) document, outlining and explaining the modifications.

The PPEA Manual and Guidelines do not modify or override requirements of the PPEA. In the event of any conflicts between the PPEA and the PPEA Manual and Guidelines, the PPEA shall govern. The
PPEA Manual and Guidelines will be updated periodically in order to reflect changes in legislation, policies and best practices.

1.2 P3 Project Objectives

To ensure that P3 projects are consistent with the General Assembly's findings for the PPEA and the Commonwealth’s goals, the following objectives for P3 projects have been established:

- Create investment opportunities that increase the quality of public infrastructure and government facilities;
- administer a fair, reliable, uniform and competitive project development and procurement process that encourages innovation, private sector investment and creates long term value for the Commonwealth;
- achieve lifecycle cost efficiencies through appropriate risk transfer and optimal risk allocation;
- facilitate timely delivery of P3 projects, within established laws and regulations;
- promote transparency and accountability through active public engagement, coupled with informed and timely decision making; and
- foster efficient management of Commonwealth financial and organizational resources.

1.3 Organizational Structure

Using the Framework, the RPE will work with the VAP3 for each P3 project considered under the PPEA. Key participants in the development and delivery of a PPEA project in this regard would include the: VAP3; RPE; Affected Jurisdiction(s); RPE Oversight Body; Appropriating Bodies and the Public-Private Partnership Advisory Commission.

VAP3 - The VAP3 coordinates with the RPE in all aspects of the development and procurement of PPEA projects initiated as Solicited Projects or submitted as Unsolicited Proposals to RPEs. The VAP3 works closely with the RPE and Affected Jurisdictions to facilitate public awareness, understanding, and support for P3 projects. Other responsibilities of the VAP3 include:

- **Project Identification and Screening** - The VAP3 assists RPEs to screen and evaluate potential Qualifying Projects to determine whether or not to advance the potential project using the P3 delivery method. Further descriptions of VAP3’s role in the project identification, advancement and decision-making phase can be found in Chapter 2.

- **Developing and Procuring P3 Projects** - A VAP3 project manager works with the RPE to develop and procure P3 projects. A description of the project development and project procurement phases can be found in Chapter 3 and 4 respectively.

RPE - According to the PPEA, the RPE is the legal entity that has the authority and power to develop and/or operate a Qualifying Project. The RPE has the responsibility and legal authority to make decisions on commercial and contractual terms related to P3 projects and to enter into contractual agreements.

Affected Jurisdiction(s) - An Affected Jurisdiction is any county, city, or town in which all or a portion of a Qualifying Project is located (§56-575.1). It is important that Affected Jurisdictions are part of the
process and have input in potential Qualifying Projects. Qualifying Projects should be compatible with the goals and objectives of the Affected Jurisdiction(s).

**RPE Oversight Bodies** – RPEs developing public use facility P3 projects may rely on direction from various Oversight Bodies. For example, the Commonwealth Transportation Board (CTB) serves as the Oversight Body for the Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (VDRPT).

It is important that RPE Oversight Body(ies) are regularly informed regarding the status of a P3 project. The VAP3 works collaboratively with the RPE to keep the respective RPE Oversight Body(ies) informed at major milestones as shown in *Figure 1*.

**Appropriating Bodies** - The Appropriating Body reviews financial studies and analyses related to a Qualifying Project; including but not limited to: a Cost-Benefit Analysis and an assessment of opportunity cost prior to execution of an Interim Agreement (IA) or Comprehensive Agreement (CA) (§56-575.3:1B).

**Public-Private Partnership Advisory Commission** – The Public-Private Partnership Advisory Commission (the Commission) advises RPEs that are agencies or institutions of the Commonwealth on financial impacts, policy aspects and general business terms and conditions for Proposals received pursuant to the PPEA.

As defined in the Code of Virginia, Title 30, General Assembly Chapter 42, (§30-279) the Commission shall consist of the following eleven members:

- Chair of the House Committee on Appropriations, or their designee;
- four members of the House of Delegates appointed by the Speaker of the House;
- Chair of the Senate Committee on Finance, or their designee;
- two members of the Senate appointed by the Senate Committee on Rules;
- Secretary of Administration, or their designee;
- Secretary of Finance, or their designee; and
- Secretary of Technology, or their designee.

According to the Code of Virginia, Title 30, General Assembly Chapter 42, (§30-280), part F., each RPE receiving Detailed Proposals from Private Entities for a Qualifying Project shall provide copies of such Proposals to the chair of the Commission, the chair of the House Committee on Appropriations, Senate Committee on Finance or their designees, and the Director of the Department of General Services for review and comment prior to the development of an IA or CA.

**1.4 P3 PROJECT DELIVERY FRAMEWORK (FRAMEWORK)**

The Framework shown in *Figure 1* formalizes P3 project delivery for Qualifying Projects. It highlights the phases and decision points inherent in P3 project development for both Solicited Projects and Unsolicited Proposals. Further information on each phase of the P3 Framework is contained in each of the chapters of the PPEA Manual and Guidelines.

**1.5 PUBLIC ENGAGEMENT**

Active public engagement is important to ensure transparency, accountability and the successful delivery of the Qualifying Project. There are numerous public engagement opportunities identified throughout the PPEA. The PPEA requires that a RPE make publically available the guidelines that it has adopted (§56-575.3:1.A.). In addition, the PPEA Manual and Guidelines are available on the VAP3 website: [www.P3virginia.org](http://www.P3virginia.org).
For Unsolicited Proposals the PPEA requires, the advertising of a public notice in the Virginia Business Opportunities publication and posting on the Department of General Services’ centralized electronic procurement website (eva.virginia.gov) (§56-575.3:1.B.11.). The PPEA also addresses the posting of Proposals, public comment and public access to procurement records (§56-575.17), as noted below.

The RPE, in coordination with the VAP3, will post Proposals within 10 working days after acceptance of such Proposals. Posting, or a link to the Proposal documents will be on the RPE website, the VAP3 website and the eva.virginia.gov website.

In addition to the posting requirements, at least one copy of the Proposals will be made available for public inspection. Trade secrets, financial records, or other records of the Private Entity eligible to be excluded from disclosure under the provisions of § 2.2-3705.6 (11) of the Code of Virginia will not be required to be posted, except as otherwise agreed to by the RPE and the Private Entity.

The RPE, in coordination with the VAP3, will also hold a public hearing on the Proposals during the Proposal review process, but not later than 30 calendar days prior to entering into an IA or CA (§56-575.17.B).

Once the development of an IA or a CA is complete, but before it is executed, the RPE will make the proposed agreement available for public inspection.

Once an IA or a CA has been executed, an RPE will make the procurement records available for public inspection.

1.6 Pre-Procurement Funding

The RPE Administrator and the VAP3 Director will establish a funding mechanism to advance the development of a Qualifying Project submitted through the required steps identified in the P3 Framework shown in Figure 1.


2 PROJECT IDENTIFICATION AND SCREENING PHASE

This chapter discusses the criteria for identification of Qualifying Projects. The chapter also outlines the two step process by which the VAP3 screens a Qualifying Project. The screenings assist RPEs in making decisions about advancing the Qualifying Project to project development and potential procurement through the PPEA.

2.1 PROJECT IDENTIFICATION

For a project to be identified for development under the PPEA it must first be considered for its suitability as a Qualifying Project. In terms of the PPEA, Qualifying Projects are defined as one or more of the following (56-575.1.):

- Any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- any building or facility that meets a public purpose and is developed or operated by or for any Public Entity;
- any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a Public Entity;
- utility and telecommunications and other communications infrastructure;
- a recreational facility;
- technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- any services designed to increase the productivity or efficiency of the Responsible Public Entity through the use of technology or other means;
- any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or
- any solid waste management facility that produces electric energy derived from solid waste.

In addition to determining if the project satisfies the criteria of a Qualifying Project, each project needs to be screened for applicability with the criteria listed below to establish a declaration of public purpose (56-575.2.):

- There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;

- such public need may not be wholly satisfied by existing methods of procurement in which Qualifying Projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;

- there are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships will meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;

- financial incentives exist under state and federal tax provisions that promote Public Entities to enter into partnerships with Private Entities to develop Qualifying Projects; and

- authorizing Private Entities to develop or operate one or more Qualifying Projects may result in the availability of such projects to the public in a more, timely, or less costly fashion, thereby serving the public safety, benefit, and welfare.

PPEA candidate projects are identified from two primary sources, either as Solicited Projects, or as Unsolicited Proposals

2.1.1 Solicited Projects

RPEs that are interested in developing candidate Solicited Projects for P3 consideration should select projects that meet P3 suitability criteria as outlined below in Section 2.2. The VAP3 will maintain a portfolio of candidate P3 projects and perform High-Level Screenings, as described below, to determine their feasibility.

2.1.2 Unsolicited Proposals

Unsolicited Proposals for a PPEA project are submitted to an RPE by a Private Entity. A copy of the Unsolicited Proposal may also be mailed to the VAP3 Director at the following address:

Virginia Office of Public-Private Partnerships
600 E. Main Street, Suite 2120
Richmond, VA 23219

Private Entities may request the approval of a potential Qualified Project by submitting an Unsolicited Proposal. Any such request shall be accompanied by the following material and information unless waived by the RPE in coordination with the VAP3:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the Qualifying Project;
2. A description of the Qualifying Project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the Qualifying Project to include the proposed major responsibilities and timeline for activities to be performed by both the Public Entity and the Private Entity;

3. A statement setting forth the method by which the Private Entity proposes to secure necessary property interests required for the Qualifying Project;

4. Information relating to the current plans for development of facilities or technology infrastructure to be used by a Public Entity that is similar to the Qualifying Project being proposed by the Private Entity, if any, of each Affected Jurisdiction;

5. A list of all permits and approvals required for the Qualifying Project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;

6. A list of public utility facilities, if any, that will be crossed by the Qualifying Project and a statement of the plans of the Private Entity to accommodate such crossings;

7. A statement setting forth the Private Entity's general plans for financing the Qualifying Project including the sources of the Private Entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the Private Entity;

8. The names and addresses of the persons who may be contacted for further information concerning the request;

9. User Fees, Lease Payments, and other service payments over the term of the IA or CA and the methodology and circumstances for changes to such User Fees, Lease Payments, and other service payments over time;

10. Any additional material and information as the RPE may reasonably request; and

11. Private Entities will also be required to submit an initial Cost-Benefit Analysis and Opportunity Cost Analysis (§56-575.3:1B.5).

Using the information listed above, a Policy Review of Unsolicited Proposals submitted will be performed to determine their feasibility.

2.1.2.1 Proposal Review Fee

Private Entities interested in submitting an Unsolicited Proposal are required to pay a, non-negotiable Proposal Review Fee at the time of submitting the Unsolicited Proposal to the RPE.

The Proposal Review Fee is $25,000.00 for all Unsolicited Proposals submitted with a total proposed and conceptual value of under $50M. For Unsolicited Proposals submitted with a total proposed and conceptual value of $50M and greater, the Proposal Review Fee will be $50,000.00.

The form and manner of the Proposal Review Fee payment submission shall be determined and specified by the RPE. Proposers submitting multiple Proposals for unrelated P3 projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.
2.2 HIGH-LEVEL SCREENING AND POLICY REVIEW

The project screening process within the Framework is designed to assist the RPE in determining the suitability of delivering projects under the PPEA and is a means of systematically and consistently applying evaluation criteria to Solicited Projects and Unsolicited Proposals.

Project screening is organized into two stages:

1. Solicited Projects will undergo a **High-Level Screening** and Unsolicited Proposals will undergo a **Policy Review**.

2. Those Solicited Projects and Unsolicited Proposals that are recommended to advance for further consideration will undergo a **Detail-Level Screening**.

The VAP3 Director will appoint a VAP3 project manager for each project selected for screening.

2.2.1 Solicited Projects: High Level Screening

In coordination with the RPE, the VAP3 will conduct the **High-Level Screening** of Solicited Projects identified as candidates for P3 delivery.

*Figure 2* depicts steps taken during the **High-Level Screening**.

**Figure 2: High-Level Screening Process**

![High-Level Screening Process Diagram]

Table 1 below provides guidance for the **High-Level Screening** criteria intended to assess whether a project is a potential candidate P3 project.

**Table 1: High-Level Screening Criteria for Solicited Projects**

<table>
<thead>
<tr>
<th>High-Level Screening Criteria</th>
<th>Description</th>
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<tr>
<td><strong>Project Complexity</strong></td>
<td>Is the project sufficiently complex in terms of technical and/or financial requirements to effectively leverage private sector innovation and expertise?</td>
</tr>
<tr>
<td><strong>Accelerating Project Development</strong></td>
<td>If the required public funding is not currently available for the project, could using a P3 delivery method accelerate project delivery?</td>
</tr>
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## High-Level Screening Criteria

<table>
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<tr>
<th>Education, Technology, Public Infrastructure and Government Facility Priorities</th>
<th>Is the project consistent with the overall objectives and missions of the Commonwealth and/or the RPE? Does the project adequately address education infrastructure, technology infrastructure or public infrastructure and government facility needs?</th>
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<td>Project Efficiencies</td>
<td>Would the P3 delivery method provide efficiencies over the project lifecycle? Is there an opportunity to provide economies of scale, or achieve efficiencies through the inclusion of long term operations and maintenance functions?</td>
</tr>
<tr>
<td>Ability to Transfer Risk</td>
<td>Would the P3 delivery method provide for optimal transfer of project risks and potential future responsibilities to the private sector either on a short term, or a long-term basis?</td>
</tr>
<tr>
<td>Funding Requirement</td>
<td>Does the project have any revenue generation potential to offset any public funding requirement, if necessary? Could an RPE pay for the project over time, such as through an availability payment, or bridge financing as opposed to paying for the entire cost upfront?</td>
</tr>
<tr>
<td>Ability to Raise Capital</td>
<td>Would delivering the project under the PPEA help free up capital from other sources for other priorities within the Commonwealth or for the RPE? Is the project consistent with federal requirements and potential agreements for federal funding and/or approval for P3 projects, if required?</td>
</tr>
</tbody>
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The VAP3 will rely on these High-Level Screening criteria to initially assess the suitability of candidate projects for P3 delivery and to determine which projects should advance to a Detail-Level Screening. The VAP3, in consultation with the RPE Administrator, may amend these High-Level Screening criteria to address unique aspects of each candidate project.

Within 10 calendar days of completing the High-Level Screening, the VAP3 Director will submit a recommendation to the RPE Administrator as to whether a given candidate project should advance to the Detail-Level Screening process. The RPE Administrator will then make the final determination.

If the candidate project is not recommended by the VAP3 for advancement to the Detail-Level Screening, the RPE may decide to resubmit a similar project at a later date for screening; with updated information and project characteristics more closely satisfying the High-Level Screening criteria.

### 2.2.2 Unsolicited Proposals: Policy Review

Private Entities may submit Unsolicited Proposals to an RPE at any time pursuant to the PPEA and this PPEA Manual and Guidelines. Private Entities should note the requirements with respect to submission of Unsolicited Proposals are described in Section 2.1.2.

Within 30 calendar days of receiving an Unsolicited Proposal from a Private Entity via an RPE, the VAP3 will perform a Policy Review and brief evaluation of the concept and benefits to ensure the Unsolicited Proposal is in accordance with the Code of Virginia, this PPEA Manual and Guidelines and is consistent
with the PPEAs intent and policy objectives. The findings of the evaluation and the VAP3’s recommendation’s will be documented in a Policy Review Report, which will be submitted by the VAP3 Director to the RPE Administrator.

**Figure 3** below represents the steps to be taken during the Policy Review process.

**Figure 3: Policy Review Process**

Table 2 provides guidance for the Policy Review criteria intended to assess whether an Unsolicited Proposal is a potential candidate P3 project.

**Table 2: Policy Review Criteria for Unsolicited Proposals**

<table>
<thead>
<tr>
<th>Policy Review Criteria</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Objectives</strong></td>
<td>The Unsolicited Proposal conforms to the policy objectives and intent of the PPEA.</td>
</tr>
<tr>
<td><strong>Timely Development</strong></td>
<td>The Unsolicited Proposal satisfies a public need for timely development and operation of a Qualifying Project.</td>
</tr>
<tr>
<td><strong>Demonstrated Need</strong></td>
<td>The Unsolicited Proposal addresses a demonstrated need as identified by a state, regional, and/or local agency, or capital improvement plans.</td>
</tr>
<tr>
<td><strong>Interface with Existing/Planned Systems</strong></td>
<td>The Unsolicited Proposal interfaces with existing and planned systems.</td>
</tr>
<tr>
<td><strong>Potential for Market Interest</strong></td>
<td>The Unsolicited Proposal has potential to generate market interest from other private sector entities.</td>
</tr>
<tr>
<td><strong>Project Efficiencies</strong></td>
<td>The Unsolicited Proposal would make the Qualifying Project available to the public in a more efficient and less costly fashion as compared to the traditional procurement method</td>
</tr>
<tr>
<td><strong>Funding Requirement</strong></td>
<td>The Unsolicited Proposal is consistent with federal requirements and potential agreements for federal funding and/or approval for P3 projects if required</td>
</tr>
<tr>
<td><strong>Not on List of Solicited Projects</strong></td>
<td>The Unsolicited Proposal is not currently on the list of proposed Solicited Projects.</td>
</tr>
</tbody>
</table>
Policy Review Criteria

| Cost Benefit Analysis and Opportunity Cost Analysis Review | Does the Cost Benefit Analysis and Opportunity Cost Analysis submitted indicate a positive benefit to cost ratio and a favorable opportunity cost scenario? Are the assumptions used to generate the Cost Benefit Analysis and Opportunity Cost Analysis reasonable? |

Within 10 calendar days of completing the Policy Review, the VAP3 will submit a Policy Review Report containing a recommendation to the RPE Administrator as to whether the Unsolicited Proposal meets the policy requirements and is compliant with applicable laws and this PPEA Manual and Guidelines. The RPE Administrator will then make the final determination as to whether the Unsolicited Proposal should advance to the Detail-Level Screening review.

If the VAP3 recommends that the Unsolicited Proposal does not meet the PPEA requirements and Policy Review criteria, or if the Unsolicited Proposal pertains to a project for which the RPE plans to issue a solicitation, the RPE may decide to return the Unsolicited Proposal and any unused portion of the Proposal Review Fee to the Private Entity that submitted it.

If the Unsolicited Proposal passes the Policy Review, the VAP3 Director will send a written request to the Private Entity to deliver the Unsolicited Proposal to each Affected Jurisdiction identified in the Unsolicited Proposal. The VAP3 Director will also send a written request for comments to each Affected Jurisdiction identified in the Unsolicited Proposal. An Affected Jurisdiction is required by law to submit in writing any comments regarding the proposed project to the RPE within 60 calendar days from the date of notification regarding the Unsolicited Proposal.

### 2.3 Detail-Level Screening Process

The Detail-Level Screening criteria shall form the basis upon which the VAP3 determines the desirability and feasibility of delivering Qualifying Projects utilizing the P3 delivery method.

The VAP3 intends to evaluate Solicited Projects and Unsolicited Proposals against the same criteria wherever possible; however, due to differences in project characteristics across Qualifying Projects, screening criteria may be modified accordingly.

The steps to be taken for both Solicited Projects and Unsolicited Proposals through the Detail-Level Screening phase are summarized in the discussion below.

The VAP3 will conduct a Detail-Level Screening for Solicited Projects advancing through the High-Level Screening and Unsolicited Proposals advancing through the Policy Review. As part of the Detail-Level Screening, the VAP3 will assess each Solicited Project and Unsolicited Proposal for its feasibility as a P3 project. The VAP3 will capture the output of the Detail-Level Screening and summarize the results in a Detail-Level Screening Report for each Solicited Project or Unsolicited Proposal evaluated. The final report and recommendation will be presented by the VAP3 Director to the RPE Administrator.

#### 2.3.1 Report to Commission

If the RPE Administrator decides to advance the Solicited Project or Unsolicited Proposal based on the findings presented in the Detail-Level Screening Report, then the VAP3 Director and the RPE Administrator will submit the findings and recommendations of the Detail-Level Screening Report to the Commission. The Detail-Level Screening Report will be submitted to the Commission within 15 calendar days of the RPE Administrator’s decision to advance the Solicited Project or Unsolicited Proposal. The Commission will make a recommendation on the Solicited Projects or Unsolicited Proposals feasibility and whether it warrants continued investment as a P3 project. This recommendation is based upon how
well the Solicited Project, or Unsolicited Proposal conforms to the appropriate evaluation criteria and the objectives of the Qualifying Project. Within 10 calendar days of this recommendation, the Affected Jurisdiction will be notified by the VAP3 in writing of the Commission’s decision. If the Commission rejects the Solicited Project, it is returned to the RPE and may be re-submitted for consideration as a P3 project at a later date or implemented through traditional planning and procurement. Rejected Unsolicited Proposals are returned to the Proposer along with any remainder of the Proposal Fee.

### 2.4 REPORT TO RPE OVERSIGHT BODY

The VAP3 Director and the RPE Administrator will present a Project Fact Sheet (identification and screening phase) to the RPE’s Oversight Body and brief them on: the results of the [Detail-Level Screening Report](#); the recommendation of the Commission; and the planned duration of the P3 development and procurement at the next available scheduled public meeting of the RPE Oversight Body. During the briefing, the VAP3 Director and the RPE Administrator will seek the approval of the RPE’s Oversight Body to proceed to the project development phase. An estimated budget to complete the project development activities will also be presented.

If the RPE’s Oversight Body approves the advancement of an Unsolicited Proposal it may be accepted by the RPE Administrator. Once the Unsolicited Proposal is accepted in writing by the RPE Administrator, a notice of the Proposal’s acceptance is posted within 10 working days (§ 56-575.17.). Section 2.6 below elaborates on the posting of public notices for both Solicited Projects and Unsolicited Proposals. For RPEs that are agencies or institutions of the Commonwealth; the RPE Administrator and the Director of the VAP3 will notify and brief the Chair of the House Appropriations and Senate Finance Committees regarding the results of the [Detail-Level Screening Report](#) and recommendation of the Commission to proceed to the project development phase. Other members of the General Assembly and stakeholders will be notified; and briefed upon request.

For the projects presented as Unsolicited Proposals, the RPE will provide notice of the RPE Oversight Body’s decision to the Private Entity and each Affected Jurisdiction identified in the Unsolicited Proposal.

The Project Fact Sheet developed in the identification and screening phase and the record of the RPE Oversight Body’s decision will be posted on the VAP3 website ([www.P3.virginia.org](http://www.P3.virginia.org)) and the RPEs website for public awareness and feedback.
Figure 4 below represents the steps to be taken during the Detail-Level Screening process for Solicited Projects:

Figure 4: Detail-Level Screening Process – Solicited Projects

Figure 5 represents the steps to be taken during the Detail-Level Screening process for Unsolicited Proposals:

Figure 5: Detail-Level Screening Process – Unsolicited Proposals
2.5 Risk Assessment

As part of the Detail-Level Screening desirability and feasibility analysis, the VAP3 will convene an initial risk workshop to identify and assess risks specific to the development of the project. A Risk Register for the project is created during this phase and an initial assessment of the risks is carried out (see VAP3 Risk Management Guidelines). Risks identified during this phase will be updated and refined as the project moves through subsequent phases of the Framework.

2.6 Public Notice for Solicited Projects and Unsolicited Proposals

In accordance with the PPEA (§56-575.17) Unsolicited Proposals will be posted by VAP3, on behalf of the RPE, within 10 working days after having been accepted by the RPE. Responses to Solicited Projects will also be posted within 10 working days of acceptance by the RPE. Posting shall be on the Department of General Services’ centralized electronic procurement website, the RPE website and the VAP3 website: www.P3.virginia.org.

Public notice for an Unsolicited Proposal will also be completed in accordance with the PPEA (§56-575.3:1.B.11.), in that the posting and publishing of the public notice of a Private Entity’s request for approval of an Unsolicited Proposal for a Qualifying Project will include the following:

- specific information and documentation to be released regarding the nature, timing, and scope of the Qualifying Project;
- a reasonable time period as determined by the RPE to encourage competition and public-private partnerships in accordance with the objectives of the PPEA, such reasonable period will not be less than 45 calendar days, during which time the RPE in coordination with VAP3 shall receive competing Proposals; and
- Advertisement of a public notice in the Virginia Business Opportunities publication.

2.7 Key Action Items

Table 3: Key Action Items for High-Level Screening during Project Identification and Screening Phase

<table>
<thead>
<tr>
<th>Project Identification and Screening Activity</th>
<th>Responsible Entity</th>
<th>Targeted Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>High-Level Screening for Solicited Projects</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adopt PPEA Manual and Guidelines</td>
<td>RPE</td>
<td>As appropriate</td>
</tr>
<tr>
<td>Initiate a Solicited Project</td>
<td>RPE with VAP3</td>
<td>As appropriate</td>
</tr>
<tr>
<td>Produce High-Level Screening Report</td>
<td>VAP3</td>
<td>Within 30 calendar days of written notification of project identification by the RPE</td>
</tr>
<tr>
<td>Submit High-Level Screening Report to RPE</td>
<td>VAP3</td>
<td>Within 10 calendar days of completing the High-Level</td>
</tr>
</tbody>
</table>
### Table 4: Key Action Items for Policy Review during Project Identification and Screening Phase

<table>
<thead>
<tr>
<th>Project Identification and Screening Activity</th>
<th>Responsible Entity</th>
<th>Targeted Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Policy Review for Unsolicited Proposals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adopt PPEA Manual and Guidelines</td>
<td>RPE</td>
<td>As appropriate</td>
</tr>
<tr>
<td>Submit Unsolicited Proposal</td>
<td>Private Entity</td>
<td>At any time</td>
</tr>
<tr>
<td>Produce Policy Review Report</td>
<td>VAP3</td>
<td>Within 30 calendar days of receiving a copy of the Unsolicited Proposal from the RPE</td>
</tr>
<tr>
<td>Submit Policy Review Report to RPE</td>
<td>VAP3</td>
<td>Within 10 calendar days of completing the Project Screening Report</td>
</tr>
<tr>
<td>Unsolicited Proposal sent to Affected Jurisdiction(s)</td>
<td>VAP3</td>
<td>Within 10 calendar days of RPE Administrator’s decision to proceed to Detail-Level Screening</td>
</tr>
<tr>
<td>Provide comments on Unsolicited Proposal</td>
<td>Affected Jurisdiction(s)</td>
<td>Within 60 calendar days from the date of notification</td>
</tr>
<tr>
<td>RPE Administrator decision to proceed to Detail-Level Screening</td>
<td>RPE Administrator</td>
<td>Within 10 calendar days of receiving a completed Project Screening Report</td>
</tr>
</tbody>
</table>

### Table 5: Key Action Items for Solicited Projects and Unsolicited Proposals during Project Identification and Screening Phase

<table>
<thead>
<tr>
<th>Project Identification and Screening Activity</th>
<th>Responsible Entity</th>
<th>Targeted Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Detail – Level Screening for Solicited Projects and Unsolicited Proposals</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct a Detail-Level Screening of Solicited Projects and Unsolicited Proposals</td>
<td>VAP3</td>
<td>As appropriate</td>
</tr>
<tr>
<td>Submit the findings and recommendation of Detail-Level Screening Report</td>
<td>VAP3 Director/RPE Administrator</td>
<td>After completion of Detail-Level Screening Report and within</td>
</tr>
<tr>
<td>Project Identification and Screening Activity</td>
<td>Responsible Entity</td>
<td>Targeted Timeframe</td>
</tr>
<tr>
<td>----------------------------------------------------------------------------------------------------------------</td>
<td>-----------------------------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Level Screening to the Commission</td>
<td></td>
<td>15 calendar days of the RPE Administrator’s decision to advance the project or Proposal</td>
</tr>
<tr>
<td>Accept or reject advancing of P3 project to project development phase</td>
<td>Commission</td>
<td>As appropriate</td>
</tr>
<tr>
<td>Submit the findings, Project Fact Sheet and recommendation of Detail-Level Screening, Commission recommendation and project development budget for approval to RPE Oversight Body</td>
<td>VAP3 Director/RPE Administrator</td>
<td>At the next scheduled and available RPE Oversight Body meeting after Commission approval to advance the project to the project development phase</td>
</tr>
<tr>
<td>Post notification of accepted Unsolicited Proposal or Solicited Project</td>
<td>VAP3 Director/RPE Administrator</td>
<td>Within 10 calendar days of RPE Oversight Body decision to advance Unsolicited Proposal or Solicited Project</td>
</tr>
</tbody>
</table>
3 PROJECT DEVELOPMENT

This chapter describes the project development phase and related activities for P3 projects that are determined as Qualified Projects and accepted by the RPE for development under the PPEA.

3.1 PROJECT DEVELOPMENT PROCESS

In coordination with the RPE and with assistance from external advisors as necessary, the VAP3 project manager is responsible for getting the project ready for procurement. The VAP3 Director is responsible for maintaining appropriate coordination with other Agencies, elected officials and the RPE Oversight Body throughout the project development phase and for providing, as appropriate, project information such as budget, scope, and schedule, to the RPE Administrator.

The VAP3’s efforts will include, but not be limited to, developing the elements shown in Table 6.

Table 6: Examples of Key Tasks during the Project Development Phase

<table>
<thead>
<tr>
<th>Key tasks undertaken during the project development phase, depending on the characteristics of the project.</th>
</tr>
</thead>
<tbody>
<tr>
<td>▪ Further defining project scope, cost and schedule</td>
</tr>
<tr>
<td>▪ Determining compliance with environmental requirements</td>
</tr>
<tr>
<td>▪ Determining technical feasibility and operations and maintenance evaluations</td>
</tr>
<tr>
<td>▪ Determining the adequacy of the information to be included in the Proposals</td>
</tr>
<tr>
<td>▪ Submitting grant and funding applications, as required</td>
</tr>
<tr>
<td>▪ Performing public outreach</td>
</tr>
<tr>
<td>▪ Defining an approach to risk assessment (see VAP3 Risk Management Guidelines)</td>
</tr>
<tr>
<td>▪ Performing a Cost-Benefit Analysis and Opportunity Cost Analysis</td>
</tr>
<tr>
<td>▪ Determining the optimal financial structure</td>
</tr>
<tr>
<td>▪ Soliciting information from private sector through Request for Information</td>
</tr>
</tbody>
</table>

At the discretion of the VAP3 and the RPE Administrator, a Request for Information (RFI) may be issued to obtain additional information and comment from the private sector and other interested stakeholders. Public briefings may also be arranged to further discuss elements of the project under consideration and include, or identify stakeholders for engagement, consultation and support. These forums offer opportunities for public comments and private sector input which improve or refine the scope of the project being developed.
3.2 Cost Benefit and Opportunity Cost Analyses

For Solicited Projects, once the project development work has reached a level to support initial Cost Benefit and Opportunity Cost analyses, the VAP3 will arrange for these analyses to be performed to provide both quantitative and qualitative information to the RPE. Under this guideline document Unsolicited Proposals are required have an initial Cost Benefit Analysis provided at the time of submittal. The initial Cost Benefit Analysis will compare the total expected cost of a project against the total expected benefits, to see whether the benefits outweigh the costs, and by how much. The initial Opportunity Cost Analysis will evaluate potential returns on different investment options to determine the best use of limited public resources.

The output from these analyses tool for the VAP3 and the RPE Administrator to determine a quantitative comparison in expended cost, to benefits gained by continuing to invest in a project as a P3.

The RPE Oversight Body will be briefed on the results of the initial Cost Benefit and Opportunity Cost analyses before the project is advanced to the procurement phase.

The appropriate Cost Benefit and Opportunity Cost analyses methodologies will vary across Qualifying Projects.

3.3 Initial Finding of Public Interest

During the project development phase, VAP3, in coordination with the RPE, will prepare an Initial Finding of Public Interest (Initial FOPI) document.

The Initial FOPI will describe the scope and nature of the project; identify any risks to the project that have a high level of probability and/or potential costs; and identify any anticipated benefits to the Commonwealth and/or RPE related to the development and/or operation of the project in accordance with the PPEA ($ 56.575.1 et sec). In addition, the Initial FOPI will include all relevant analyses and information supporting the use of a P3 delivery method with a statement that the RPE Administrator has a clear understanding regarding the elements included in the FOPI.

Once complete the Initial FOPI will be signed by the RPE Administrator and the Secretary to whom the RPE Administrator reports. The Initial FOPI provides an affirmation that the P3 delivery method is being conducted in a manner that is in the best interest of the Commonwealth and/or the RPE.

3.4 Report to RPE Oversight Body

At the conclusion of the P3 project development phase, the VAP3 Director and the RPE Administrator will present a Project Fact Sheet (development phase) to the RPE Oversight Body. The Project Fact Sheet will provide information on studies and activities such as: salient points emerging from an RFI process (if used); a preliminary schedule for project delivery; preliminary procurement documents; activities related to risk management for the project; Cost Benefit and Opportunity Cost analyses; preliminary estimation of the project cost; an initial estimate of the public subsidy for the project; any potential economic benefits, and the preliminary business points.

The VAP3 Director and the RPE Administrator will:

- Present the Initial FOPI signed by the Secretary to whom the RPE Administrator reports.
- Seek the approval of the RPE Oversight Body to proceed to the P3 project procurement phase.
• Notify and brief the Chairman of the House Appropriations and Senate Finance Committees regarding the details of the project development phase. Other members of the General Assembly and stakeholders will be notified and briefed upon request.

The Project Fact Sheet (development phase) and the decision of the RPE Oversight Body is posted on the VAP3 website (www.P3.virginia.org) for public awareness and feedback.

Figure 6 represents the steps during the project development process for P3 projects.

**Figure 6: Project Development Process**

3.5 **Risk Assessment**

During the project development phase, the VAP3 will convene and participate in a risk workshop to review the project risks previously identified in the Detail-Level Screening and identify any additional risks that may have become known as part of the project development phase. At this phase in the Framework a quantitative assessment of all identified risks is carried out; including appropriate risk assessment, risk response/treatment, preferred risk allocation and the commencement of a risk management plan (see VAP3 Risk Management Guidelines).

3.6 **Key Action Items**

**Table 7: Key Action Items for Project Development Phase**

<table>
<thead>
<tr>
<th>Project Development Activity</th>
<th>Responsibility</th>
<th>Targeted Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perform project development activities (e.g., geotechnical testing, environmental, preliminary)</td>
<td>The RPE with assistance from the VAP3 project manager</td>
<td>Determined by project specific scope</td>
</tr>
<tr>
<td>Project Development Activity</td>
<td>Responsibility</td>
<td>Targeted Timeframe</td>
</tr>
<tr>
<td>------------------------------------------------------------------</td>
<td>----------------------</td>
<td>-----------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>engineering, risk analysis, etc.)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Conduct Cost Benefit and Opportunity Cost Analyses</td>
<td>VAP3</td>
<td>Determined by project specific scope</td>
</tr>
<tr>
<td>Update project risks and identify new project risks</td>
<td>VAP3</td>
<td>Continuous through project development phase</td>
</tr>
<tr>
<td>Report to RPE Oversight Body</td>
<td>VAP3 Director/ RPE Administrator</td>
<td>Determined by completion of project development activities</td>
</tr>
</tbody>
</table>
4  P R O J E C T  P R O C U R E M E N T

This chapter describes the procurement phase and provides guidance on related activities for projects that are determined to be Qualified Projects and have been accepted by the RPE for implementation under the PPEA. There are two ways to structure the procurement for a Qualified Project: using a single-stage procurement, or a two-stage procurement. While the discussion below focuses on a two-stage P3 procurement, it may be more beneficial in certain cases (i.e. for less complex P3 projects) to use a single-stage procurement. For instance a single-stage procurement may be selected if it is determined that doing so is in the best interest of the Commonwealth. In either case, the VAP3 in coordination with the RPE is responsible for leading the procurement process.

4.1  S I N G L E - S T A G E  P P E A  P R O C U R E M E N T  P R O C E S S

The single-stage procurement process requires Offerors to submit project specific information regarding qualifications and experience with their response to Request for Proposals (RFP). The Offeror’s experience and qualifications are evaluated first; against project specific criteria. Based on the results of this evaluation, technical criteria related to the Qualifying Project are then evaluated and a determination is made regarding the selection of the most responsive Proposal.

4.2  T W O - S T A G E  P P E A  P R O C U R E M E N T  P R O C E S S

The two-stage procurement process consists of issuing a Request for Qualifications (RFQ) and then a Request for Proposals (RFP).

The VAP3 serves as the primary point of contact for P3 procurements, in consultation with the RPE and the Office of the Attorney General (OAG). VAP3 will conduct a consistent, transparent and well-defined procurement process and will ensure that the process is administered in accordance with applicable law.

4.2.1  R e q u e s t  f o r  Q u a l i f i c a t i o n s (RFQ)

The VAP3 initiates the first stage of the P3 procurement process by issuing the RFQ. The primary objective of the RFQ is to receive Statements of Qualifications (SOQ) to define a pool of qualified, potential Offerors for the project.

4.2.2  S t a t e m e n t  o f  Q u a l i f i c a t i o n s  E v a l u a t i o n

The RFQ documents will specify the evaluation criteria and the methodology used to evaluate such criteria so that Offerors will know how their SOQs will be evaluated.

RFQ documents will be posted on the Department of General Services central procurement website (www.eva.virginia.gov), the RPEs website and the VAP3 website (www.P3.virginia.org). These documents shall (1) provide for a minimum of 60-days to allow for competitive procurement and (2) include information regarding the scope, nature and timing of development and/or operation of the proposed project. The public will have the opportunity to provide comments on a continuous basis by making use of the VAP3 website (www.P3.virginia.org).
4.2.3 Short-Listing of Qualified Offerors

The VAP3, in coordination with the RPE, is responsible for reviewing, scoring, and ranking all responsive SOQs. Upon completion of the SOQ evaluation process, the VAP3 will make a recommendation to the RPE Administrator regarding which Offerors should advance to the RFP stage. Offerors that are confirmed by the RPE Administrator will be short-listed to advance to the RFP stage. While the RPE Administrator will make the final decision, it is expected that no more than four Offerors will be short-listed to advance to the RFP stage. Scoring of qualifications and any ranking of the SOQs will not be carried over to the evaluation of the final RFP responses.

Electronic copies of the public information included in the SOQs submitted by all Offerors will be posted on the RPE website and the VAP3 website (www.P3.virginia.org) within 10 calendar days of the RPE Administrator’s decision on which Offerors will advance to the RFP stage.

The VAP3, in coordination with the RPE, will notify all Offerors in writing whether they have been short-listed. Additionally, the VAP3 will inform other state and federal Agencies, Affected Jurisdictions, relevant members of the General Assembly and stakeholders.

If after the competitive response period there are no Offerors, that submit SOQs for a particular RFQ, the VAP3 Director, in consultation with the RPE Administrator will arrange to meet with private industry to determine why the market was not more responsive to the RFQ. From those discussions the scope may be modified taking into account the feedback from the private sector.

If the RPE receives a single responsive submittal to its RFQ, then the VAP3, in coordination with the RPE, will conduct an evaluation and market assessment to determine if the responsive submittal brings benefit to the Commonwealth and/or RPE, or if the proposed procurement should be terminated. If it is found that the submittal does not bring value to the Commonwealth and/or RPE, the VAP3, in coordination with the RPE, may reissue a modified RFQ or re-procure the project at a later date after obtaining a resolution from the RPE Oversight Body to advance a modified procurement.

The RPE will make a presentation of its determination to its Oversight Body and seek a resolution from the Oversight Body to advance a modified procurement. The RPE’s presentation will be at a regularly scheduled meeting open to the public.

4.2.4 Request for Proposals (RFP)

Upon the determination of short-listed Offerors the RFP process begins. The RFP process optimizes competition among a short-listed group of qualified Offerors.

The VAP3 in coordination with the RPE, may choose to issue the RFP documents in draft format to short-listed Offerors and hold proprietary one-on-one meetings to solicit feedback on the proposed draft RFP including a draft CA. Once consideration has been given to the Offeror’s feedback, the VAP3 will issue the final RFP documents to the short-listed Offerors. VAP3 and other appropriate personnel comprising an Evaluation Team, will evaluate responses to the RFP from short-listed Offerors based on criteria defined in the RFP. The VAP3, in coordination with the RPE, reserves the right to run a Best and Final Offer (BAFO) process with the short-listed Offerors (see Appendix I for more details on the use of the BAFO process).

If after the competitive response period, an RPE receives a single responsive submittal to its RFP, the RPE will conduct a full benefit assessment of the Proposal received to determine if the responsive submittal brings benefit to the Commonwealth and/or the RPE. The benefit assessment will include, at a minimum, an assessment of risk allocations and the Cost Benefit and Opportunity Cost Analyses described in Section 4.5. Once these assessments have been completed, the RPE will make a presentation to the RPE’s Oversight Body to seek a resolution from the RPE Oversight Body to accept
the responsive Proposal or terminate the procurement. The RPE’s presentation to the Oversight Body will be at a meeting which is open to the public.

Decision’s related to payment of a stipend for the development and submittal of an RFP by responsive short-listed Offerors will be made by the RPE Administrator on a project specific basis and detailed in the RFP.

4.2.5 **Interim Agreement (IA)**

The PPEA (§ 56.-575.9.1. of the Code of Virginia) allows an RPE to enter into an IA with a Private Entity or multiple Private Entities if the RPE determines in writing that it is in the public interest to do so.

In certain circumstances the RPE Administrator in consultation with the VAP3 Director, may choose to enter into an IA with the Private Entities proposing the development and/or operation of a Qualifying Project prior to and in connection with the finalization of a CA. All proposed IAs will be reviewed by the Commission and the Appropriating Body for the RPE prior to execution.

**4.3 REPORT TO THE COMMISSION**

An RPE receiving Proposals from Private Entities for a Qualifying Project will provide copies of the Proposals to the Commission for review and comment prior to the negotiation of an IA or CA.

The following Qualifying Projects shall not be subject to review by the Commission (§30-280):

1. Any proposed Qualifying Project with a total cost of less than $3 million; or

2. Any proposed Qualifying Project with a total cost of more than $3 million but less than $50 million for which funds have been specifically appropriated as a public-private partnership in the general appropriation act or capital construction projects that have been authorized in the appropriation act, provided such project does not increase in size more than five percent beyond the plans and justifications that were the basis of the appropriation. For any Qualifying Project that will be completed in phases and for which no appropriation has been made for phases other than the current phase of the project, the Commission may undertake additional reviews of such projects.

Within 10 calendar days of receipt of a complete copy of the Proposals for a Qualifying Project, the Commission will determine whether to accept or decline such Proposals for review and notify the RPE of its decision. If the Commission accepts a Proposal for review, the findings and recommendations of the Commission shall be provided to the RPE within 45 calendar days of receiving complete copies of the Proposals. If no findings or recommendations are provided by the Commission to the RPE within the 45-day period, the Commission shall be deemed to have no findings or recommendations. Upon acceptance for review, the RPE shall provide any additional information regarding the Qualifying Project upon the request of the Commission, provided such information is available or can be obtained by the RPE.

The Commission will review accepted Proposals and provide findings and recommendations including:

- Whether the terms and conditions of the Proposals and proposed Qualifying Project create state tax-supported debt taking into consideration the specific findings of the Secretary of Finance with respect to such recommendation;

- An analysis of the potential financial impact of the Qualifying Project;

- A review of the policy aspects of the Proposals and the Qualifying Project; and
• Proposed general business terms and conditions.

Review by the Commission will not be construed to constitute approval of any appropriations necessary to implement any subsequent IA or CA. The RPE will not commence negotiation of an IA or CA until the Commission has submitted its findings and recommendations or the time has expired for the Commission to do so.

4.4 Basis for Award and Selection of Preferred Proposer

After the Commission has had the opportunity to review the Proposals and proposed IA or CA as described above in Section 4.2, the VAP3 will inform the Preferred Proposer that it has been selected. Pursuant to § 56-575.17.B of the Code of Virginia, 30 calendar days prior to entering into a CA, a public hearing will be held for public comment on the Proposals. The VAP3 also provides opportunities for public comment on the project and Proposals on a continuous basis by making use of the VAP3 and/or project website. The RFP, including the proposed CA will be posted to the VAP3 and/or project website. The VAP3, in coordination with the RPE, will notify all other Proposers in writing regarding the RPE Administrator's decision to award the project to the Preferred Proposer. The VAP3 and the RPE will also provide a briefing to the RPE Oversight Body as noted in Section 4.9. Appropriate members of the General Assembly and other previously identified stakeholders will also be notified and briefed upon request.

4.5 Competition: Significant Scope Change Policy

If the RPE, during the procurement of a P3 project, modifies the procurement documents in such a manner as to materially change the scope or alter the proposed delivery method, then the RPE shall conduct full Cost Benefit and Opportunity Cost Analyses of the current and proposed procurements. Once the Cost Benefit and Opportunity Cost Analyses have been completed, the RPE will make a presentation to the RPE’s Oversight Body to present the Cost Benefit and Opportunity Cost Analyses and seek a resolution from the Oversight Body to continue the procurement with the proposed material changes or terminate the procurement. The RPE’s presentation to the RPE Oversight Body will be at a meeting which is open to the public.

4.6 Revisited Cost Benefit and Opportunity Cost Analysis

Prior to recommending the selection of the Preferred Proposer to the RPE’s Oversight Body, the VAP3 will revisit the Cost Benefit and Opportunity Cost Analyses and update them accordingly, taking into account any additional project information that has become available since the initial Cost Benefit and Opportunity Cost Analyses (as described in Section 3.2) were performed. The RPE Administrator will consider the recommendation of the VAP3, the evaluation criteria and the results of the Cost Benefit and Opportunity Cost Analyses when selecting a Preferred Proposer. The results are provided in the briefing given by the VAP3 Director and RPE Administrator’s to the RPE’s Oversight Body.
Figure 7 represents the two-stage PPEA procurement process.

4.7 Risk Management

During the project procurement phase, the VAP3 will convene and participate in a risk workshop to refresh the risk register, confirm the project risk allocation and update the risk management plan. The VAP3 Director certifies the risk management plan and the RPE Administrator endorses the final risk management plan for application during the implementation stages of the project. (see VAP3 Risk Management Guidelines).

4.8 Final Finding of Public Interest

During the project procurement phase, VAP3, in coordination with the RPE, will prepare a Final Finding of Public Interest (Final FOPI) document for the signature of the RPE Administrator and the Secretary to whom the RPE Administrator reports. This is a reaffirmation that the P3 delivery method is consistent with the intent of the Initial FOPI and continues to bring benefit and is in the best interest of the Commonwealth and/or the RPE. The Final FOPI is presented to the RPE Oversight Body along with the major business points of the CA as described in Section 4.8.
4.9 Report to RPE Oversight Body

Near the conclusion of the P3 project procurement phase and the RPE’s selection of the Preferred Proposer has been completed, the VAP3 Director and the RPE Administrator will present a Project Fact Sheet (procurement phase) to the RPE Oversight Body. The RPE Oversight Body will be briefed on: the Final FOPI; updated schedule for project delivery; the CA documents; the updated risk management report; the final Cost Benefit and Opportunity Cost Analyses; the projected final project cost; including the projected public contribution for the project (if applicable); the updated Cost Benefit and Opportunity Cost Analyses and the final major business points. During the briefing, the RPE Administrator will seek the RPE Oversight Body’s endorsement of the Final FOPI indicating support of the RPE Administrator’s execution of a CA pending the review by the RPE’s Appropriating Body.

The Project Fact Sheet (procurement phase) and RPE Oversight Body’s endorsement of the Final FOPI are posted on the VAP3 website, RPEs website and/or project dedicated website for public awareness. The RPE Administrator and the Director of the VAP3 will notify and brief the Chairs of the House and Senate Committees as appropriate. Other members of the General Assembly and stakeholders will be notified and briefed upon request.

4.10 Appropriating Body Review

Before any IA or CA is executed it will be submitted to the relevant Appropriating Body for the RPE. When the proposed CA for a Qualifying Project:

- Creates a tax-supported debt,
- Requires a level of appropriation significantly beyond the appropriation received by the RPE in the most recent appropriation act, or
- Significantly alters the Commonwealth’s discretion to change the level of services or funding the services provided by the Qualifying Project over time.

The RPE Administrator and the VAP3 Director will submit the proposed IA or CA to the relevant Appropriating Body for review and brief them specifically on the three afore mentioned conditions (§ 56-575.4.J.).

4.11 Contract Finalization and Award

Prior to developing and/or operating a Qualifying Project, the successful Offeror must enter into a CA with the RPE. The RPE Administrator has the statutory authority to enter into the CA, as applicable, pursuant to the PPEA.

The RPE shall submit a copy of the proposed IA or CA to the Commission, the chair of the House Committee on Appropriations, and Senate Committee on Finance or their designees, and the Director of the Department of General Services at least 30 calendar days prior to execution of the Agreement along with a report describing the extent to which the Commission's recommendations, as outlined in Section 4.2, were addressed in the proposed IA or CA.

The VAP3 and the RPE will initiate the contract finalization and award process by issuing a list of open issues and matters for the parties to resolve and an anticipated timeline for completion.

Once the contract is finalized and executed, the RPE will post major business points of the CA, including any public funds used on the Qualifying Project and the proposed CA documents on the VAP3 website, RPE website and/or project dedicated website.
4.12 POST-FINANCIAL CLOSE

Once the contract documentation, including the CA is signed, the RPE is responsible for coordinating the implementation of the Qualifying Project.

The VAP3 will serve as a resource to the RPE for any commercial or contract management issues that may arise during the construction, finance, and operations or maintenance phases.

4.13 KEY ACTION ITEMS

Table 8: Key Action Items for Project Procurement Phase

<table>
<thead>
<tr>
<th>Project Procurement Activity</th>
<th>Responsibility</th>
<th>Targeted Timeframe</th>
</tr>
</thead>
<tbody>
<tr>
<td>Release of RFQ</td>
<td>VAP3 with assistance from the RPE</td>
<td>Released after Oversight Body decision to proceed from project development phase to project procurement phase</td>
</tr>
<tr>
<td>For Unsolicited Proposals post RFQ to Department of General Services central procurement website and VAP3 or project website</td>
<td>VAP3</td>
<td>120 calendar day minimum duration</td>
</tr>
<tr>
<td>Develop RFP documents</td>
<td>VAP3 with assistance from the RPE</td>
<td>Completion targeted for 120 calendar days after release of RFQ</td>
</tr>
<tr>
<td>Evaluate responses and short-list qualified Offerors</td>
<td>VAP3 with assistance from the RPE</td>
<td>Completion targeted for 60 calendar days after receipt of SOQ</td>
</tr>
<tr>
<td>RPE approves Short-Listed Offerers</td>
<td>RPE</td>
<td>Within 10 calendar days of completion of SOQ evaluation</td>
</tr>
<tr>
<td>Short-Listed Offerers announced</td>
<td>VAP3 in coordination with RPE</td>
<td>Within 10 calendar days of RPE approval of Short-Listed Offerers</td>
</tr>
<tr>
<td>Release RFP</td>
<td>VAP3 with the RPE</td>
<td>Release targeted for 30 calendar days after completion of SOQ evaluation</td>
</tr>
<tr>
<td>Request comments from Affected Localities</td>
<td>VAP3</td>
<td>Within 10 calendar days of release of the RFP</td>
</tr>
<tr>
<td>Comments received from Affected Localities</td>
<td>VAP3</td>
<td>60 calendar days after request for comments by VAP3</td>
</tr>
<tr>
<td>Project Procurement Activity</td>
<td>Responsibility</td>
<td>Targeted Timeframe</td>
</tr>
<tr>
<td>--------------------------------------------------------</td>
<td>------------------------------------------------------</td>
<td>------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Evaluate the RFPs</td>
<td>VAP3 with the RPE</td>
<td>Completion targeted for 90 calendar days after receipt of RFP</td>
</tr>
<tr>
<td>Revisit Cost Benefit and Opportunity Cost analyses</td>
<td>VAP3</td>
<td>Completion targeted for 30 calendar days after completion of evaluation of RFPs</td>
</tr>
<tr>
<td>Report to the Commission</td>
<td>VAP3 Director and RPE Administrator</td>
<td>Targeted for 60 calendar days after completion of RFP evaluation.</td>
</tr>
<tr>
<td>Select a Preferred Proposer</td>
<td>RPE Administrator</td>
<td>Targeted for 90 calendar days after receipt of RFP</td>
</tr>
<tr>
<td>Report to Oversight Body on selection of Preferred Proposer, and seek approval to award</td>
<td>VAP3 Director and RPE Administrator</td>
<td>Determined by completion of project procurement activities and timing of next public meeting</td>
</tr>
<tr>
<td>Appropriating Body Reviews CA</td>
<td>RPE Appropriating Body, VAP3 Director and RPE Administrator</td>
<td>At least 30 calendar days prior to execution of IA (if needed) and/or CA</td>
</tr>
<tr>
<td>Finalize and Award the Contract</td>
<td>RPE with assistance from the VAP3</td>
<td>30 calendar days after Oversight Body’s briefing</td>
</tr>
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APPENDIX A

PPEA GUIDANCE - DEFINITIONS

These definitions are applicable to all guidance documentation published by the Virginia Office of Public-Private Partnerships.

- **Affected Jurisdiction** means any county, city or town in which all or a portion of a Qualifying Project is located.

- **Appropriating Body** means the body responsible for appropriating or authorizing funding to pay for a Qualifying Project.

- **Assumptions** means an act or condition presumed to be true, even without proof.

- **Commission** means the Public-Private Partnership Advisory Commission.

- **Comprehensive Agreement** means the Comprehensive Agreement between the Private Entity and the RPE, required by § 56-575.9 of the Code of Virginia.

- **Cost-Benefit Analysis** means an evaluation tool comparing proposed Total Benefits to the proposed Net Total Cost of a Qualified Project. The evaluation provides information to decision-makers on whether a Qualified Project is worth pursuing to procurement.

- **Evaluation Team** means a team made up from individuals representing VAP3 and the RPE for the purpose of evaluation of Proposals submitted during the procurement phase.

- **Hard Benefits** means the benefits of a Qualified Project with independent, fact based, easily measurable and easy to prove results of reduced cost or increased revenue at designated times throughout the project.

- **Hard Benefits ROI Ratio** means the Return on Investment received for the Hard Benefits of a Qualified Project. This ratio is expressed as a percent and is calculated by taking total Hard Benefits and dividing by the Net Total Cost of the Qualified Project times 100.

- **Initial Finding of Public Interest (Initial FOPI)** means a document prepared by the VAP3 and the RPE, wherein the RPE Administrator affirms that the P3 procurement method is in the best interests of the Commonwealth. The initial FOPI is signed by the RPE Administrator and the Secretary to whom the RPE Administrator reports.

- **Interim Agreement** means an agreement between a Private Entity and a RPE that provides for phasing of the development or operation, or both, of a Qualifying Project. Such phases may include, but are not limited to, design, planning, engineering, environmental analyst and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the Qualifying Project.

- **Net Total Costs** – means the project costs minus any revenue generation for the contract term of the project.

- **Opportunity-Cost-Analysis** – means an evaluation tool that compares the Qualified Project with the next best alternative that was not chosen. The opportunity cost analysis is what action you would have taken if you didn’t make the choice you did. The evaluation provides information to decision-makers.
makers demonstrating if the proposed Qualified Project is worthwhile in pursuing and has inherent value that is greater than the next best alternative.

- **Offeror** means the Private Entity, company, firm, consortium or other legal entity submitting a Statement of Qualifications for a P3 project in response to Request for Qualifications.

- **PPEA** means the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, which is a legislative framework enabling the Commonwealth of Virginia, local governments, and certain other RPEs to enter into agreements authorizing Private Entities to develop and/or operate Qualifying Projects.

- **P3 Project Delivery Framework (Framework)** means the Commonwealth’s structured project identification, screening, development and procurement process designed to assist in the evaluation and selection of P3 Projects in which projects must pass through a series of decision points in order to progress towards final approval and contract award.

- **Preferred Proposer** means the Private Entity, company, firm, consortium or other legal entity selected during the procurement process to perform the services described in the RFP documents issued by the VAP3, in coordination with the RPE.

- **Private Entity(ies)** means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, special purpose vehicle, or other business entity.

- **Procurement** means the acquisition of goods, services, or works from a Private Entity.

- **Project Cost** means the measurement of all costs associated with the project, including all construction, routine and full lifecycle maintenance costs for the contract term of the project.

- **Proposal** means the documents submitted by a Proposer in response to an RFP issued by the VAP3, in coordination with the RPE.

- **Proposal Review Fee** means the non-negotiable fee to be remitted to the RPE with the submission of an Unsolicited Proposal.

- **Proposer** means the Private Entity submitting a Proposal for an Unsolicited Proposal or a P3 Project, in response to an RFP issued by the VAP3, in coordination with the RPE.

- **Public Entity** means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

- **Public-Private Partnership (P3)** means a project or service which is funded and operated through a partnership of government and one or more Private Entities. In Virginia, the PPEA is the legislative framework that enables P3 agreements for Qualifying Projects defined by the PPEA.

- **Public-Private Partnership Advisory Commission** means an advisory commission in the legislative branch that will advise RPE’s that are agencies or institutions of the Commonwealth on Proposals received pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (as Amended).

- **Public Subsidy** means the amount of funds committed to the project by the Responsible Public Entity.
Qualifying Project means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility for principal use by any Public Entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a Public Entity; (iv) utility and telecommunications and other communications infrastructure; or (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) Any services designed to increase the productivity or efficiency of the RPE through the use of technology or other means; (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility that produces electric energy derived from solid waste.

Revenues means all revenues, income, earnings, User Fees, Lease Payments, or other service payments arising out of or in connection with supporting the development and/or operation of a Qualifying Project, including without limitation, money received as grants or otherwise from the United States of America, from any Public Entity, or from any agency or instrumentality of the foregoing in aid of a Qualifying Project.

RFP means the documents constituting the Request for Proposals and identifying the P3 Project, the work to be performed and materials to be furnished, in response to which a Proposer may submit a Proposal.

RFQ means the documents constituting the Request for Qualifications issued for a P3 Project by the VAP3, in coordination with the RPE.

Responsible Public Entity (RPE) means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that has the authority to develop and/or operate an applicable Qualified Project in accordance with the PPEA. RPE Administrator means the Commissioner, Director or the Chairman of the Board of Commissioners who is responsible for making decisions for his/her respective Department, or Agency.

Return on Investment (ROI) means the benefit received from an investment in a Qualified Project. A high ROI means the investment compares favorably to investment cost. As a performance measure, ROI is used to evaluate the effectiveness of an investment or to compare the effectiveness of a number of different investments.

Short-Listed Offeror means the Offerors that have been selected to advance to the RFP stage of the PPEA procurement process.

Soft Benefits means benefits which are difficult to define, for which no positive confirmation is possible and have more qualitative than quantitative results. These benefits are more complex and the assumptions they’re based on are easy to challenge.

Soft Benefits ROI Ratio means the Return on Investment received for the Soft Benefits of a Qualified Project. This ratio is expressed as a percent and is calculated by taking total Soft Benefits and dividing by the Net Total Cost of the Qualified Project times 100.

Solicited Project means a project initiated by an RPE.
- **SOQ** means the documents constituting the Statement of Qualifications and supporting information, including all clarifications thereto, submitted by Offerors in response to RFQs issued by the VAP3.

- **State** means the Commonwealth of Virginia.

- **Total Benefits** – means the total Hard Benefits plus the total Soft Benefits.

- **Total Benefits ROI Ratio** means the Return on Investment received for the Total Benefits of a Qualified Project. This ratio is expressed as a percent and is calculated by taking Total Benefits and dividing by the Net Total Cost of the Qualified Project times 100.

- **Total Costs** – means all costs including all procurement, risk adjustments costs, construction, routine maintenance and full lifecycle maintenance.

- **Unsolicited Proposal** means a Proposal to develop and/or operate a Qualifying Project submitted by a Private Entity not in response to an RFQ or RFP.

- **User Fees** mean the rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Comprehensive Agreement pursuant to § 56-575.9.

- **VAP3** means the Virginia Office of Public-Private Partnerships established under the guidance of the Commonwealth’s Secretary of which is responsible for developing, implementing and administering the procurement of P3 Projects.

- **VAP3 Director** means the highest ranking individual within the VAP3 responsible for overseeing all aspects of the P3 Program.
APPENDIX B

Rights and Disclaimers

Rights Reserved

The VAP3, in coordination with each RPE, reserves all rights available by law in processing PPEA Proposals, including, without limitation, the sole and unfettered right to:

1. Alter the schedule of review or scope of evaluation, including components thereof, of any Proposal if changes are deemed are necessary because of the scope or complexity of a Proposal they receive;

2. Reject any and all Proposals at any time;

3. Terminate evaluation of any and all Proposals at any time;

4. Suspend, discontinue and/or terminate Interim or Comprehensive Agreement negotiations with any Proposer at any time prior to the actual authorized execution of such agreement by all parties, subject to appropriate documentation;

5. Negotiate with a Proposer without being bound by any provision in the Proposal;

6. Request or obtain additional information about any Proposals;

7. Waive minor errors, omissions or irregularities in a response to an RFQ or RFP;

8. Issue addenda to, and/or cancel, any RFQ or RFP;

9. Revise, supplement or withdraw all or any part of the guidelines included in this PPEA Manual and Guidelines;

10. Decline to return any and all fees required to be paid by Private Entities as part of the evaluation process for Unsolicited Proposals;

11. Request clarifications to Unsolicited Proposals; and

12. Modify the process and submission requirements for reviewing Proposals in connection with a resale, re-tendering, transfer or other disposition of a project pursuant to the provisions of an existing Comprehensive Agreement.

Disclaimers and Conditions for Submissions under the PPEA

Neither the Commonwealth nor any of its political subdivisions, agencies, or employees shall be liable for, or reimburse, the costs incurred by Offerors or Proposers, whether or not selected for negotiations, in developing and submitting Proposals or in negotiating agreements.

Any and all information made available to Offerors and Proposers is made for convenience purposes only and is without representation or warranty of any kind.
Offerors and Proposers must submit questions concerning the PPEA process in writing to the point of contact referenced in the procurement documents, which will coordinate a response in writing; Proposers may not rely on oral responses to inquiries.

The Commonwealth, the VAP3 Director or the RPE Administrator shall not be liable to an Offeror or Proposer for the disclosure of all or a portion of a response to RFQ, RFP or a Proposal submitted pursuant to this PPEA Manual and Guidelines.
APPENDIX C

P3 Project Delivery Framework Flowchart

PPEA Framework for Solicited Projects

Project Identification and Screening Phase
APPENDIX D

Guidance on Approach to Commercial Terms

The guidance below presents the VAP3’s approach to developing commercial terms that forms the basis for Interim Agreements and Comprehensive Agreements governing P3 projects. In developing commercial terms, the VAP3 seeks to strike a balance between (i) providing the private sector with enough transparency regarding the Commonwealth’s and/or RPE’s principles and processes so as to promote and preserve its confidence and participation in the P3 program and (ii) preserving the VAP3’s flexibility across modes and projects to develop and complete competitive fair, market-based transactions that reflect the best interests of the Commonwealth and/or RPE.

While each P3 project is different and will have its own unique challenges, the guiding principles identified below remain constant and the VAP3 intends to apply these principles during the process of developing commercial terms for P3 projects across modes and methods of project delivery:

- **Protect the Public Interest** by being an effective steward of public resources and ensuring that the Commonwealth and/or RPE satisfy their statutory and legal duties to the public;
- **Deliver Education and Technology Infrastructure Solutions** to solve the Commonwealth’s and/or RPE’s challenges;
- **Promote Transparency and Efficiency** within the Framework in order to generate and preserve confidence of key stakeholders in the P3 program;
- **Maximize Competition** through constant, early communication with the private sector, and during development and procurement, managing an efficient project selection process and administering a uniform and transparent procurement process;
- **Execute P3 projects in a Timely and Efficient Manner** through decisive process management and efficient decision-making;
- **Encourage Creativity and Innovation** to generate meaningful participation by the private sector;
- **Collaborate, Cooperate and Communicate** with private partners within the process as well as federal and state agencies and other key stakeholders to identify shared goals, key concerns and criticisms and resolve issues and challenges on a programmatic and project-specific basis;
- **Advocate Reasonable and Fair Commercial Terms** to ensure marketability of P3 projects by adopting market-based risk allocations that are appropriate for the complexity and scope of a specific P3 project – and are in the best interest of the Commonwealth and/or RPE;
- **Standardize Terms, Procedures and Documents** as appropriate to enhance speed of project execution and establish common understanding of key commercial terms and uniform treatment of general matters while remaining flexible to address the unique elements of a project on a transaction-specific basis; and
- **Lead the Public-Private Partnership Community** by developing and preserving a reputation for managing P3 projects effectively and successfully to promote confidence in the P3 program and realize the benefits of a long term investment in the Commonwealth.

The VAP3 intends to apply these guiding principles and values to each P3 project through the processes utilized to develop commercial terms as outlined below; however, due to the uniqueness of each P3
project, certain principles and values may weigh and factor differently when developing commercial terms and finalizing an Interim or Comprehensive Agreement, as applicable, for a specific P3 project.

**Development of Commercial Terms**

During the pre-solicitation stage of the PPEA procurement process, the VAP3, in conjunction with the RPE, may conduct project-specific industry workshops in order to measure the private sector's interest in the proposed P3 project and to gauge the potential scope of the project risks, allocation of those risks and related commercial terms. The VAP3 and the RPE may follow up, hold industry workshops, or conduct independent one-on-one meetings with potential developer teams to further develop the scope of the proposed P3 project and advance the consideration of potential commercial terms for the project.

Prior to the issuance of the final RFP documents for a particular P3 project, the VAP3 will maintain open lines of communication within the parameters and restrictions set forth in the procurement documents with short-listed Offerors. The VAP3 will consider the input received from short-listed Offerors related to the project scope and other salient matters to ensure that the project and its corresponding commercial terms are financeable, risk appropriate, consistent with prevailing market conditions and in the best interest of the Commonwealth.

The VAP3 expects the key commercial terms that will form the basis for an Interim Agreement or Comprehensive Agreement will be determined prior to issuance of the final RFP documents. The contract finalization phase will provide an opportunity to make modifications necessary to react to events, such as changes in law, litigation, significant shifts in market conditions, new facts, and considerations raised by significant third party participants as appropriate. During the contract finalization phase, the VAP3, in coordination with the RPE, will work with the Preferred Proposer to agree upon an ordered and efficient review and comment process to resolve any outstanding issues and/or refine the language of the documents in a manner which is timely, cost effective and reflects the importance of achieving commercial and financial closings.

The VAP3, in conjunction with the RPE and external legal, financial and technical advisors, will, in most circumstances, be primarily responsible for drafting, issuing and managing the P3 project’s primary commercial documents, such as term sheets, Interim Agreements, Comprehensive Agreements, technical requirements and related documents.

During the process of drafting the primary commercial documents, the VAP3, the RPE and external advisors will be guided by the PPEA principles and consider the following factors:

1. Whether the project is a Greenfield construction or Brownfield monetization;
2. The proposed financial structure;
3. The commercial terms and risk allocations reflected in past P3 projects in the Commonwealth, parties that are best able to manage each risk and recent transactions of similar complexity and scope in other jurisdictions;
4. Current economic and financial conditions; and
5. Political and cultural issues.

For certain terms, the VAP3 will develop standard contractual language to address matters that will be part of any transaction, regardless of the nature of the P3 project or the RPE involved.
The VAP3, in conjunction with its constituent agencies and external advisors, will engage the private sector on an ongoing basis to evaluate shifting market conditions and will conduct periodic internal reviews of its principles and processes. Furthermore, the VAP3 will reach out to both the private sector and similar public-private partnership offices in other states to discuss shifting market dynamics and/or conditions that may impact the P3 program.

The VAP3 views its approach to developing commercial terms as a dynamic process that will evolve over time in an effort to continually reflect the best practices of using public-private partnerships to develop transportation infrastructure in the Commonwealth.
APPENDIX E

Guidance for Unsolicited Proposal Preparation

The PPEA permits Private Entities to submit Unsolicited Proposals to develop and/or operate Qualifying Projects at any time, pursuant to the PPEA and this PPEA Manual and Guidelines. In an effort to streamline the PPEA process, all Unsolicited Proposals should be submitted directly to the RPE with a copy to the VAP3. Private Entities are encouraged to contact the VAP3 in coordination with the RPE to arrange a meeting to discuss their ideas and concepts prior to submitting an Unsolicited Proposal. The VAP3 Point of Contact to arrange a meeting in this regard is:

Ms. Jackie Cromwell
Virginia Office of Public Private Partnerships
600 E. Main Street, Suite 2120
Richmond, VA 23219
Tel: 804 786 0455 (O)

Proposal Preparation

Private Entities submitting an Unsolicited Proposal should ensure that the Proposal includes a comprehensive project description and provides enough information about the proposed project for the VAP3, in coordination with the RPE, to determine whether the Proposal satisfies the review and evaluation criteria as set out in 56-575.4. of the Code of Virginia. Private Entities should also provide sufficient information to facilitate a Policy Review as detailed in Section 2.2.2 of this PPEA Manual and Guidelines and a Detail-Level Screening as described in Appendix F. In addition, the financial plan for the Qualifying Project must contain enough detail so that an analysis could be performed to determine whether the proposed project is financially feasible. The financial plan shall disclose the full extent of any forecasted public financing and/or funding commitments that are required to enable the proposed Qualifying Project.

To promote standardization of the evaluation procedure, Private Entities are required to organize contents of the Unsolicited Proposal as follows:

- Table of Contents
- Executive Summary
- TAB 1: Project Description and Approach
- TAB 2: Desirability of the Project
- TAB 3: Feasibility of the Project
- Appendices – Additional Information (if applicable)

The VAP3, in coordination with the RPE, may require Private Entities submitting an Unsolicited Proposal to give one or more oral presentations of their Proposal to the VAP3, the RPE and/or the public. Such presentations will provide opportunities to educate the RPE and the public and/or to clarify aspects of the Proposal. All pages of the Proposal should be numbered. Each copy of the Proposal should be placed in a three-ring binder and contained in a single volume where practical.
Proposal Submission

Private Entities submitting Unsolicited Proposals are required to deliver ten (10) hard copies and one (1) electronic copy in Portable Document Format (PDF) to the RPE. In coordination with the RPE one (1) hard copy and (1) one electronic copy in Portable Document Format (PDF) can also be submitted directly to VAP3. Proposals must be sealed in mailing envelopes or packages bearing the Proposer's name, address and the words "Public-Private Education Facilities and Infrastructure Act Proposal" clearly written on the outside. The cover page must include the title of the Proposal, the name and address of the proposing entity, the person authorized to act on behalf of the Proposer and his or her email address and telephone and facsimile numbers.

All Unsolicited Proposals should be submitted to the RPE, with a copy sent to the attention of the VAP3 Director at the address listed above for the VAP3 Point of Contact.

Private Entities interested in submitting an Unsolicited Proposal are required to pay a non-negotiable Proposal Review Fee as specified in Section 2.1.2.1 of this PPEA Manual and Guidelines at the time of submitting the Unsolicited Proposal to the RPE. Proposers submitting multiple Proposals for unrelated P3 projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.

Upon receipt, the RPE will notify the VAP3. Upon notification by the RPE, the VAP3 will notify any appropriate federal agency, and other stakeholders that the Unsolicited Proposal has been submitted for a given Qualifying Project and that the VAP3 will initiate a review within 30 calendar days to determine if the Proposal meets all legal and policy requirements for further evaluation, as set out in §§ 56-575.4 of the Code of Virginia and this PPEA Manual and Guidelines.

The Private Entity submitting a copy of the Unsolicited Proposal to the RPE pursuant to 56-575-4 of the Code of Virginia shall coordinate with the VAP3 Director prior to furnishing a copy of its Proposal to Affected Localities other than the RPE that is identified in the Proposal.

If an Unsolicited Proposal is submitted during a period when the VAP3, in coordination with the RPE, is unable to review and evaluate that Proposal by virtue of being committed to the development, evaluation, and procurement of other Qualifying Projects, or for any other reason as determined by the RPE at its sole discretion, then the Private Entity will be notified by the VAP3; in coordination with the RPE, so that the Proposal may be resubmitted at a later date.
Appendix F

Guidance on Detail-Level Screening Criteria

Those Solicited Projects that have advanced through the High-Level Screening process and those Unsolicited Proposals that have advanced through the Policy Review are eligible for a Detail-Level Screening. The Detail-Level Screening Criteria form the basis upon which the VAP3 evaluates the feasibility of delivering projects using the P3 project delivery method. The screening criteria reflect the Commonwealth’s and/or RPE’s goals and policy priorities for delivering projects in a timely and cost-effective manner.

The Detail-Level Screening Criteria, as described in more detail below, provides the private sector with a guide for defining what information the VAP3 and the RPE will evaluate as they make their recommendation to the P3 Advisory Commission as to whether to invest in advancing the Qualifying Project under the PPEA.

In the Detail-Level Screening phase, the VAP3 will evaluate projects on the basis of two primary review categories: (1) desirability of the project and (2) feasibility of the project. The table below provides some guidance to the public and private sectors as to how to interpret the criteria:

Table 9 – Detail-Level Screening Criteria - Desirability

<table>
<thead>
<tr>
<th>Detail-Level Screening Criteria – Desirability of the Project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Public Need</strong></td>
</tr>
<tr>
<td>§ Does the project address the needs outlined in the local, regional and state plans?</td>
</tr>
<tr>
<td><strong>Public Benefits</strong></td>
</tr>
<tr>
<td>§ Are there anticipated benefits to the community, the region and/or the Commonwealth?</td>
</tr>
<tr>
<td>§ Is the project expected to help achieve performance, safety goals?</td>
</tr>
<tr>
<td>§ Are there potential project benefits to the Affected Localities?</td>
</tr>
<tr>
<td>§ Are there anticipated enhancements to adjacent facilities?</td>
</tr>
<tr>
<td><strong>Economic Development</strong></td>
</tr>
<tr>
<td>§ Will the project enhance the Commonwealth's economic development efforts?</td>
</tr>
<tr>
<td>§ Is the project helpful to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?</td>
</tr>
<tr>
<td><strong>Market Demand for PPEA Delivery</strong></td>
</tr>
<tr>
<td>§ This measure is only applicable to Solicited Projects; Unsolicited Proposals do not need to address this issue, as Private Entities are demonstrating market demand through the submission of their Proposal.</td>
</tr>
<tr>
<td><strong>Stakeholder Support</strong></td>
</tr>
<tr>
<td>§ Public and Business Community Support – What is the extent of support or opposition for the project? Does the proposed project demonstrate an understanding of the national and regional issues and needs, as well as the impacts this project may have on those needs?</td>
</tr>
<tr>
<td>§ Public Involvement Strategy – What strategies are proposed to involve citizens, local, state and/or federal officials in developing this project?</td>
</tr>
<tr>
<td>§ Federal Requirements – Is the project consistent with federal agency programs or grants?</td>
</tr>
</tbody>
</table>
### Detail-Level Screening Criteria – Desirability of the Project

| Legislative Considerations | Are there any legislative considerations that need to be taken into account, such as User Fees or use of public funds? |

### Table 10 Detail-Level Screening Criteria - Feasibility

#### Detail-Level Screening Criteria – Feasibility of the Project

| **Technical Feasibility** | Project Approach – Is the project described in sufficient detail to determine the type and size of the project, the location of the project, the communities that may be affected and alternatives that may need evaluation?  
Proposed Project Schedule – Is the proposed schedule for project completion clearly outlined and feasible?  
Operation – Does the project set forth plans for operation of the facility, including a schedule defining initiation of operations?  
Technology – Is the project’s technical approach based on proven technology?  
Conforms to Laws, Regulations, and Standards – Is the project consistent with applicable state and federal statutes and regulations or reasonably anticipated modifications of state or federal statutes, regulations or standards?  
Design Standards – Does the conceptual design appear to be consistent with the appropriate state and federal standards?  
Federal Oversight – Will the project require some level of federal involvement or oversight?  
Meets/Exceeds Environmental Standards – Is the proposed project consistent with applicable state and federal environmental statutes and regulations?  
Federal, State, and Local Permits and Approvals – Does the project identify the required permits and regulatory approvals and a reasonable plan and schedule for obtaining them?  
Utilities – Does the project set forth the method by which utility relocations will be identified and managed?  
Maintenance – Does the project include a schedule and plan to maintain this facility? |
| **System Interface and Compatibility** | Land Use Impacts – Is the project compatible with local land use and comprehensive plans?  
System Interface – Does the project provide continuity with existing and planned state and local facilities? |
| **Financial Feasibility** | Are there public funds required and, if so, are the Commonwealth’s and/or RPE’s financial responsibilities clearly stated?  
Is the preliminary financial plan feasible in that the sources of funding and financing can reasonably be expected to be obtained?  
What is the level of private financial equity/debt within the preliminary financial plan? |
<table>
<thead>
<tr>
<th>Detail-Level Screening Criteria – Feasibility of the Project</th>
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</thead>
<tbody>
<tr>
<td>Legal/Legislative Feasibility</td>
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<tr>
<td>Project Risks</td>
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<td>Concession Term</td>
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<td>End of Term Arrangement</td>
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APPENDIX G

Guidance for the RFQ Process

This Appendix provides guidance on the processes for issuance of RFQ documents and submitting SOQs.

Issuance of RFQ Documents

The VAP3, in consultation with the RPE Administrator and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The VAP3 will issue a public notice on the VAP3 website, the RPE website and the state eVA system to announce the issuance of the RFQ documents. The VAP3 will also notify General Assembly Members. The eVA system is a web-based purchasing system used by state agencies to announce bid opportunities, invite Offerors and receive quotes. The public notice may be issued by publication in a newspaper or newspapers of general circulation in the area in which the project is to be performed, so as to provide reasonable notice to the maximum number of Offerors that can be reasonably anticipated to submit responses to the RFQ.

The procurement documents, including any required forms, Addenda and other related information will be made available electronically on the eVA system, the RPE website and the VAP3 website. The VAP3 may arrange for a pre-Proposal conference or webinar, as deemed appropriate, to present and clarify information about the project and procurement process and respond to any questions that prospective Offerors may have about the RFQ. A notice for such an event will be made known within the RFQ documents, on the eVA system, and on the VAP3 and/or RPE website.

At any time during the procurement process, the need to issue one or more Addenda to the procurement documents may arise following interaction with the industry or in the event the underlying conditions of a particular project change or more information becomes available. Private Entities are encouraged to check the eVA system the RPE website and the VAP3 website frequently and before submitting their responses.

Submission of SOQs

In response to the issuance of an RFQ, Offerors that are interested in the project will be required to submit an SOQ. SOQs should be prepared in accordance with the timelines and requirements of the RFQ document. For those Unsolicited Proposals that have been accepted by the RPE for a competitive procurement, the Offeror that submitted the original Unsolicited Proposal will be required to submit a SOQ with other prospective Offerors to an RFQ if the Offeror submitting the original Unsolicited Proposal remains interested in developing the project.

As a part of the SOQ, Offerors may be required to provide information related to the structure of the respondent team, the qualification and experience of the Offeror, individual team members and key personnel with developing, designing, constructing, financing, operating and/or maintaining projects comparable to the project. The specific nature of experience, key personnel and background sought will depend on the specific project as well as the project delivery structure used. Additionally, the RFQ may require submittal of certain financial information from the Offeror and its affiliates. The intent of financial qualification submittal requirements is to determine whether the Offeror submitting a response has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule. The VAP3, in coordination with the RPE, may require the submission of financial statements (including audited financial statements), letters of support from providers of payment and...
performance security and/or disclosure of material changes in the Offeror’s financial position during a specified period of time or reporting period identified in the RFQ.

Offerors are encouraged to become familiar with the Virginia Freedom of Information Act (VFOIA) provisions to ensure that documents identified as confidential or proprietary will not be subject to disclosure pursuant to VFOIA prior to submitting their responses and to otherwise understand which documents may be subject to disclosure pursuant to the VFOIA.
APPENDIX H

Guidance for the RFP Process

This Appendix provides guidance on the process for developing RFP documents, the contents of Proposals and evaluation methodology.

Upon making the determination of short-listed Offerors, the RPE in coordination with the VAP3, may begin the RFP process. The purpose of the RFP process is to create competition among a short-list of the most qualified Offerors to create value for the Commonwealth and/or RPE.

The RPE, in coordination with the VAP3, may choose to issue the RFP documents in draft format to short-listed Offerors and hold one-on-one meetings in order to solicit feedback on the proposed RFP documents and draft Comprehensive Agreement. Once consideration has been given to feedback from the short-listed Offerors and other appropriate parties, the RPE, in coordination with the VAP3, will issue final RFP documents to short-listed Offerors.

The RPE, in coordination with the VAP3, will evaluate Proposals submitted by shortlisted Offerors in response to the RFP, based on appropriate criteria. The RPE in coordination with the VAP3 reserves the right to carry out a Best and Final Offer (BAFO) process with some or all of the Proposers submitting responsive Proposals.

Contents of RFP Documents

The RFP documents may include specific requirements for the detailed Proposals, as well as the selection criteria to be met. Depending on the project, the RFP documents may also include, among other things:

- Technical requirements for the design, construction, environmental commitments, operations and maintenance components of the project;
- The scope of the services to be provided;
- The RPE’s preferred allocation of project risks and commercial terms via a draft Comprehensive Agreement;
- Clear instructions on the content and format of each Proposal; and
- A clear and reasonable timetable for submitting the Proposals.

Proposal Submission

In response to the issuance of the final RFP documents, short-listed Offerors will be invited to submit a detailed Proposal containing at least two basic components, a Technical Proposal and a Financial Proposal, in accordance with the requirements stated in the RFP documents. The RFP may require Proposers to submit information different from or in addition to such information referenced in this PPEA Manual and Guidelines.

Additionally, the extent and type of information requested may vary depending upon the complexity of the P3 project; however, the information and supporting documents provided should be sufficient to allow the VAP3 and the RPE to determine the most suitable Proposer for delivering the P3 project.
Technical Proposal

The VAP3 may require the Proposer to provide a Technical Proposal regarding the project’s scope of work and technical requirements as the VAP3 and the RPE deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, approach for maintenance of traffic during construction, project management approach, schedule, phasing, quality control and assurance approach, environmental requirements, communication and public involvement approach and other information as is appropriate for the project’s implementation.

The intent of the Technical Proposal is to provide assurance that the selected Preferred Proposer has a sufficient understanding of the project and/or desired service; an approach that fosters innovation and creativity; an approach that meets technical and contractual requirements; and the ability to deliver the project and/or desired service in accordance with technical and contractual requirements stated in the RFP documents in a timely and efficient manner. If compliance with NEPA is required, the Technical Proposal must be consistent with any existing NEPA approvals or additional NEPA documentation may be required.

Financial Proposal

The content requirements of the Financial Proposal will vary with the type of PPEA delivery structure and the nature of a particular P3 project. If the RFP and project scope requires the Proposer to finance any part of the project, the RFP will require that the Financial Proposal include a financial plan and financial model. Depending upon the nature of the project, the project delivery method and current market conditions, the requirements for the contents and level of detail of the financial plan could be substantially different. The Financial Proposal may require that the Proposer update the financial qualification information provided with the SOQ. The RFP documents will include the financial plan requirements.

The VAP3 will seek, where possible and financially feasible, Proposals that minimize the use of public funds as well as the creation of state-supported debt. If a Proposal including public or private debt is submitted, then the RFP will require that the Proposal identify the amount of public funds required and a plan for complying with any requirements associated with using public funds.

Proposal Evaluation Criteria

The evaluation methodology for Proposals will depend largely on the nature of the project, the scope of work and details set forth in the RFP documents. However, the VAP3 in coordination with the RPE reserves the right to utilize other basis for award, including lowest lifecycle cost, highest concession payment, lowest public subsidy and any other basis that is appropriate and deemed by the VAP3 in coordination with the RPE to be in the best interests of the project and the Commonwealth.

The specific criteria and methodology for evaluating Proposals will be included in the RFP documents of the specific PPEA procurement and will vary depending on the scope and complexity of a project and project delivery approach. The RFP evaluation criteria allow the VAP3, the RPE, and the Commonwealth to clearly communicate the project objectives and priorities of the RPE to the private sector.

Upon receipt of Proposals, the VAP3 will commence the evaluation and selection process. The VAP3, in coordination with the RPE, may hold interviews, present written questions to Proposers, seek written clarifications and conduct discussions on the Proposals during the evaluation and selection process.

After evaluation of the Proposals, the VAP3, in consultation with the RPE, reserves the right to request that Proposers submit Proposal revisions (also known as a Best and Final Offer (BAFO)). Typically, only those Proposers that are responsive and/or which fall within a competitive range will be permitted to
submit BAFOs. The request for Proposal revisions or BAFOs is intended to provide Proposers an opportunity to revise their Proposals (both the Technical Proposal and Financial Proposal) in light of the BAFO request issued by the VAP3. Upon receipt of the Proposal revisions or BAFOs, the Proposal evaluation process will be repeated by the VAP3. It is important to note that BAFOs are not mandatory and may not be useful or appropriate for a given project. If BAFO is to be used, it will be specifically stated in the RFP.

APPENDIX I

Legal Framework – PPEA of 2002

Document Filing with Auditor of Public Accounts

The Auditor of Public Accounts shall periodically review IAs and CAs entered into pursuant to the PPEA to ensure compliance with the provisions of the PPEA (§56-575.18). VAP3 will electronically file copies of the Agreements and supporting documents on the database maintained by Auditor of Public Accounts.

Conflicts of Interest and Other Considerations

Actual, potential or perceived conflicts of interest may be encountered during a P3 project delivery. To assure transparency, accountability, and objectivity, any Proposal submitted to an RPE pursuant to the PPEA will follow the state and federal laws, regulations and guidelines regarding potential organizational conflicts of interest. Such requirements will extend to external advisors, consultants and staff. Examples of such federal laws, regulations and guidelines are 23 CFR §636.116, 23 CFR §771, 48 CFR §9.5, the Committee on Foreign Investment in the United States (CFIUS) processes, and §2.2-4373 of the Code of Virginia.

VAP3 and the RPE, in consultation with the OAG, will determine on a case-by-case basis whether organizational conflicts of interest exist and what actions may be appropriate to avoid or mitigate any actual, potential or perceived conflict.

Pledge of Confidentiality

Each member of the VAP3 and the RPE that is associated with developing, reviewing or selecting submitted project Proposals has access to proprietary and confidential information. Any misuse by VAP3 employees or representatives of these RPEs of such information or other materials, information and data provided to the VAP3 or RPE by a Proposer is strictly prohibited.

VAP3 and the RPE will institute safeguards concerning Proposal security for each P3 project, including where materials will be stored along with who has access to them and under what circumstances. Consultants assisting in the evaluation of the Proposals will be required to execute Confidentiality/Non-Disclosure and Conflict of Interest Agreements that provide for the confidential treatment of evaluation and procurement materials and also require the disclosure of potential or actual conflicts of interest with Proposers. These agreements may be executed at the commencement of procurement as well as during the Proposal evaluation period.

Gifts
Contribution and gift provisions are in place (§56-575.17:1) for a Private Entity involved in an IA or CA where the stated or expected value of the contract is $5 million or more. No Private Entity that has submitted a bid or Proposal to a Public Entity that is an executive branch agency directly responsible to the Governor and is seeking to develop and/or operate a Qualifying Project, and no individual who is an officer or director of such a Private Entity, shall knowingly provide a contribution, gift, or other item with a value greater than $50 or make an express or implied promise to make such a contribution or gift to the Governor, Governor’s political action committee, or the Governor’s Secretaries, if the Secretary is responsible to the Governor for an executive branch agency with jurisdiction over the matters at issue, following the submission of a PPEA Proposal until the execution of a CA. Any person who knowingly violates this provision shall be subject to a civil penalty of $500 or up to two times the amount of the contribution or gift, whichever is greater.

**Virginia Freedom of Information Act (VFOIA)**

All Proposals submitted by Private Entities to VAP3 or RPE pursuant to the PPEA become the property of the Commonwealth and are subject to disclosure pursuant to the Virginia Freedom of Information Act (§2.2-3700 et seq. of the Code of Virginia; VFOIA). Sections 2.2-3705.6 and 56-575.4G of the Code of Virginia outline the application of the VFOIA to the PPEA process. Private Entities submitting Unsolicited Proposals or Proposers responding to solicitation requests are advised to familiarize themselves with the VFOIA provisions.

Once a CA has been executed the RPE will make procurement records available in accordance with §2.2-4342 of the Code of Virginia.