

# The Commonwealth of Virginia



## PPTA Implementation 2017 Manual and Guidelines

For the  
Public-Private Transportation Act of 1995  
(As Amended)

[October] 2017

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## EXECUTIVE SUMMARY

Under the Public-Private Transportation Act of 1995 (PPTA; Va. Code §§ 33.2-1800, *et seq.*), public and private entities may collaborate to develop and operate qualifying transportation facilities. This *PPTA Implementation Manual and Guidelines for the Public-Private Transportation Act of 1995* (Manual and Guidelines) applies to the Virginia Department of Transportation (VDOT) and the Department of Rail and Public Transportation (DRPT). Other public entities that want to deliver projects under the PPTA must adopt their own guidelines (Va. Code § 33.2-1819).

This version of the Manual and Guidelines was developed in accordance with legislative changes to the PPTA as of July 1, 2017.

The VDOT P3 project delivery process, shown in **Figure 1**, streamlines and standardizes the process to deliver transportation projects under the PPTA. It shows the processes, decision points, transparency, public engagement, and competitive nature of PPTA procurements.

The Manual and Guidelines is organized into chapters that provide details on the P3 activities within the process, and addresses roles and responsibilities under Solicited Projects, *i.e.*, projects initiated by the Commonwealth. It is anticipated that majority of projects developed under the Manual and Guidelines will be Solicited Projects. However, the Manual and Guidelines also provides for the procedure for the evaluation and procurement of an Unsolicited Proposal when the private sector introduces new or innovative solutions to Commonwealth transportation needs.

**Chapter 1** is an **introduction** that explains the organizational structure of the Manual and Guidelines and the P3 program objectives. Chapter 1 also provides a description of the roles of the VDOT P3 Office, the Transportation Public Private Partnership Steering Committee (PPTA Steering Committee), the VDOT / DRPT Chief Executive Officers (CEO), and the Commonwealth Transportation Board (CTB).

**Chapter 2** contains information on the **project screening and identification** phase for potential P3 projects. A Project Screening Report include responses to: (i) Qualitative Project Screening criteria and (ii) Quantitative Project Screening criteria. The purpose of the Qualitative and Quantitative criteria is to determine whether delivery under the PPTA may be in the best interest of the public. The Quantitative Project Screening considers the feasibility and desirability of the potential P3 project; it forms the basis for the VDOT P3 Office and the CEO to recommend to the PPTA Steering Committee whether a potential P3 project is in the best interest of the public.

**Chapter 3** describes the P3 **project development** phase, which prepares the project for P3 procurement. During the project development phase, the project scope is refined.

**Chapter 4** describes the P3 **project procurement** phase with details regarding preparation for the validation of the Finding of Public Interest (FOPI).

**Chapter 5** describes the **implementation** phase, including the actual implementation of the Comprehensive Agreement, or other contractual document that specifies roles, responsibilities and obligations.

# 1. INTRODUCTION

The PPTA is a law that allows public entities to enter public-private partnership (P3) agreements with the private sector to develop and/or operate Qualifying Transportation Facilities (P3 projects).

This Manual and Guidelines replaces earlier versions and constitutes the guidelines required by Va. Code § 33.2-1803. For previous versions of this Manual and Guidelines, refer to the VDOT P3 Office's website – [www.virginiadot.org/p3](http://www.virginiadot.org/p3).

The Manual and Guidelines is updated periodically at the discretion of the Secretary of Transportation and VDOT or DRPT CEO to reflect changes in legislation, policies, procedures, and industry practice.

This chapter describes the purpose and organization of the Manual and Guidelines, summarizes the Commonwealth's objectives for the P3 program, and presents the P3 Project delivery process. This chapter also describes the VDOT P3 Office's organizational structure and reporting, public participation opportunities within the Process, and addresses the funding mechanism for the VDOT P3 Office.

In the remainder of the Manual and Guidelines, the term PPTA will refer to the legislative act. When referring to projects in the Manual and Guidelines, the more general industry term of "P3" is used.

Capitalized terms (e.g. Project Screening Report) represent defined terms and can be found in Appendix B.

## 1.1 PURPOSE OF THE MANUAL AND GUIDELINES

The processes outlined in the Manual and Guidelines are specifically designed for use by VDOT and DRPT, and may also be used by other Responsible Public Entities (RPE's) as a basis to adopt their own PPTA guidelines. Please note a number of the specific changes made in 2017, affect VDOT / DRPT alone.

The Manual and Guidelines should be used by members of the private sector interested in submitting Proposals for P3 projects to VDOT or DRPT.

Each P3 project is unique and certain elements set forth in this Manual and Guidelines may not apply in all circumstances or may be subject to change in certain circumstances. Therefore, the VDOT P3 Office Director, in coordination with the VDOT / DRPT CEO, retains the flexibility to modify the procurement and implementation processes set forth herein to address the specific needs of a particular P3 project. Any deviation from the processes set forth in this Manual and Guidelines by the VDOT P3 Office or the CEO shall not give recourse to any individual or entity for such deviation. The public, Proposers, and other stakeholders will be notified of modifications to procurement and implementation processes set forth in this Manual and Guidelines by means of a statement issued with the Request for Proposals (RFP) document, outlining and explaining the modifications.

In no way does the Manual and Guidelines modify or override requirements of the PPTA, and the PPTA governs in the event of any conflicts between the PPTA and the Manual and Guidelines. The processes and requirements included in the Manual and Guidelines will not apply retroactively to P3 projects for which

either an Interim Agreement or Comprehensive Agreement has been entered into by VDOT / DRPT prior to July 1, 2017.

## **1.2 ORGANIZATION OF THE MANUAL AND GUIDELINES**

This Manual and Guidelines is organized into chapters that specifically address the roles and responsibilities associated with the Process. These chapters include: 2. **Project Identification and Screening**; 3. **Project Development**; 4. **Project Procurement**, and 5. **Project Implementation**. At the end of each chapter are summaries of key action items and the entities responsible for each item. Supporting technical documentation is provided in the **Appendices**.

## **1.3 P3 PROGRAM OBJECTIVES**

The Commonwealth's transportation goals are: improving safety and security; reducing congestion; system maintenance and preservation; mobility, connectivity, and accessibility; environmental stewardship; economic vitality; and coordination of transportation, land use, and program delivery. To ensure that P3 projects are consistent with these goals the following objectives for the P3 program have been established.

- Create investment opportunities that increase the quality of transportation services in the Commonwealth;
- Administer a fair, transparent and competitive project development and procurement process that encourages innovation, private sector investment and creates long-term value for the Commonwealth;
- Achieve capital and lifecycle cost efficiencies through appropriate risk transfer;
- Establish reliable and uniform processes and procedures to encourage private sector investment;
- Facilitate timely delivery of P3 projects, within established laws, regulations and this Manual and Guidelines;
- Promote transparency and accountability, coupled with informed and timely decision making;
- Foster efficient management of Commonwealth financial and organizational resources through a Public Sector Analysis and Competition;
- Ensure that the projects pursued under the P3 program serve the best interests of the public.

## **1.4 ORGANIZATIONAL STRUCTURE**

The VDOT P3 Office reports directly to the VDOT Chief of Innovation, who reports to the Chief Deputy Commissioner. The VDOT P3 Office also works with the respective VDOT Divisions and Districts for each P3 project that corresponds with a particular transportation mode. The VDOT P3 Office also supports the DRPT in multi-modal projects undertaken through the P3 process.

### **1.4.1 PPTA Steering Committee**

The PPTA Steering Committee consists of the following representatives:

- A Deputy Secretary of Transportation, serving as chairperson;
- Two members of the CTB;
- Staff Director of the House Committee on Appropriations, or designee;
- Staff Director of the Senate Committee on Finance, or designee;

- Chief Financial Officer (CFO) of VDOT / DRPT, as appropriate; and
- Non-Agency public financial expert, as selected by Secretary of Transportation.

The PPTA Steering Committee will meet on an as-needed basis and will be briefed by the VDOT / DRPT CEO. Based on the results of the Quantitative Project Screening Report, the PPTA Steering Committee will make a recommendation on whether a project should advance to the P3 project development phase. The PPTA Steering Committee may consult with resident experts and external advisors on an as-needed basis.

The PPTA Steering Committee: (i) reviews the Public Sector Analysis and Competition, (ii) concurs the Public Sector Option is fully and reasonably developed, financially sound and reflects the best interest of the public, and that the terms sheet contains all the necessary elements, (iii) votes whether a potential P3 project serves the public interest, (iii) makes a determination whether a potential P3 project is in the best interest of the public, and (iv) is briefed within 60 days of the execution of a Comprehensive Agreement.

PPTA Steering Committee meetings are open to the public, on an as needed basis. A notice of PPTA Steering Committee meetings will be posted on the Commonwealth Calendar of Events and the VDOT P3 Office website prior to the meeting. The PPTA Steering Committee documentation will be posted to the VDOT P3 Office website.

#### **1.4.2 Commonwealth Transportation Board**

The CTB has the power to promote private investment in the Commonwealth's transportation infrastructure, and to develop a statewide transportation plan. Generally, the CTB serves as the oversight board for VDOT / DRPT and makes recommendations concerning P3 projects.

#### **1.4.3 CEOs**

Each agency's CEO has the responsibility and legal authority to make decisions on the P3 project delivery process and commercial and contractual terms related to the P3 projects within the relevant transportation agency. At VDOT, the CEO is the Commissioner of Highways; at DRPT, the CEO is the Director.

#### **1.4.4 VDOT P3 Office Director**

The VDOT P3 Office Director is responsible for overseeing all phases of the P3 program (project identification and screening, project development, procurement, and implementation). This includes ensuring compliance with applicable policies, regulations and statutes, conducting public outreach, stake holder engagement, and acting as the liaison to the P3 industry.

The VDOT P3 Office Director reports all program and project activities to the Chief of Innovation and CEOs, and may also provide periodic briefings to the Secretary of Transportation and the PPTA Steering Committee.

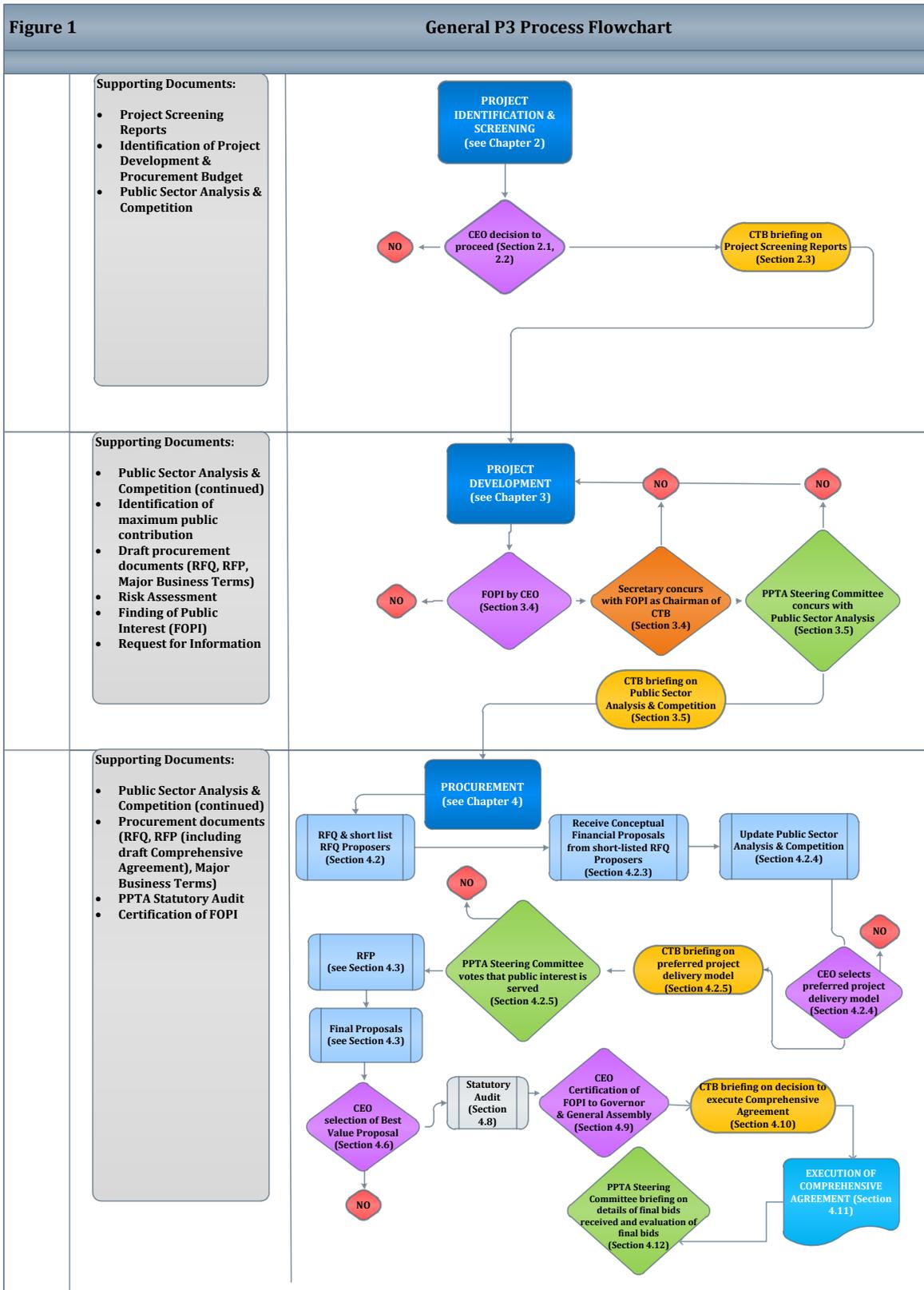
### **1.5 GENERAL P3 PROCESS**

The General P3 process (Figure 1) is intended to streamline and standardize the overall process to enhance the delivery of P3 transportation projects within the Commonwealth. It was developed to capture the processes and decision points inherent in a P3 project involving both Solicited Projects and Unsolicited

Proposals, namely **project identification and screening, project development, project procurement, and project implementation.**

In Figure 1, there are certain elements that benefit from additional information:

- The General P3 Process Flowchart (Figure 1) depicts at a high level, the steps and decision points.
- This flowchart is the “general” process for screening, developing, and procuring P3 projects. However, the PPTA allows flexibility to modify the process for unique projects.
- “No” symbols on the flowchart can indicate a point in the process where the CEO, PPTA Steering Committee, and/or Secretary determine a P3 project will not advance further. Or, in other circumstances, “No” arrows take the process back to a previous phase (e.g. Project Development), indicating that decision makers require additional studies and analyses before they are able to make their decision.
- There are citations in the flowchart that allow readers to quickly find more detailed information on that element of the flowchart.



## **1.6 PUBLIC PARTICIPATION**

Numerous opportunities exist for public engagement at different times during identification, development, procurement and implementation of transportation projects. The VDOT / DRPT has a [Public Involvement Manual](#) and VDOT's P3 Office developed [P3 Public Engagement Guidance](#) that outlines the processes to comply with law and regulation. For further details on public participation throughout the P3 process for both solicited and unsolicited proposals, see Chapters 2 to 4 of this Manual and Guidelines.

For all projects requiring federal action, VDOT / DRPT completes an environmental document in accordance with the National Environmental Policy Act (NEPA). At this point, the purpose and need for the project has been well-established, alternative design concepts and scopes have been analyzed, and operational features are identified. The concepts and analyses are submitted to the public and various other stakeholders for review and comment at citizen information meetings, community meetings and, on project-specific websites. Ultimately, a preferred alternative is selected and a determination such as a Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) is issued by the appropriate lead federal agency which also has provisions for public comment. The VDOT P3 Office is presented at these meetings to answer P3-related questions.

## **1.7 FUNDING FOR P3 PROJECT DEVELOPMENT**

The VDOT P3 Office funds the work to advance candidate Solicited Projects and Unsolicited Proposals to the end of the project identification and screening phase. If the CEO elects to advance the project as a P3 after the Quantitative Project Screening, a dedicated fund for the project should be identified to support the project development (i.e., preliminary engineering and studies) and procurement phase activities.

## 2. PROJECT IDENTIFICATION & SCREENING



The VDOT P3 Office is responsible for the project identification and screening process. The project identification and screening phase is designed to assist the VDOT P3 Office and VDOT / DRPT in determining the suitability, feasibility, and desirability of delivering projects as P3's. The P3 project identification and screening methodology is also a means of systematically and consistently applying evaluation criteria to Solicited Projects and Unsolicited Proposals submitted as candidates for consideration.

P3 candidate projects are identified from two primary sources:

- **Solicited Projects**

Solicited Projects are identified by VDOT / DRPT. Projects that are identified must address the needs outlined in the local, regional, and state transportation plans and programs including safety, reducing congestion, increasing capacity and enhancing economic efficiency.

- **Unsolicited Proposals**

Unsolicited Proposals are submitted by the private sector.

There are specific steps to be followed for Solicited Projects and Unsolicited Proposals outlined in more detail below.

### 2.1 SOLICITED PROJECTS

The project identification and screening phase is a two-part assessment (Qualitative and Quantitative screenings) to determine whether a project is a potential candidate for P3 project delivery. The VDOT P3 Office relies on both qualitative, and quantitative criteria (see Section 1. Appendix D). The criteria may be modified by the VDOT P3 Office, in consultation with the CEO to address each project's unique aspects.

At the conclusion of its assessment, the VDOT P3 Office will prepare a Project Screening Report that contains information and findings from the two-part assessment described below. Based on the Project Screening Report, the VDOT P3 Office Director will provide a recommendation to the CEO on whether a project should advance to the project development phase. The CEO makes the final decision. Should the CEO disagree with the VDOT P3 Office Director's recommendation, the project may be re-submitted if new information demonstrates the criteria have now been adequately addressed.

#### 2.1.1 Qualitative Project Screening

Qualitative Project Screening is a process that examines whether a project meets broader, policy considerations including the criteria in Appendix D. The criteria may also take into account such

considerations as mode of transportation, Greenfield versus Brownfield project characteristics, revenue versus non-revenue risk profile, or changes in the Commonwealth's transportation goals or policies.

## **2.1.2 Quantitative Project Screening**

If the findings from the Qualitative Project Screening indicate that the project remains suitable for P3 project delivery, the VDOT P3 Office will continue to look at the technical and financial feasibility of the project under a Quantitative Screening process. Other considerations during the Quantitative Screening process are described in Appendix D.

### **2.1.2.1 Public Sector Analysis and Competition**

The VDOT P3 Office, in cooperation with the Secretary of Transportation and Secretary of Finance, is responsible for conducting a Public Sector Analysis to determine whether a project provides more benefits to its users and to the Commonwealth when delivered through the P3 delivery model than when delivered through a traditional procurement method. The Public Sector Analysis and Competition is comparable to a Value for Money Analysis that is required prior to deciding to advance the project as a P3 (49 USC 116 (e)(3)(A)), and provides a useful decision-making tool for the CEO when determining whether value is gained by continuing to develop a project using a P3 delivery model.

The Public Sector Analysis is an ongoing process that is initiated at during the Quantitative Project Screening, and continues to the Project Development phase until the Comprehensive Agreement is executed. At a minimum, the Public Sector Analysis contains the following information:

1. How the risk of user-fee financing is mitigated. This information is based on assumptions on competing facilities, projected compensation for high usage of the facility by high-occupancy vehicles (HOV), or other considerations.
2. Whether VDOT / DRPT intends to maintain/operate the facility itself, or if the Public Sector Option above is based on the transfer of these responsibilities to the private sector.
3. Whether public contributions would still be required to cover costs not covered by financing obtained for the project. This presumes that the General Assembly has authorized the use of debt secured by a pledge on the net revenues derived from rates, fees, or other charges pursuant to Article X Section 9 (c) of the Constitution of Virginia.
4. Whether funds to support non-user fee generating components of the project will contribute to increased person throughput, reduction in congestion, improved safety and other expected benefits under Va. Code §33.2-1803.1(B)(1).

During Quantitative Project Screening, a Public Option will be defined based on available public funding and financing options. The Public Sector Option will be used to set a maximum amount of public contribution to the proposed project.

The VDOT P3 Office will be issuing guidelines providing further details on the conduct of a Public Sector Analysis and Competition,

### **2.1.2.2 Risk Management**

As part of the Quantitative Project Screening, the VDOT P3 Office will hold an initial risk workshop to identify and assess risks specific to development of the project. A project Risk Register is created during this phase of the process, an assessment of the risks is carried out and risk responses and potential risk allocations

are determined (see VDOT P3 Office [Risk Management Guidelines](#)). Risks identified during this phase will be updated and refined as the project moves through subsequent phases of the process.

## **2.2 UNSOLICITED PROPOSALS**

The PPTA allows VDOT / DRPT to receive and evaluate Unsolicited Proposals from the private sector to develop/operate P3 projects. Unsolicited Proposals allow innovation and new technologies to be potentially introduced into transportation facilities. Persons interested in applying to VDOT/DRPT with an Unsolicited Proposal should coordinate with the VDOT P3 Office prior to their submission. Further information on the procedure for the submission of Unsolicited Proposals may be found in Appendix E.

The private sector may submit Unsolicited Proposals to the CEO (Va. Code § 33.2-1803(A)). A copy of the Unsolicited Proposal may also be mailed to the VDOT P3 Office Director at the following address:

**Director of VDOT P3 Office**  
**Virginia Department of Transportation**  
**1401 E. Broad Street, Suite 1306**  
**Richmond, VA 23219**  
**(804) 786-0455**

The VDOT P3 Office shall be responsible for the evaluation of an Unsolicited Proposal. Evaluation of Unsolicited Proposals also follows a two-part assessment which involves looking into Policy Review criteria and Quantitative Screening criteria. The VDOT P3 Office's findings will be documented in a Project Screening Report. Based on the Project Screening Report, the VDOT P3 Office Director will submit a recommendation to the CEO on whether a project should advance to the project development phase. The CEO makes the final decision. If the CEO does not approve the advancement of the Unsolicited Proposal to the project development phase, or if the Unsolicited Proposal pertains to a project for which the VDOT P3 Office plans to issue a RFQ, the VDOT P3 Office will return the Unsolicited Proposal to the Proposer that submitted it.

The VDOT P3 Office may charge reasonable amounts to cover the costs of processing, review, and evaluation of the Unsolicited Proposal. Evaluation will commence upon payment of an initial fee of \$50,000. During its evaluation, the VDOT P3 Office will assess whether additional fees will be needed to cover the costs to complete the evaluation. The VDOT P3 Office will create a budget to support its cost assessment, and will share the budget with the Proposer to ascertain whether the evaluation of the Unsolicited Proposal should continue.

### **2.2.1 Policy Review**

Within 90 calendar days of receiving an Unsolicited Proposal from a Proposer to VDOT / DRPT, the VDOT P3 Office will initiate a Policy Review. The Policy Review is a brief evaluation of the Unsolicited Proposal's concept and benefits to determine that it is in accordance with the Code of Virginia and this Manual and Guidelines, and is consistent with the Commonwealth's transportation policy goals. Table 1 provides some criteria used for the VDOT P3 Office's Policy Review.

**Table 1** provides guidance for the Policy Review criteria intended to assess whether a project is a potential candidate P3 project.

Policy Review Criteria
<ul style="list-style-type: none"> <li>▪ Does the Proposal conform to the Commonwealth’s transportation goals and the policy objectives of the administration?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Does the Proposal satisfy a public need for timely development and/or operation of a Qualifying Transportation Facility?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Does the Proposal address a demonstrated need as identified in a state, regional, and/or local transportation plans?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Does the Proposal interface with existing and planned transportation systems?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Is the Proposal at a sufficient level of development that a procurement process can be run including an element of price competition?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Will the Proposal make the Qualifying Transportation Facility available to the public in a more efficient and/or less costly fashion as compared to the traditional procurement method and procurement would be in the best interest of the public?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Is the Proposal consistent with federal requirements and potential agreements for federal funding and/or approval for P3 projects?</li> </ul>
<ul style="list-style-type: none"> <li>▪ Is the Proposal not currently on the list of proposed Solicited Projects.</li> </ul>

### 2.2.2 Quantitative Project Screening

If the findings from the Policy Review indicate the project remains suitable for P3 project delivery, the VDOT P3 Office will continue to look at the technical and financial feasibility of the project under a Quantitative Screening process similar to that for Solicited Projects, as provided in Appendix D.

### 2.2.3 Proposal Review Fee

Proposers interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee of \$50,000. The form and manner of the Proposal Review Fee payment submission shall be determined and specified by the CEO.

Upon successful completion of the Policy Review, the VDOT P3 Office will create a budget to cover additional costs associated with proceeding with a Quantitative Screening. The private entity will be required to provide those funds to VDOT should they wish to have the Quantitative Screening proceed.

Proposers submitting multiple Proposals for unrelated P3 projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.

## 2.3 REPORT TO CTB

VDOT/DRPT will present a briefing to the CTB on the results of the Screening Report (for Solicited Projects), and the Policy Review Report/Quantitative Project Screening Report (for Unsolicited Proposals).

After a briefing to the CTB on an Unsolicited Proposal, the VDOT P3 Office will notify the Proposer and each Affected Locality identified in the Proposal of the CTB’s decision. If the project is advanced and located in a metropolitan area, coordination with the MPO may be required to ensure that the project is included in the financial plan that accompanies the MPO’s transportation plan.

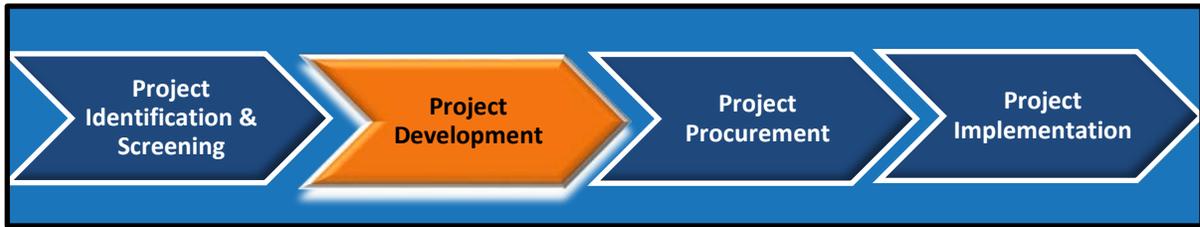
The project briefing and the record of the CTB decision will be posted on the VDOT P3 Office website and the CTB's website for public awareness and feedback.

## 2.4 KEY ACTION ITEMS

**Table 2**

<b>Project Screening Activity</b>	<b>Responsibility</b>	<b>Targeted Timeframe</b>
<b><i>Solicited Projects</i></b>		
Conduct Screening of Solicited Projects	VDOT P3 Office	As appropriate
<b><i>Unsolicited Proposals</i></b>		
Initiate a Policy Review of Unsolicited Proposals	VDOT P3 Office	Within 90 calendar days of receipt of an Unsolicited Proposal
Release Unsolicited Proposal to Affected Locality	VDOT P3 Office	Within 5 calendar days of receipt of an Unsolicited Proposal
Obtain comments from each Affected Locality	VDOT P3 Office and affected localities	Within 60 calendar days of release of Unsolicited Proposal to each Affected Locality
<b><i>Solicited Projects and Unsolicited Proposals</i></b>		
Conduct Quantitative Project Screening of Unsolicited Proposals	VDOT P3 Office	As appropriate
Prepare Project Screening Report	VDOT P3 Office	As appropriate
Recommend advancement to project development phase	VDOT P3 Office Director	As appropriate
Approve advancement of project to project development phase	CEO	Within 10 calendar days of recommendation of VDOT P3 Office Director
Report to the CTB	VDOT/DRPT	After CEO's approval to advance to project development phase
Notify the relevant Affected Locality (for Unsolicited Proposals)	VDOT P3 Office Director	Within 5 calendar days of CTB decision

### 3. PROJECT DEVELOPMENT



This chapter describes the project development process and related activities for projects that are initiated either as a Solicited Project or an Unsolicited Proposal during the project identification and screening phase.

#### 3.1 PROJECT DEVELOPMENT PROCESS

The VDOT P3 Office Director appoints a project manager for each project selected for development. The project manager is responsible for getting the project ready for procurement with assistance from relevant disciplines within VDOT / DRPT and external advisors as necessary.

The VDOT P3 Office Director is responsible for maintaining appropriate coordination with other agencies, the PPTA Steering Committee and the CTB throughout the project development lifecycle and for providing, as appropriate, project information such as budget, scope, and schedule, to the CEO.

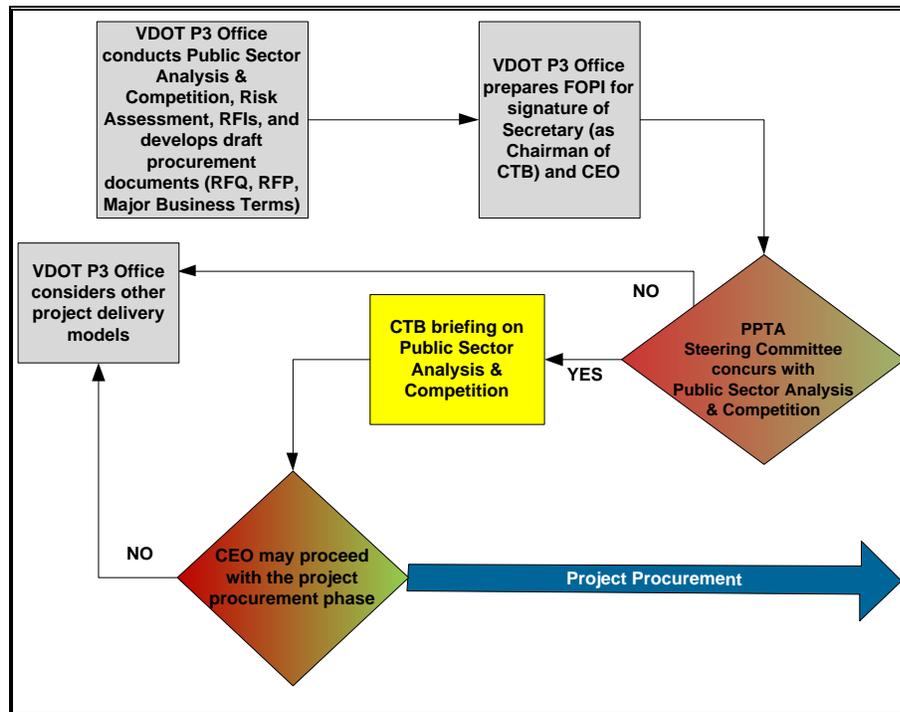
**Table 3**

During the project development phase, a number of key tasks could take place to prepare the project for procurement depending on the characteristics of the project. These include, but are not limited to:
▪ Further defining project scope, design concept and phasing schedule
▪ Analyzing compliance with environmental and transportation planning requirements
▪ Analyzing technical feasibility and operations and maintenance evaluations
▪ Refining project cost, revenue estimates and lifecycle costing
▪ Submitting funding and grant applications, as required
▪ Performing outreach, coordinating public involvement and building stakeholder support
▪ Defining an approach to risk allocation and management (see VDOT P3 Office <a href="#">Risk Management Guidelines</a> )
▪ Continuing the Public Sector Analysis and Competition initiated at the project identification and screening phase
▪ Continue to determine the optimal procurement delivery method(s)
▪ Soliciting information from the private sector through a Request for Information (RFI)

For P3 projects requiring federal action, the VDOT P3 Office will ensure that decisions regarding mode, location, user-fees and capacity are made after adequate consideration of potential alternatives to address

needs and impacts of the project. The VDOT / DRPT may modify the project scope to meet the Commonwealth's transportation goals and the priorities of the administration.

**Figure 2** represents the steps during the project development process for P3 projects.



### 3.2 PUBLIC SECTOR ANALYSIS AND COMPETITION (CONTINUED)

The VDOT P3 office further refines project cost, revenue estimates and lifecycle costing of alternative scenarios under both a traditional procurement and a P3 delivery model. The analysis is supplemented with data on risk allocation, traffic revenue and other studies. The appropriate methodology for the analysis will vary across modes and payment mechanisms (e.g., the analysis for privately-tolled concessions will differ from an availability payment transactions in which VDOT / DRPT retains some or all revenue risk). The analysis should be applied to all P3 projects in the project development phase to ensure that the P3 delivery method continues to offer the Best Value as the preferred delivery method.

### 3.3 RISK ASSESSMENT

During the project development phase, the VDOT P3 Office will convene and participate in an interim risk workshop to update the project risks identified in the initial risk workshop conducted as part of the Quantitative Project Screening and identify any additional risks and update the status of existing risks. At this phase in the process a quantitative assessment of all identified risks is carried out and the risk response and preferred risk allocation are updated in the risk matrix and Risk Assessment. The P3 Risk Management Guidelines better defines the approach to risk allocation and management for the project (see [P3 Risk Management Guidelines](#)).

### **3.4 FINDING OF PUBLIC INTEREST**

During the project development phase, the VDOT P3 Office, in coordination with the CEO, will prepare a FOPI document for the signature of the CEO and the Secretary of Transportation (in his capacity as Chairman of the CTB), which is an affirmation the P3 delivery method is being conducted in a manner that brings value and is in the best interest of the public pursuant to the PPTA and this Manual and Guidelines. In addition, the FOPI will include all relevant analyses and information supporting the use of a P3 delivery method with a statement that the CEO has a clear understanding regarding the elements included in the FOPI.

Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk will not be considered material changes to the FOPI, provided that such changes were presented in a public meeting to the CTB.

### **3.5 REPORT TO PPTA STEERING COMMITTEE AND THE CTB**

At the conclusion of P3 project development, and before initiating the project procurement phase, the CEO and the VDOT P3 Director will brief the PPTA Steering Committee on studies and activities, including the results of a Request for Information (RFI); an initial schedule for project delivery; preliminary procurement documents; activities related to risk management for the project; an initial estimation of the project cost; the potential economic benefits for the project, and the preliminary business points for the project to determine whether the project should continue to the procurement phase.

The PPTA Steering Committee will be asked to concur with the FOPI signed by the CEO and the Secretary of Transportation, and the Public Sector Analysis. At this meeting, the PPTA Steering Committee (pursuant to Va. Code § 33.1-1803.2(C)) will concur that:

1. The assumptions regarding the project scope, benefits, and costs of the Public Sector Option were fully and reasonably developed;
2. The assumed financing costs and valuation of both financial and construction risk mitigation included in the Public Sector Option are financially sound and reflect the best interest of the public; and
3. The terms sheet developed for the proposed procurement contains all necessary elements.

The project briefing and the decision of the PPTA Steering Committee is posted on the Commonwealth Calendar and the VDOT P3 Office website for public awareness and feedback.

VDOT / DRPT will also brief the CTB on the FOPI and the Public Sector Analysis and Competition prior to proceeding with the project procurement phase.

### **3.6 REQUEST FOR INFORMATION**

At the discretion of the CEO, a RFI may be issued to obtain additional information and comment from the private sector and other interested stakeholders. RFIs may also include public briefings to further discuss elements of the project under consideration. These forums offer opportunities for public comments and private sector input which improve or refine the scope, risk allocation and technical requirements of the project being developed.

### 3.7 KEY ACTION ITEMS

Key Action Items

**Table 4**

Project Development Activity	Responsibility	Targeted Timeframe
Perform project development activities (e.g., geotechnical testing, environmental, preliminary engineering, risk analysis, etc.)	The VDOT / DRPT with assistance from the VDOT P3 Office	Determined by project specific scope
Continue Public Sector Analysis and Competition	VDOT P3 Office	During project development phase
Update Risk Register	VDOT P3 Office	Continuous through project development phase
Present FOPI and the Public Sector Analysis and Competition to the PPTA.  PPTA Steering Committee concurs with Public Sector Analysis and Competition	VDOT/DRPT  PPTA Steering Committee	Determined by completion of project development activities
Brief the CTB on the FOPI and the Public Sector Analysis and Competition	VDOT/DRPT	Determined by completion of project development activities

## 4. PROJECT PROCUREMENT

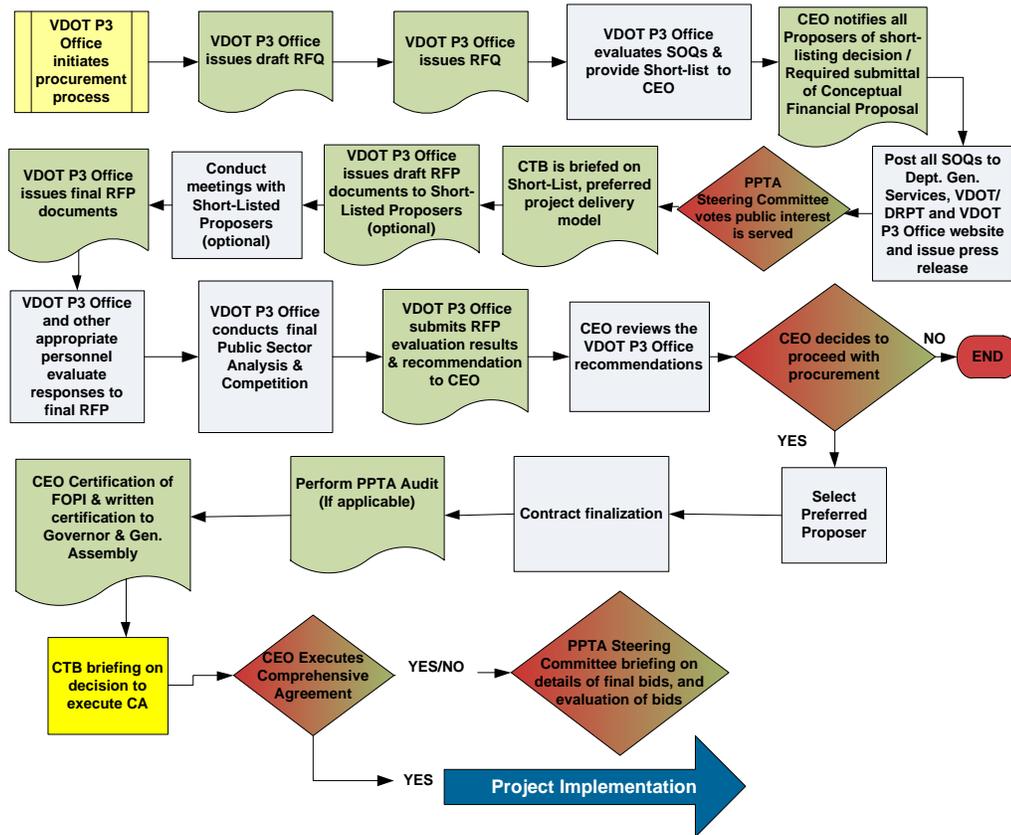


This chapter describes the competitive P3 procurement phase and provides guidance on related activities for all projects that have been selected for procurement under the PPTA. While the discussion below describes a two-stage P3 procurement, it may be more beneficial in certain cases to use a single-stage procurement. A single-stage procurement may be appropriate if an RFQ can be omitted to streamline the process and is in the best interest of the public (e.g., when an Unsolicited Proposal is submitted, or for less complex P3 projects). In either case, the VDOT P3 Office is responsible for leading the procurement with support from appropriate District(s) that would implement the resulting Comprehensive Agreement.

### 4.1 TWO-STAGE PPTA PROCUREMENT PROCESS

The P3 procurement phase (Figure 3) consists of: 1) issuing a RFQ, and 2) issuing a Request for Proposals (RFP). The VDOT P3 Office serves as the primary point of contact for P3 procurements, in consultation with the CEO and Office of the Attorney General (OAG), and ensures that the process is administered in accordance with applicable law and this Manual and Guidelines. The VDOT P3 Office Director is responsible for managing a consistent, transparent, competitive, and well-defined procurement process.

**Figure 3** below of the Procurement Process:



## 4.2 REQUEST FOR QUALIFICATIONS

The VDOT P3 Office 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) and Conceptual Financial Proposals to define a pool of qualified, potential Proposers for the project and finalize the preferred delivery model. The submission of Conceptual Financial Proposals, while optional, is usually required in a procurement where multiple project delivery models are being considered.

Prior to the issuance of the RFQ, the VDOT P3 Office may post the RFQ in a draft format in the VDOT P3 website. The RFQ documents will be posted on the Department of General Services (DGS) central procurement website and the VDOT P3 Office website. These documents will: 1) provide for a 30 to 60 day competition period, and 2) include information regarding the scope, nature and timing of development and/or operation of the proposed project. The public has the opportunity to provide comments on a continuous basis by making use of the VDOT P3 Office website comment form during the process.

### 4.2.1 SOQ Evaluation

The RFQ documents will specify the evaluation criteria and the methodology used to evaluate such criteria so Proposers will know how submissions will be evaluated. In projects with multiple project delivery models, Proposers may opt to submit an SOQ for either or all delivery models.

#### **4.2.2 Qualification of RFQ Proposers**

The VDOT P3 Office leads the review of all responsive SOQs. The CEO, or his designees, will be responsible for scoring and ranking the Proposers. Proposers qualified and approved by the CEO will be invited to submit Conceptual Financial Proposals. While the CEO will make the final decision, it is expected that no more than five Proposers will be qualified for each delivery model. Scoring of qualifications and any ranking of the SOQs will not be carried over to the evaluation of the final RFP responses.

The VDOT P3 Office will notify all Proposers in writing whether they have been qualified. In procurements where the submission of a Conceptual Financial Proposal is required, the notification will indicate whether an RFQ Proposer is qualified to submit a Conceptual Financial Proposal. Additionally, the VDOT P3 Office will inform other state and federal Agencies, Affected Localities, affected members of the General Assembly, MPOs, and stakeholders.

Electronic copies of the public information included in the SOQs submitted by all Proposers will be posted on the DGS central procurement website and the VDOT P3 Office website within 10 business days of the completion of the SOQ evaluation.

#### **4.2.3 Evaluation of Conceptual Financial Proposal**

If multiple project delivery models are being considered as part of the RFQ stage, the qualified Proposers will be invited to submit Conceptual Financial Proposals for the project delivery model they have been qualified for that may include information on a preliminary financial model, sources and use of funds, and indicative pricing.

If VDOT / DRPT receives only one responsive Conceptual Financial Proposal, then the VDOT P3 Office will conduct an evaluation and market assessment to determine if advancing the procurement is still in the best interest of the public, and if the proposed procurement should continue with one Proposer, be terminated or be modified.

#### **4.2.4 Public Sector Analysis and Competition (Continued); Short-listing of Qualified RFQ Proposers**

Among other things, the information in Conceptual Financial Proposals received will be used for the ongoing Public Sector Analysis and Competition process (see Sections 2.1.2.1, 3.2, and 4.5). Findings from the Public Sector Analysis and Competition will be the basis for a final determination by the CEO of the preferred project delivery model for the project. Once the CEO has made a determination, qualified RFQ Proposers who had submitted Conceptual Financial Proposals under the preferred project delivery model will advance to the RFP stage,

#### **4.2.5 Presentation to the CTB and to the PPTA Steering Committee**

After the CEO has made a final determination of the preferred project delivery model, the VDOT / DRPT will brief the CTB on the results of its evaluation of the SOQs and the Conceptual Financial Proposals, and its selection of the preferred project delivery model.

At a meeting of the PPTA Steering Committee, the VDOT / DRPT will also present the results of its evaluation of the SOQs and the Conceptual Financial Proposals, as well as its determination to continue with, terminate, or pursue a modified procurement (including its selection of a preferred project delivery model). If the PPTA Steering Committee makes an affirmative determination that the proposals serve a public interest pursuant to the Va. Code § 33.2-1803.1, as evidenced by a majority vote of its members, the

VDOT / DRPT may proceed with the procurement, or modified procurement. The PPTA Steering Committee may convene a closed door session to review the SOQs received.

#### **4.2.6 Interim Agreement**

The PPTA (Va. Code § 33.2-1809) allows the CEO to enter into an Interim Agreement with a Proposer or multiple Proposers if VDOT / DRPT determines in writing that it is in the public interest to do so. But neither VDOT nor DRPT may enter into an Interim Agreement that (i) establishes a process and timing of the negotiations of the Comprehensive Agreement or (ii) allows for competitive negotiations as set forth in Va. Code § 2.2-4302.2.

The processes outlined in the Manual and Guidelines envision that the VDOT P3 Office will follow the two-stage procurement process for P3 projects. In certain circumstances the CEO, in consultation with the VDOT P3 Office Director, however, may choose to enter into an Interim Agreement with the Proposers proposing the development and/or operation of a project prior to and in connection with the negotiation of the Comprehensive Agreement for those P3 projects that were selected for procurement through competitive sealed bidding or competitive negotiation.

### **4.3 REQUEST FOR PROPOSALS**

The VDOT P3 Office may choose to issue the draft RFP including the Comprehensive Agreement in draft format to Short-Listed RFQ Proposers and hold proprietary one-on-one meetings to solicit feedback on these proposed documents. Once consideration has been given to feedback from the Short-Listed RFQ Proposers and other appropriate parties, the VDOT P3 Office will issue the final RFP documents to Short-Listed RFQ Proposers. The VDOT P3 Office and other appropriate personnel will evaluate responses to the RFP from Short-Listed RFQ Proposers based on defined criteria in the draft RFP. The VDOT P3 Office reserves the right to run a Best and Final Offer (BAFO) process with the Short-Listed RFQ Proposers (see Appendix G).

Pursuant to Va. Code § 33.2-1820(B)(2), 30 calendar days prior to issuance of the final RFP, VDOT / DRPT must post a draft Comprehensive Agreement and provide an opportunity for public comments. The VDOT P3 Office provides opportunities for public comment on the project and proposals on a continuous basis by making use of the VDOT P3 Office and/or project website. The RFP, including the Comprehensive Agreement will be posted to the VDOT P3 Office and project website.

If after the competitive response period, VDOT / DRPT receives at least a single responsive submittal to its RFP, VDOT P3 Office will conduct a full value assessment of the Proposal received to determine if the responsive submittal is in the best interest of the public. The value assessment will include, at a minimum, an assessment of risk allocations and the final Public Sector Analysis and Competition.

Decisions related to issuing of a stipend for the development and submittal of a Proposal by Short-Listed Proposers will be made by the CEO on a project specific basis.

### **4.4 COMPETITION: SIGNIFICANT SCOPE CHANGE POLICY**

If VDOT / DRPT, 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 VDOT P3 Office shall conduct a full value assessment of the current and proposed procurements. Once the value assessment has been completed, the VDOT / DRPT CEO will make a presentation to the PPTA Steering Committee to present the value assessment and seek a resolution to continue the procurement with the

proposed material changes or terminate the procurement. The presentation to the PPTA Steering Committee will be at a scheduled meeting on the Commonwealth Calendar and open to the public.

#### **4.5 PUBLIC SECTOR ANALYSIS AND COMPETITION (FINAL)**

Prior to contract finalization and award, the VDOT P3 Office will perform a final Public Sector Analysis and Competition, taking into account any additional project information that has become available since the initial Public Sector Analysis and Competition was performed. This final Public Sector Analysis and Competition compares the VDOT / DRPT updated Public Sector Option and the Apparent Best Value Proposal. The final Public Sector Analysis and Competition is a final check to ensure the award of the project as a P3 project remains in the best interest of the public.

#### **4.6 BASIS FOR AWARD & SELECTION OF PREFERRED PROPOSER**

The CEO will take into account the recommendation of the VDOT P3 Office, the evaluation criteria and the Public Sector Analysis and Competition when selecting a Preferred Proposer. The VDOT P3 Office will inform the Preferred Proposer that it has been selected and initiate the finalization of the terms of the CA. The VDOT P3 Office will notify all other Proposers in writing regarding the CEO's decision to award the project to the Preferred Proposer. The VDOT P3 Office will also provide briefings to the PPTA Steering Committee, CTB members, and other previously identified stakeholders.

#### **4.7 RISK MANAGEMENT**

During the project procurement phase, the VDOT P3 Office will convene and participate in a risk workshop to refresh the Risk Register and update the current project risk assessment and allocation. The current Risk Register and Risk Management Plan are applied to the Comprehensive Agreement. The VDOT P3 Office Director certifies a Risk Management Plan and the CEO endorses the Risk Management Plan for application during the implementation stages of the project. (see [P3 Risk Management Guidelines](#)).

#### **4.8 CERTIFICATION OF FINDING OF PUBLIC INTEREST**

During the project procurement phase, the VDOT P3 Office, in coordination with VDOT / DRPT, will prepare a Certification of FOPI document for the signature of the CEO, and addressed to the Governor and the General Assembly. The Certification of FOPI confirms the P3 delivery method is being conducted in a manner that is consistent with the intent of the FOPI. Namely, the Certification of FOPI must indicate that the project continues to bring value, the transfer, assignment, and assumption of risk by the preferred Proposer have not materially changed, and finally that the public contribution requested by the Proposer does not exceed the maximum public contribution (identified under the Public Sector Option), and the project remains in the best interest of the public.

#### **4.9 PPTA AUDIT REQUIREMENTS**

For P3 projects with estimated construction costs over \$50 million dollars, the PPTA (Va. Code § 33.2-1803(E)) requires the preferred Proposer to pay for an independent audit of any and all traffic and cost estimates associated with the preferred Proposer's Proposal, and a review of all public costs and potential liabilities to which taxpayers could be exposed. This includes improvements to other transportation facilities that may be needed as a result of the Proposal, failure by the preferred Proposer to reimburse the VDOT / DRPT for services provided, and potential risk and liability in the event the preferred Proposer defaults on the Comprehensive Agreement or on bonds issued for the project. The VDOT P3 Office will appoint an

independent consultant to conduct this audit prior to the final contract award to the Preferred Proposer. Additionally, the VDOT P3 Office will disclose all information from such a review within 30 calendar days of completion of the audit by posting it on the VDOT P3 Office website. See Appendix J for further information.

#### **4.10 REPORT TO CTB**

After the completion of the PPTA audit, the CEO will report to the CTB the final schedule for project delivery; the Risk Management Plan; the final Public Sector Analysis and Competition; the projected final and total project cost; including the projected public contribution for the project; the updated economic benefits; and the major business points in the draft Comprehensive Agreement, as finalized at the end of the period for submission of public comments (Section 4.3).

During the briefing, the CEO will seek the CTB's endorsement of the Certification of FOPI indicating support of the CEO's execution of a Comprehensive Agreement. The briefing documentation and CTB's endorsement of the Certification of FOPI are posted on the VDOT P3 Office website for public awareness.

#### **4.11 CONTRACT FINALIZATION AND AWARD**

Prior to developing or operating a P3 project, the preferred Proposer must enter into a Comprehensive Agreement with VDOT / DRPT. The CEO has the statutory authority to enter into the Comprehensive Agreement, as applicable, pursuant to the PPTA.

If, at any point in during contract finalization, the VDOT P3 Office and the CEO determines that the Preferred Proposer will not provide services in the best interest of the public, then the CEO may suspend or terminate the procurement, or choose to finalize a contract with the next highest ranking Proposer. This process may continue until the CEO reaches an agreement or ultimately decides to terminate the procurement.

During contract finalization, no changes to the major business terms in the draft Comprehensive Agreement as finalized at the end of the period for submission of public comments (Section 4.3) will be permitted. The final authorization to develop and/or operate any P3 project is contingent upon the successful finalization and execution of the Comprehensive Agreement between the Preferred Proposer and the CEO.

Once the contract is finalized and a decision to award has been made, the CEO will direct the posting of the executed CA, its major business terms, the projected use of any public funds used on the project, on the websites of the DGS central procurement, the VDOT P3 Office, and the project website. The posting will also outline how the public can submit comments on the documents and major business terms.

The VDOT / DRPT will also present the major business terms of the CA, including the use of any public funds, to the CTB at a scheduled public meeting.

#### **4.12 REPORT TO PPTA STEERING COMMITTEE**

Within 60 days of the execution of the CA, the VDOT / DRPT CEO, will in closed session brief the PPTA Steering Committee on the details of the final bids received and the details of the evaluation of such bids.

### 4.13 PROCUREMENT FOR UNSOLICITED PROPOSALS

The VDOT P3 Office will post on the DGS central procurement website and the VDOT P3 Office website the Unsolicited Proposal within 10 days from its acceptance, as indicated by the PPTA Steering Committee's concurrence with the Public Sector Analysis and Competition. A notice will also be posted (i) providing for a period of 120 days for the submission of competing proposals, (ii) including specific information regarding the proposed nature, timing, and scope of the facility subject of the Unsolicited Proposal; and (iii) outlining the opportunities that will be provided for public comments during the review process.

At the end of the 120-day period for submission of competing proposals, VDOT / DRPT shall conduct an evaluation and proceed in accordance with the procedures in Sections 4.2.1 to 4.12 above.

### 4.14 KEY ACTION ITEMS

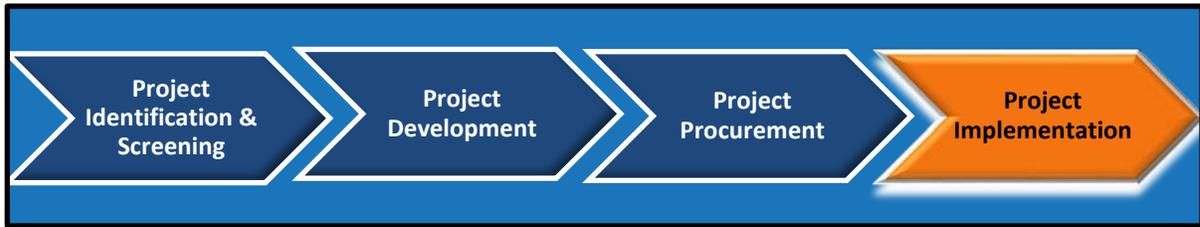
Table 5

Project Procurement Activity	Responsibility	Targeted Timeframe
<b><i>Solicited Projects</i></b>		
Issue Draft RFQ	VDOT P3 Office	Prior to issuance of RFQ
Issue RFQ	VDOT P3 Office	After approval by PPTA Steering Committee of initiation of procurement
Receive SOQs	VDOT P3 Office	Between 30 and 60 calendar days after release of RFQ
<b><i>Unsolicited Proposals</i></b>		
Post the Unsolicited Proposal	VDOT P3 Office	10 days from acceptance of Unsolicited Proposal, as indicated by the PPTA Steering Committee's concurrence with the Public Sector Analysis and Competition
Issue notice for submission of competing proposals	VDOT P3 Office	As appropriate
Receive competing proposals	VDOT P3 Office	120 days from issuance of notice
<b><i>Solicited Projects/Unsolicited Proposals</i></b>		
Evaluate SOQs/competing proposals and qualify Proposers.	VDOT / DRPT	Completion targeted for 60 calendar days after receipt of SOQs

Agency approves qualified RFQ Proposers	CEO	Within 10 business days of completion of SOQs evaluation
Notification of qualified RFQ Proposers Posting of qualified RFQ Proposers	VDOT P3 Office	Within 10 business days of CEO's approval of qualified RFQ Proposers
Require submission of Conceptual Financial Proposals by qualified RFQ Proposers	VDOT P3 Office	Upon notification of qualified RFQ Proposers
Receive Conceptual Financial Proposals	VDOT P3 Office	Between 60 and 90 calendar days from Notification of qualified RFQ Proposers
Evaluate Conceptual Financial Proposals	VDOT P3 Office	10 business days from receipt of Conceptual Financial Proposals
Update Public Sector Analysis and Competition based on information in Conceptual Financial Proposals	VDOT P3 Office	
Agency selects preferred project delivery model. The Short-List is finalized based on the selection.	CEO VDOT P3 Office	10 business days from end of evaluation of the Conceptual Financial Proposals
CTB briefing on the Short-List, the results of the evaluation of the SOQs and Conceptual Financial Proposals, and the selection of the preferred project delivery model.	VDOT / DRPT	After the CEO's selection of the preferred project delivery model
PPTA briefing on the Short-List, the results of the evaluation of the SOQs and Conceptual Financial Proposals, and the selection of the preferred project delivery model.  Vote on whether the project serves public interest, and whether to proceed to the project procurement phase.	VDOT / DRPT  PPTA Steering Committee	After briefing of the CTB
Issue draft RFP	VDOT P3 Office	Within 60 calendar days after affirmative vote in meeting of the PPTA Steering Committee
Post draft Comprehensive Agreement prior to release of final RFP	VDOT P3 Office	30 calendar days before final RFP release

Release RFP to Qualified Proposers	VDOT P3 Office	Release targeted for 30 calendar days after affirmative vote in meeting of the PPTA Steering Committee
Release final RFP	VDOT P3 Office	30 calendar days after posting of draft Comprehensive Agreement
Evaluate the responses to the RFPs	VDOT / DRPT	Completion targeted for 90 calendar days after receipt of RFP
Conduct the final Public Sector Analysis and Competition	VDOT P3 Office	Completion targeted for 60 calendar days after completion of evaluation of RFPs
Select a Preferred Proposer	CEO	Targeted for 90 calendar days after receipt of RFP
Conduct PPTA Audit	VDOT P3 Office	Completion targeted for 30 calendar days after selection of Preferred Proposer
Issue Public Notice of PPTA Audit	VDOT P3 Office	Within 30 calendar days of completion of PPTA Audit
Issue Certification of FOPI	CEO and Secretary of Transportation	After conduct of PPTA Audit but before entering into the Comprehensive Agreement
Brief PPTA Steering Committee on Comprehensive Agreement	CEO	Within 60 calendar of execution of CA
Report to CTB on decision to execute Comprehensive Agreement	VDOT P3 Office Director and CEO	Determined by completion of project procurement activities and timing of next public meeting
Finalize and Award the Comprehensive Agreement	VDOT P3 Office (finalize) and CEO (execute)	30 calendar days after CTB briefing

## 5. PROJECT IMPLEMENTATION



### 5.1 POST-COMMERCIAL CLOSE

Once a Comprehensive Agreement is executed for a P3 project by the CEO and Preferred Proposer responsible party, the VDOT P3 Office begins preparing for the transition from leading project procurement, to supporting the responsible VDOT District project manager leading the project's implementation functions.

During this transition phase, the VDOT P3 Office will also continue to lead coordination efforts related to achieving Financial Close.

### 5.2 POST-FINANCIAL CLOSE

After Financial Close is reached, project design and construction begins with leadership from the VDOT District project manager. The VDOT P3 Office project manager assumes a supporting role during this phase, assisting with contract interpretations, documentation submittals, etc.

A checklist will be developed by the VDOT P3 Office to ensure that the appropriate party (i.e. FHWA, VDOT, TIFIA office, etc.) receives timely submittals or evidence of commitments addressed as stipulated in the Comprehensive Agreement, and other contract documents.

A database will also be developed during the project procurement phase to house all appropriate project documentation. This will continue to be maintained during the project implementation phase by submittals of documentation to the VDOT P3 Office.

### 5.3 KEY ACTION ITEMS

Table 6

Project Implementation Activity	Responsibility	Targeted Timeframe
Coordination to reach Financial Close	VDOT P3 Office	6 to 9 months after award
Support District Implementation of the Comprehensive Agreement	VDOT P3 Office	Ongoing after Financial Close
Lessons Learned Workshop	VDOT P3 Office / VDOT District	60 days after Financial Close/after Project Completion

Project Implementation Activity	Responsibility	Targeted Timeframe
Document Control database	VDOT P3 Office/VDOT District	Begin during Project Procurement & continued until Project Completion
Performance Monitoring	VDOT P3 Office/ VDOT District	As stipulated in CA

## APPENDICES

**Appendix A** – Rights and Disclaimers

**Appendix B** – P3 Definitions

**Appendix C** – Guidance on Approach to Commercial Terms

**Appendix D** – Guidance on Project Identification and Screening

**Appendix E** – Guidance for Unsolicited Proposal Preparation

**Appendix F** – Guidance for the RFQ Process

**Appendix G** – Guidance for the RFP Process

**Appendix H** – Guidance for the PPTA Audit Requirements

**Appendix I** – Summary of Changes to PPTA Legislation

**Appendix J** – PPTA Statutory Requirements

**Appendix K** – Conflicts of Interest and other Legal Considerations

## **APPENDIX A**

### **Rights and Disclaimers**

#### **RIGHTS RESERVED**

1. The VDOT P3 Office, in coordination with VDOT / DRPT, reserves all rights available by law in procuring PPTA Proposals, including, without limitation, the sole and unfettered right to:
2. Alter the schedule of review or scope of evaluation, including components thereof, of any Proposal if they deem changes are necessary because of the scope or complexity of a Proposal they receive;
3. Reject any and all Proposals at any time;
4. Terminate evaluation of any and all Proposals at any time;
5. 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;
6. Negotiate with a Proposer without being bound by any provision in the Proposal;
7. Request or obtain additional information about any Proposals;
8. Waive minor errors, omissions or irregularities in a response to an RFQ or RFP;
9. Issue addenda to, and/or cancel, any RFQ or RFP;
10. Revise, supplement or withdraw all or any part of the guidelines included in this 2017 Manual and Guidelines;
11. Decline to return any and all fees required to be paid by Proposers as part of the evaluation process for Unsolicited Proposals;
12. Request clarifications to Unsolicited Proposals; and
13. Modify the process and submission requirements for reviewing Proposals in connection with a re-sale, 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 PPTA**

1. Neither the Commonwealth nor any of its political subdivisions, agencies, or employees shall be liable for, or reimburse, the costs incurred by Respondents or Proposers, whether or not selected for negotiations, in developing and submitting Proposals or in negotiating agreements. Any and all information made available to Respondents and Proposers is made for convenience purposes only and is without representation or warranty of any kind.

2. Respondents and Proposers must submit questions concerning the PPTA process in writing to the point of contact referenced in the procurement documents, who will coordinate a response in writing; Proposers may not rely on oral responses to inquiries.
3. The Commonwealth, the Secretary of Transportation, the VDOT P3 Office Director or the CEO shall not be liable to a Respondent or Proposer for the disclosure of all or a portion of a response to RFQ, RFP or a Proposal submitted pursuant to this Manual and Guidelines.

## APPENDIX B

# P3 DEFINITIONS

These definitions are applicable to all guidance documentation published by the VDOT P3 Office. This includes this Manual and Guideline, the Value for Money Guidelines, the Public Engagement Guidelines and the Risk Management Guidelines. These definitions will be attached to all the VDOT P3 Office guidance documentation for reference and updated separately from the guidance documents from time to time as the need arises. When changes are made to these definitions, notification of the changes will be posted to the VDOT P3 Office website: [www.virginiadot.org/p3](http://www.virginiadot.org/p3)

- **Apparent Best Value Proposal** means the Proposal offering the Best Value.
- **Addenda or Addendum** means supplemental additions, deletions, and modifications to the provisions of the solicitation documents issued by the VDOT P3 Office or a Responsible Public Entity.
- **Affected Locality** means any county, city or town in which all or a portion of a Qualifying Transportation Facility is located and any other Responsible Public Entity directly affected by the Qualifying Transportation Facility.
- **Availability Payments:** Annual payments made by an Agency to a Concessionaire under a privately financed delivery method to repay the design, build, finance, operation and maintenance costs that the private sector has incurred in delivering a P3 project. An Availability Payment model is used where the Agency wishes to retain the toll revenue risk for a project delivered via the PPTA.
- **Base Date** means the year to which all Cash Flows in the PSC and Shadow Bid should be discounted.
- **Best Value** means the most overall public benefits as determined through an evaluation of the amount of the concession payment and other appropriate considerations in proposals received from Offerors. Such other appropriate considerations may include, but are not limited to, qualifications and experience of the private sector, expected quality of services to be provided, the history or track record of the private sector in providing the services, timelines for the delivery of services, performance standards and revenue sharing. Such appropriate considerations may also include, but are not limited to, policy considerations that are important, but not quantifiable, such as retaining a desired level of oversight over the project, ensuring a certain level of maintenance and operations for the project, considerations relative to the structure and amount of the toll rates, economic development impacts and considerations, or social and environmental benefits and impacts.
- **Bonding Capacity** means the total amount of bonds that an issuer is eligible to issue.
- **Brownfield Project** means the modification and/or replacement of an existing transportation facility where the new project may need to take into consideration existing structures and services already in place.
- **Business Case** means the overarching process used by the VDOT P3 Office to determine whether a project should proceed, irrespective of the delivery method.
- **Cash Flows** mean the total amount of money that is received or paid by a project either in terms of revenue and funds or in terms of expenses and payments.

- **CTB** means the CTB for the respective Agency. For example, the Commonwealth Transportation Board (CTB) serves as the CTB for the Virginia Department of Transportation and the Department of Rail and Public Transportation, the Virginia Aviation Board (VAB) serves as the CTB for the Department of Aviation, the Virginia Port Authority Board of Commissioners (VPAB) serves as the CTB for the Virginia Port Authority and the Commercial Space Flight Authority Board of Directors serves as the CTB for the Virginia Commercial Space Flight Authority.
- **CEO** means the Commissioner of Highways and the Director of DRPT.
- **CE** means Categorical Exclusion means actions which meet the definition contained in 40 CFR 1508.4, and, based on federal agencies past experience with similar actions, do not involve significant environmental impacts.
- **Certification of FOPI** is a document where the CEO and the Secretary of Transportation certify that the P3 delivery method is being conducted in a manner that is consistent with the intent of the FOPI submitted prior to the project procurement phase. The Certification of FOPI is presented to the PPTA Steering Committee prior to the execution of the Comprehensive Agreement.
- **Competitive Neutrality** means an adjustment made to remove certain perceived additional costs of delivering a project as a P3 procurement. In certain instances, the Raw PSC costs delivered as a P3 will include a provision for certain taxes and insurance premiums. The equivalent costs will not appear under the PSC as the public sector may be exempt from paying certain taxes and may “self- insure.” The adjustment consists of adding such costs to the PSC.
- **Comprehensive Agreement (CA)** means the Comprehensive Agreement between the Proposer and the VDOT / DRPT, required by § 33.2-1808 of the Code of Virginia.
- **Concessionaire** has the meaning assigned to such term in Section 33.2-1800 of the Code of Virginia, means a private entity that, under a Comprehensive Agreement, among other things, has the right to operate a Qualifying Transportation Facility and collect revenues for the use of the facility, also a party to the Comprehensive Agreement.
- **Construction costs** means capital costs incurred and expended in completing the construction of a project, including labor, materials, construction equipment, site preparation, construction management, typical contingencies, etc.
- **Design Build (DB)** means a delivery method in which the private sector, by means of a written agreement is generally responsible for the design and construction of a project. The project is paid for by the public sector according to milestones such that the entire DB cost is paid to the private sector by the time of final acceptance.
- **Design Bid Build (DBB)** means a delivery method in which the public sector, by means of a written agreement, is generally responsible for the design of the project and the project is then procured under competitive low-bid arrangements. The project is paid for by the public sector according to actual work completed.
- **Design, Build, Finance, Operate, and Maintain (DBFOM)** means the private sector, by written agreement, is generally responsible for design, construction, long-term financing and maintenance. The project may be a privately tolled facility in which the private sector retains the rights to toll revenues for

an agreed term or may be paid for by the public sector in the form of service payments over a fixed period (see “availability payment” above).

- **Develop or Development** means to plan, design, finance, lease, acquire, install, construct or expand.
- **Discounting** means the process of adjusting nominal or real future Cash Flows to Present Values which represent current-value dollars through the application of a Discount Rate.
- **Discount Rate** means the rate at which future cash payments are discounted to a base date to determine their value at the Base Date.
- **Finding of Public Interest (FOPI)** means a document prepared by the VDOT P3 Office for the VDOT/DRPT CEO, wherein the VDOT/DRPT CEO reaffirms that the P3 procurement method is in the best interests of the public. The FOPI is presented to the PPTA Steering Committee prior to the initiation of the project procurement phase. The Certification of FOPI is signed by the VDOT/DRPT CEO and the Secretary of Transportation and is produced during the project procurement stage.
- **FONSI** means Finding of No Significant Impact as defined in 40 CFR 1508.13. A FONSI is issued by the lead federal agency when environmental analysis and interagency review during the environmental assessment process determines a project has no significant impacts on the environment.
- **General Obligation Bonds** means municipal bonds issued by state and local governments that are backed by the full faith and credit of the issuing municipality and typically repaid using taxation receipts.
- **Grant Anticipation Revenue Vehicles (GARVEE)** means a bond or similar financing method issued by a state or state infrastructure bank under the guidelines of the National Highway System Designation Act of 1995 that can be used for major projects receiving federal funding. GARVEES have to be repaid by states using the future expected federal funds.
- **Greenfield Project** means the development of a new transportation facility.
- **Interim Agreement** means an agreement, including a memorandum of understanding or binding preliminary agreement, between the Proposer and the Responsible Public Entity that provides for the completion of studies and any other activities to advance the development and/or operation of a Qualifying Transportation Facility.
- **Lifecycle Costs** means costs typically associated with planned or scheduled replacement, renewal and/or refurbishment of facility assets such as roadway, bridges, systems, equipment and fixtures that have reached the end of their useful life during the project term.
- **Market Valuation** also referred to as “fair market value” means the price at which the Agency is willing to enter into a tolled concession arrangement for a facility on, or as if in, the open market for a reasonable period of time and in an arm’s length transaction to any willing, knowledgeable, and able private sector entity. The Market Valuation is calculated as the discounted free cash flows from the financial model constructed to support the Shadow Bid. (Fair Market Value definition based on FHWA’s 2009 revision to its regulations to require State departments of transportation and other public authorities to obtain fair market value as part of any concession agreement involving a facility acquired or constructed with Federal-aid highway funds <http://edocket.access.gpo.gov/2008/pdf/E8-30147.pdf>)

- **Metropolitan Planning Organization (MPO)** means a transportation policy-making organization made up of representatives from local government and transportation authorities.
- **NEPA** means the National Environmental Policy Act of 1969. The law is interpreted by the Council on Environmental Quality (CEQ); each federal agency has developed its own set of regulations and guidance implementing NEPA (e.g. Federal Highway Administration's implementing regulation is found at 23 CFR 771).
- **NEPA process:** means the statutory process to assess the environmental impacts of alternative options carried out in accordance with the requirements of the National Environmental Policy Act.
- **Net Present Value (NPV)** means the sum of Present Value of future cash payments.
- **Operate or Operation** means to finance, maintain, improve, equip, modify, repair, or operate a facility.
- **Operations and Maintenance (O&M)** means the operational and ongoing maintenance requirements of a facility.
- **Planning District Commission (PDC)** means a political subdivision of the Commonwealth of Virginia chartered under the Regional Cooperation Act by the local governmental of each planning district.
- **Policy Review Report** means the form on which the VDOT P3 Office documents its findings and
- **Public-Private Partnership (P3)** means a project or service which is funded and operated through a partnership of government and one or more Proposers. In Virginia, the PPTA is the enabling legislation that enables P3 agreements.
- **PPTA** means the Public-Private Transportation Act of 1995, as amended, which is a legislative process enabling Responsible Public Entities to enter into agreements authorizing Proposers to develop and/or operate Qualifying Transportation Facilities.
- **PPTA Steering Committee** means two members of the CTB; staff director of the House Committee on Appropriations, or designee; staff director of the Senate Committee on Finance, or designee; chief financial officer of VDOT / DRPT; a Deputy Secretary of Transportation who serves as chairperson; non-agency public financial expert, as selected by the Secretary of Transportation.
- **Preferred Proposer** means the private entity, company, firm, consortium or other legal entity whose proposal is selected as the Apparent Best Value Proposal by the Agency in coordination with the VDOT P3 Office.
- **Present value (PV)** means the value of a future cash payments, adjusted for the Discount Rate, so as to be expressed at a certain Base Date.
- **Private Entity** means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.
- **Private Sector Equity Internal Rate of Return (IRR)** means the typical rate that a private sector firm pays its equity holders. This might reflect the average dividend rate paid to shareholders.

- **Private Sector Financing Costs** means the financing costs incurred by the private sector to deliver financing package for a project.
- **Project Screening Report** is a document prepared at the conclusion of the project identification and screening phase that reflects the VDOT P3 Office's assessment of the Solicited Project based on qualitative and quantitative criteria.
- **Proposal** means the documents submitted by a Proposer in response to an RFP issued by the VDOT P3 Office.
- **Proposal Review Fee** means the non-refundable, non-negotiable fee to be remitted to the VDOT / DRPT with the submission of an Unsolicited Proposal.
- **Proposer** means a private entity submitting an Unsolicited Proposal, or a Proposal for a PPTA project in response to an RFP issued by the VDOT P3 Office.
- **Public Sector Comparator (PSC)** means components of cost and, where applicable, revenue for a project procured using traditional procurement processes such as Design-Bid-Build or Design-Build and operated and maintained by VDOT / DRPT. See 33.2-1803.1:1.
- **Public Sector Equity Adjusted Rate** means a rate used to discount excess cash flows for a privately tolled Comprehensive Agreement and adjusted to reflect characteristics of a PSC.
- **Qualifying Transportation Facility** means one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA § 33.2-1808 of the Code of Virginia.
- **Raw PSC** means the base level of capital and operating costs associated with designing, constructing operating, maintaining and/or delivering a publicly procured transportation project.
- **Representative** means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, consultant, engineer, contractor, other Person for whom such Person is, under Law responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its "Representative."
- **Request for Proposals (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.
- **Request for Qualifications (RFQ)** means the documents constituting the Request for Qualifications issued for a PPTA project by the Agency in coordination with the VDOT P3 Office.
- **Respondent** means any private entity, company, firm, consortium or other legal entity that submits a response to a document issued by the VDOT / DRPT and VDOT P3 Office.
- **Responsible Public Entity** means a public entity, including local government and regional authority that has the power to develop and/or operate the Qualifying Transportation Facility in accordance with the PPTA.

- **Residual Risk** means risk(s) that remain after implementation of a planned Risk Treatment. Residual risks are those that cannot be controlled, avoided, eliminated or transferred, and generally relate to the VDOT / DRPT's core business practices, and/or the amount of risk appetite related to a specific project.
- **Retained Risks** means the Project Risks which are most efficiently managed directly by the VDOT / DRPT and would not be transferred under a P3 project because the VDOT / DRPT has determined that to do so would not provide best value. Examples of Project Risks that are retained or at least shared under almost all P3 projects include the risk of pre-existing hazardous materials, the risk of failure to obtain Right of Way by certain specified dates and the risk of Force Majeure.
- **Revenue Risk** means the risks associated with the realization of tolling revenues.
- **Retained Risks** means the Project Risks which are most efficiently managed directly by the VDOT / DRPT and would not be transferred under a P3 contractual arrangement because the VDOT / DRPT has determined that to do so would not provide best value. Examples of Project Risks that are retained or at least shared under most P3 projects include the risk of pre-existing hazardous materials, the risk of failure to obtain ROW by certain specified dates and the risk of Force Majeure.
- **Risk Adjusted PSC** means all the estimated cost and revenue components (including Raw PSC, retained risks, transferable risks, and finance costs) for a project procured using traditional delivery methods such as design-bid-build and operated and maintained by the VDOT / DRPT. The Risk-Adjusted PSC cost components are calculated over a period equivalent to that envisioned for the Shadow Bid for the same project.
- **Risk Analysis** means the systematic process to understand the nature of and to deduce the level of risk on a project. It provides the basis for risk evaluation and decisions about Risk Treatment, as well as feeds into the determination of value for money on a specific project under consideration as a P3 procurement.
- **Risk Assessment** means the overall process of Risk Identification, Risk Analysis and risk evaluation, including Risk Response.
- **Risk Avoidance** means a purposeful decision or strategy to avoid, withdraw from or not to become involved with a risk event or project related activity.
- **Risk Context** means the process of establishing the goals, objectives, strategies, scope and parameters of an activity, or part of the organization to which the risk management process is to be applied on a given project. The process should occur at the onset of considering a given project, involve key stakeholders, and be undertaken with full consideration of the need to balance costs, threats, and opportunities.
- **Risk Control** means an existing process, policy, device, practice or other action which acts to minimize negative outcomes (risk threats) or enhance positive outcomes (risk opportunities).
- **Risk Identification** means the process of identifying an activity, place, time or event which may have a positive or negative effect on a project goal or objective.
- **Risk Management** means the overarching process that encompasses establishing the context, planning, identification, analysis, response, control, monitoring, reviewing, reporting and

communicating risks associated with any activity, function or process in a way that will minimize losses (threats) and maximize gains (opportunities).

- **Risk Management Plan** is a detailed plan of action for the management of project risks, and should include recommended levels of contingency to maintain for a project in order to reflect its risk exposure.
- **Risk Management Process** means the systematic process of deciding how to approach, plan, and execute Risk Management strategies throughout the life of a project. It is intended to maximize the beneficial outcome of the opportunities and minimize or eliminate the consequences of adverse risk events.
- **Risk Mitigation** means an elimination or reduction in the probability and or impact of a given risk occurrence or event.
- **Risk Monitoring** means to systematically check, supervise, observe critically or measure the progress of a risk related activity, action or system to identify compliance or change from the expected (required) performance level and/or the specified Risk Treatment.
- **Risk Premium** means a value that a third party under contract is assumed to add to its price as a result of accepting risk.
- **Risk Owner** means the public sector's assignment of personnel to an activity or risk identified in the Risk Register during the project development and procurement phase, who are responsible and accountable to manage, consult and inform the project team on the status of such risks through execution of an Interim or Comprehensive Agreement or the earlier termination of the procurement process. Risk Owner(ship) is not to be confused with Risk Sharing or Risk Allocation, where risks or portions of risks (shared) may be allocated or assigned to the private sector, in the P3 procurement process as identified in the Comprehensive Agreement.
- **Risk Register** means a detailed table or chart that lists the conceivable quantifiable risks for each project. These risks range from cost overrun and design risks to planning and regulatory risks. Each project risk is described in detail along with the probability of the risk occurring and a range of probable cost impacts as a result of the risk occurring.
- **Risk Response** means the process of developing options and actions to enhance opportunities and reduce threats to project objectives. Risk Response documentation should consider possible actions to the identified risk by satisfying the following questions. Can the identified threat be avoided, transferred, mitigated or is it to be accepted? Can the identified opportunity be exploited, shared or enhanced?
- **Risk Sharing (Shared Risk)** means risks that are allocated among two or more parties, where the threat of a loss or the benefit of the gain of a particular risk is proportionally shared as determined by the agreed allocation.
- **Risk Treatment** means the implementation of planned Risk Responses to enhance opportunities and reduce threats to project objectives.
- **ROD** means Record of Decision as defined in 40 CFR 1508.11. The ROD identifies the selected alternative from the environmental impact statement (EIS), specifies the "environmentally preferable

alternative,” and provides information on the adopted means to avoid, minimize, and compensate for environmental impacts.

- **Service Quality** means the degree to which the finished product meets the client’s project objectives in terms of technical specification, availability of services, Lifecycle Costs, operational life-span, impact of maintenance activities and other qualitative factors. In the case of roadway project this may cover features such as the average speed, lane availability, the quality of the surface, signage, barriers etc.
- **Shadow Private Sector Bid (Shadow Bid)** means all the cost and revenue components (including financing costs) as would be expected to be generated by a Proposer bidding for a particular P3 project under a fixed firm price binding competition. The Shadow Bid takes into account transferable risks (risks that are expected to be transferred by the public sector under the particular concession model to be used under the PPTA), and the expected cost of sources of funds to be used in the private financing. When all the components are combined within a financial model, the NPV of the Shadow Bid would be the Market Valuation of the Project as a privately tolled concession, or the present value of payments to the private sector under an Availability Payment model.
- **Short-List** as used in a two-phase selection process, means the narrowing of the field of Offerors through ranking of the most highly qualified Offerors who have responded to an RFQ with the intent to advance to the RFP stage of the P3 procurement process. Only short-listed firms will be invited to submit a proposal in response to an RFP.

In procurements where the submission of a Conceptual Financial Proposal is required, a Short-List is issued once the CEO has determined a preferred project delivery model.

- **Solicited Project** means a project developed and procured by the VDOT / DRPT and VDOT P3 Office through the issuance of an RFQ or RFP to develop and/or operate a Qualifying Transportation Facility by the private entity in accordance with the PPTA.
- **Stakeholder(s)** means individuals and/or organizations who may affect, be affected by, or perceive themselves to be affected by a decision(s) associated with the project, its objectives and goals.
- **Statement of Qualifications (SOQ)** means the documents constituting the Statement of Qualifications and supporting information, including all clarifications thereto, submitted by Respondents in response to RFQs issued by the VDOT / DRPT in coordination with the VDOT P3 Office.
- **Transferable Risks** mean those risks that are selected to be transferred from the Agency to the private sector delivering the project under a P3 arrangement because to do so would provide value. The value of Transferable Risks in the PSC will differ from the value of the same risks in the Shadow Bid.
- **Transportation Infrastructure Finance and Innovation Act (TIFIA)** means the Federal program that provides credit assistance, in the form of loans, loan guarantees and standby lines of credit, for qualified large-scale, surface transportation, projects of regional and national significance.
- **Transportation Facility** means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances and other property needed to operate such facility. A commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a "transportation facility”.

- **Unsolicited Proposal** means a Proposal to develop and/or operate a Qualifying Transportation Facility submitted by a Proposer not in response to an RFQ or RFP.
- **Updated Risk-Adjusted PSC** means the Risk-Adjusted PSC as updated with the latest available cost and revenue information prior to the final Public Sector Analysis and Competition based on Final RFP.
- **Updated Shadow Bid** means the Shadow Bid updated with the latest cost and revenue information prior to the final Public Sector Analysis and Competition based on Final RFP.
- **Public Sector Analysis and Competition** means the process used to compare the impacts of a P3 project against those for the traditional public delivery alternative.
- **VDOT P3 Office** means the VDOT Office of Public-Private Partnerships, responsible for identifying, screening, developing, procuring, and implementing P3 projects.
- **VDOT P3 Office Director** means the highest ranking individual within the VDOT P3 Office responsible for overseeing all aspects of the P3 program.

## APPENDIX C

### Guidance on Approach to Commercial Terms

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

While each P3 project is different and will have its own unique challenges, the guiding principles identified below remain constant and the P3 Office 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 its transportation agencies satisfy their statutory and legal duties to the public;
- **Deliver Transportation Solutions** to solve the Commonwealth's transportation challenges;
- **Promote Transparency and Efficiency** within the Process 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;
- **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 VDOT P3 Office 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 PPTA procurement phase, the VDOT P3 Office, in conjunction with the VDOT / DRPT, 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 VDOT P3 Office and the VDOT / DRPT 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 VDOT P3 Office will maintain open lines of communication within the parameters and restrictions set forth in the procurement documents with Short-Listed Proposers. The VDOT P3 Office will consider the input received from Short-Listed Proposers related to the project scope to ensure that the project and its corresponding commercial terms are financeable and consistent with prevailing market conditions.

The VDOT P3 Office 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 VDOT P3 Office, in coordination with VDOT / DRPT 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 VDOT P3 Office, in conjunction with VDOT / DRPT, the OAG, 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 VDOT P3 Office, VDOT / DRPT, the OAG, and external advisors will be guided by the PPTA principles and consider the following factors:

1. The transportation mode and asset classification;
2. Whether the project is a Greenfield construction or Brownfield monetization;
3. The proposed financial structure;
4. 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;
5. Current economic and financial conditions; and

6. Political and cultural issues.

For certain terms, the VDOT P3 Office will develop standard contractual language to address matters that will be part of any transaction, regardless of the nature of the P3 project.

The VDOT P3 Office, 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 VDOT P3 Office 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 VDOT P3 Office 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 D

### Guidance on Project Identification and Screening

The criteria below provide an indication of what information the VDOT P3 Office will evaluate as they make their recommendation to the CTB on whether the Solicited Project or Unsolicited Proposal should proceed to the project development phase. These criteria are not intended to be an exhaustive listing, and may be modified to better address the unique aspects of a project. The findings of the evaluation will be reflected in a two (2)-part Project Screening Report, with each part corresponding to the qualitative (Table I) and quantitative (Table II) criteria below.

**Table I**

<b>Quantitative Project Screening Criteria – Desirability of the Project</b>	
Public Need	<ul style="list-style-type: none"> <li>▪ Does the project address the needs outlined in the local, regional and state transportation plans and programs, such as congestion relief, safety, new capacity and preservation of existing assets?</li> <li>▪ Is the project consistent with the overall transportation objectives of VDOT/DRPT?</li> <li>▪ Does the project support improving safety, reducing congestion, increasing capacity, providing accessibility, improving pedestrian, biking facilities and/or enhancing economic efficiency?</li> </ul>
Public Benefits	<ul style="list-style-type: none"> <li>▪ Are there anticipated transportation benefits to the community, the region and/or the Commonwealth?</li> <li>▪ Is the project expected to help achieve performance, safety, mobility or transportation demand management goals?</li> <li>▪ Is the project expected to improve connections among existing and planned transportation modes?</li> <li>▪ Are there potential project benefits to the Affected Localities' transportation system?</li> <li>▪ Are there anticipated enhancements to adjacent transportation facilities or other modes?</li> </ul>
Economic Development	<ul style="list-style-type: none"> <li>▪ Will the project enhance the Commonwealth's economic development efforts?</li> <li>▪ Is the project helpful to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?</li> </ul>
Market Demand for PPTA Delivery	<ul style="list-style-type: none"> <li>▪ This measure is only applicable to Solicited Projects; Unsolicited Proposals do not need to address this issue, as a Proposer demonstrates market demand through the submission of an Unsolicited Proposal.</li> </ul>
Project Efficiencies	<ul style="list-style-type: none"> <li>▪ Is the project sufficiently complex (in terms of technical and/or financial requirements) to effectively leverage private sector innovation and expertise?</li> <li>▪ If the required public funding is not currently available, could using a P3 project delivery process accelerate project delivery?</li> </ul>

<b>Quantitative Project Screening Criteria – Desirability of the Project</b>	
Stakeholder Support	<ul style="list-style-type: none"> <li>▪ 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 transportation issues and needs, as well as the impacts this project may have on those needs?</li> <li>▪ Public Involvement Strategy – What strategies are proposed to involve citizens, local, state and/or federal officials in developing this project?</li> <li>▪ Regional Transportation Plan and Programs – Has the project received approval in applicable local and/or regional plans and programs?</li> <li>▪ Federal Requirements – Is the project consistent with federal transportation agency programs or grants?</li> </ul>
Legislative Considerations	<ul style="list-style-type: none"> <li>▪ Are there any legislative considerations that need to be taken into account, such as tolling, user fees or use of public funds?</li> <li>▪ Is new legislation needed to complete the project?</li> </ul>

Table II

<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>	
Technical Feasibility	<ul style="list-style-type: none"> <li>▪ Project Approach – Is the project described in sufficient detail to determine the type and size of the project, the location of the project, all proposed interconnections with other transportation facilities, the communities that may be affected and alternatives that may need evaluation?</li> <li>▪ Proposed Project Schedule – Is the proposed schedule for project completion clearly outlined and feasible?</li> <li>▪ Operation – Does the project set forth plans for operation of the facility, including a schedule defining initiation of operations?</li> <li>▪ Technology – Is the project’s technical approach based on proven technology?</li> <li>▪ 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?</li> <li>▪ Design Standards – Does the conceptual design appear to be consistent with the appropriate state and federal standards?</li> <li>▪ Federal Oversight – Will the project require some level of federal involvement or oversight?</li> <li>▪ Meets/Exceeds Environmental Standards – Is the proposed project consistent with applicable state and federal environmental statutes and regulations?</li> <li>▪ 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?</li> </ul>

<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>	
	<ul style="list-style-type: none"> <li>▪ Rights of Way – Does the project set forth the method by which all property interests required for the transportation facility will be secured and by whom?</li> <li>▪ Utilities – Does the project set forth the method by which utility relocations will be identified and managed?</li> <li>▪ Maintenance – Does the project include a schedule and plan to maintain this facility?</li> </ul>
System Interface and Compatibility	<ul style="list-style-type: none"> <li>▪ Land Use Impacts – Is the project compatible with local land use and comprehensive plans?</li> <li>▪ System Interface – Does the project provide continuity with existing and planned state and local facilities and existing and planned multi-modal facilities?</li> </ul>
Financial Feasibility	<ul style="list-style-type: none"> <li>▪ Are there public funds required and, if so, are the Commonwealth's financial responsibilities clearly stated?</li> <li>▪ Does the project have the revenue generation potential to partially or completely offset the public funding requirement?</li> <li>▪ Would delivering the project under the P3 delivery process free up funding to apply to other transportation priorities within the Commonwealth?</li> <li>▪ Is the project consistent with federal requirements and potential agreements for federal funding?</li> <li>▪ Is the preliminary financial plan feasible in that the sources of funding and financing can reasonably be expected to be obtained?</li> <li>▪ What is the level of private financial equity/debt within the preliminary financial plan?</li> </ul>
Public Sector Analysis and Competition	<ul style="list-style-type: none"> <li>▪ What is the maximum amount of public contribution?</li> <li>▪ How can the risks of user-fee financing be mitigated? This information is based on assumptions on competing facilities, projected compensation for high usage of the facility by high-occupancy vehicles (HOV), or other considerations.</li> <li>▪ Will VDOT / DRPT maintain/operate the facility itself, or will these responsibilities be transferred to the private sector?</li> <li>▪ Will public contributions be required to cover costs not covered by financing obtained for the project?</li> <li>▪ Will funds to support non-user fee generating components of the project contribute to increased person throughput, reduction in congestion, improved safety and other expected benefits?</li> </ul>
	<ul style="list-style-type: none"> <li>▪</li> </ul>
Project Risks	<ul style="list-style-type: none"> <li>▪ Would the P3 delivery process promote efficiencies through the most appropriate transfer of risk over the project lifecycle?</li> <li>▪ Would the P3 delivery process help transfer project risks and potential future responsibilities to the private sector on a long-term basis?</li> </ul>

<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>	
	<ul style="list-style-type: none"><li>▪ Are there any particular risks unique to the project that have not been outlined above that could impair project viability?</li><li>▪ Are there any project risks proposed to be transferred to the Agency that are likely to be unacceptable?</li></ul>
Concession Term	<ul style="list-style-type: none"><li>▪ Does the project include a reasonable term of concession for proposed operation and maintenance?</li><li>▪ Is the proposed term consistent with market demand, providing a Best Value solution for the Commonwealth?</li><li>▪ Is the proposed term optimal for a whole- life approach?</li></ul>
End of Term Arrangement	<ul style="list-style-type: none"><li>▪ Does the project include a process for long-term performance management, inventory and hand back provisions?</li></ul>

## APPENDIX E

### Guidance for Unsolicited Proposal Preparation

Proposers may submit Unsolicited Proposals to develop and/or operate P3 projects at any time, pursuant to the PPTA and this Manual and Guidelines. Private Entities are discouraged from submitting the anticipated Proposal to the Secretary of Transportation for pre-submission review. Rather, in an effort to streamline the PPTA process, all Unsolicited Proposals should be submitted directly to the CEO with a copy to the VDOT P3 Office. Private Entities are encouraged to contact the VDOT P3 Office to arrange a meeting to discuss their ideas and concepts prior to submitting an Unsolicited Proposal.

**Director, VDOT P3 Office (804) 786-0455**

**VDOT, Office of Public Private Partnerships  
1401 E. Broad Street, Suite 1306  
Richmond, VA 23219**

#### PROPOSAL PREPARATION

Proposers submitting an Unsolicited Proposal should ensure that the Proposal includes a comprehensive project description and provides enough information about the proposed project for the VDOT P3 Office, in coordination with VDOT / DRPT, to determine whether the Proposal satisfies the review and evaluation criteria as set out in Va. Code § 33.2-1801 and § 33.2-1803 of the Code of Virginia. Proposers should also provide sufficient information to facilitate a Policy Review as detailed in Section 2.2.1 of this Manual and Guidelines and the Quantitative Project Screening Criteria as described in Appendix D. In addition, the financial plan for the 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 project.

To promote standardization of the evaluation procedure, Proposers 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 VDOT P3 Office in coordination with VDOT / DRPT may require Proposers submitting an Unsolicited Proposal to give one or more oral presentations of their Proposal to the VDOT P3 Office, the VDOT / DRPT and/or the public. Such presentations will provide opportunities to educate the VDOT / DRPT 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**

Proposers submitting Unsolicited Proposals are required to deliver ten (10) hard copies and one (1) electronic copy in Portable Document Format (PDF) to the CEO for forwarding to VDOT P3 Office. Proposals must be sealed in mailing envelopes or packages bearing the Proposer's name, address and the words "Public-Private Transportation 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 VDOT / DRPT CEO's, with a copy sent to the attention of the VDOT P3 Office Director at the address listed above for the P3 Office Point of Contact.

Proposers interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee as specified in Section 2.2.1 of this 2017 Manual and Guidelines at the time of submitting the Unsolicited Proposal to the Agency. 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 VDOT / DRPT will notify the VDOT P3 Office. Upon notification by VDOT / DRPT, the VDOT P3 Office will notify any appropriate federal agency, and other stakeholders that the Unsolicited Proposal has been submitted for a given transportation project and that the VDOT P3 Office will initiate a review within 90 calendar days to determine if the Proposal meets all legal and policy requirements for further evaluation, as set out in §§ 33.2-1801 and 33.2-1803 of the Code of Virginia and this 2017 Manual and Guidelines.

The Proposer submitting a copy of the Unsolicited Proposal to VDOT/DRPT pursuant to § 33.2-1803 of the Code of Virginia shall coordinate with the VDOT P3 Office Director prior to furnishing a copy of its Proposal to Affected Locality identified in the Proposal.

If an Unsolicited Proposal is submitted during a period when the VDOT P3 Office, in coordination with the VDOT / DRPT, is unable to review and evaluate that Proposal by virtue of being committed to the development, evaluation, and negotiation of other priority transportation projects, or for any other reason as determined by the VDOT / DRPT at its sole discretion, the Proposer will be notified by the VDOT P3 Office so that the Proposal may be resubmitted at a later date.

## APPENDIX F

### 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 VDOT P3 Office, in consultation with the CEO, and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The VDOT P3 Office will issue a public notice on the VDOT P3 Office website and the state eVA system to announce the issuance of the RFQ documents. The eVA system is a web-based purchasing system used by state agencies to announce bid opportunities, invite bidders 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 Respondents 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 and the VDOT P3 Office website. The VDOT P3 Office 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 Respondents may have about the RFQ. A notice for such event will be made known within the RFQ documents, on the eVA system and on the VDOT P3 Office 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. Proposers are encouraged to check the eVA system and the VDOT P3 Office website frequently and before submitting their responses.

#### SUBMISSION OF SOQS

In response to the issuance of an RFQ, Proposers 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 VDOT / DRPT for a competitive procurement, the individual or Proposer that submitted the original Unsolicited Proposal will be required to submit a SOQ with other prospective Respondents to an RFQ if the Proposer remains interested in developing the project.

As a part of the SOQ, Respondents may be required to provide information related to the structure of the respondent team, the qualification and experience of the Respondent, 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 model used. Respondent will also be required to identify a Responsible Charge Engineer who will accept full professional responsibility for engineering decisions relating to the final work product. Additionally, the RFQ may require submittal of certain financial information from the Respondent and its affiliates. The intent of financial qualification submittal requirements is to determine whether the Proposer submitting a response has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule. The VDOT P3 Office in coordination with the VDOT / DRPT 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 Respondent's financial position during a specified period of time or reporting period identified in the RFQ.

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

## APPENDIX G

### 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 Proposers the VDOT / DRPT in coordination with the VDOT P3 Office may begin the RFP process. The purpose of the RFP process is to create competition among a short-list of the most qualified Proposers to ensure the best interests of the public are served.

The VDOT / DRPT, in coordination with the VDOT P3 Office, may choose to issue the RFP documents in draft format to Short-Listed Proposers 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 Proposers and other appropriate parties, the VDOT / DRPT, in coordination with the VDOT P3 Office, will issue final RFP documents to Short-Listed Proposers.

The VDOT / DRPT, in coordination with the VDOT P3 Office, will evaluate responses to the RFP from Short-Listed Proposers based on appropriate criteria. The VDOT / DRPT, in coordination with the VDOT P3 Office, reserves the right to run a Best and Final Offer (BAFO) process with some or all of the Short-Listed Proposers.

#### 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;
- VDOT / DRPT'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 Proposers 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 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

VDOT P3 Office and the VDOT / DRPT to determine the most suitable Proposer for delivering the P3 project.

### **TECHNICAL PROPOSAL**

The VDOT P3 Office may require the Proposer to provide a Technical Proposal regarding the project's scope of work and technical requirements as the VDOT P3 Office and the VDOT / DRPT 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 PPTA delivery structure and the transportation mode and 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 model 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 VDOT P3 Office will seek Proposals that demonstrate the private sector can develop and/or operate the transportation facility with a public contribution amount less than the maximum public contribution. 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. The VDOT P3 Office is encouraged to use Best Value as the basis for award. However, the VDOT P3 Office reserves the right to utilize other basis for award, including low bid, lowest lifecycle cost, highest concession payment, lowest public subsidy and any other basis that is appropriate and deemed by the VDOT P3 Office in coordination with the VDOT / DRPT to be in the best interests of the public.

The specific criteria and methodology for evaluating Proposals will be included in the RFP documents of the specific PPTA procurement and will vary depending on the scope and complexity of a project, transportation mode and project delivery model. The RFP evaluation criteria allow the VDOT P3 Office, the

CEO, and the Commonwealth to clearly communicate the project objectives and priorities of the VDOT / DRPT to the private sector.

Upon receipt of Proposals, the VDOT P3 Office will commence the evaluation and selection process. The VDOT P3 Office and the VDOT / DRPT may hold interviews, ask written questions of the Proposers, seek written clarifications and conduct discussions on the Proposals during the evaluation and selection process.

After evaluation of the Proposals, the VDOT P3 Office and the VDOT / DRPT, 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 VDOT P3 Office. Upon receipt of the Proposal revisions or BAFOs, the Proposal evaluation process will be repeated by the VDOT P3 Office. 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 H

# Guidance for the PPTA Audit Requirements

### GENERAL AUDIT SCOPE

1. Audit of the traffic and cost estimates provided by the the preferred Proposer in its Proposal to the Agency;
2. Identification and quantitative assessment of anticipated public costs and potential liabilities; and
3. Qualitative assessment of the cost and revenue projections relative to other, similar projects and assessment of the potential for increased costs and liabilities to the P3 Office or the Agency.

The level of audit shall be specific to the scope and type of agreement, whether Interim or Comprehensive Agreement.

### AUDIT TIMING

The audit will be conducted prior to the execution of an Interim or Comprehensive Agreement by the VDOT P3 Office. The audit for an Interim Agreement may be limited in scope due to the preliminary and undeveloped nature of the contractual documents as well as limited availability of the project cost and traffic data.

### AUDIT PAYMENT

The VDOT P3 Office will engage the consultant, commission and pay for the audit. The Preferred Proposer will reimburse the VDOT P3 Office for the cost of the audit. The payment due date will be as determined by the VDOT P3 Office, but in no event later than financial close.

### AUDITOR SELECTION

The VDOT P3 Office will select a consultant to conduct the required audit and determine their independence utilizing its reasonable good faith judgment, as well as the following criteria:

1. In regards to auditing the cost estimates and traffic data, the consultant will have been determined not to have any actual, potential or perceived conflict of interest;
2. In regards to auditing documents to address the public cost and potential liabilities, the proposed independent consultant will not have had any responsibilities associated with the development of contractual documents or allocation of the risk as defined by those documents on behalf of either the P3 Office or the Preferred Proposer; and
3. The consultant shall not have otherwise performed services or have other relationships with either the VDOT P3 Office or the Preferred Proposer (or the Preferred Proposer's affiliates) that, in the VDOT P3 Office's judgment, may affect the objectivity of the consultant.

## APPENDIX I

## Summary of Changes to PPTA Legislation

Bill	Date Approved by Governor	Summary
SB 856	March 1995	<ul style="list-style-type: none"> <li>- Rewrote the Qualifying Transportation Facilities Act of 1994 which permitted privatization of transportation facilities and granted the State Corporation Commission (SCC) certificate of authority and rate of approval function</li> <li>- Eliminated the regulatory role of the SCC, expanded the definition of transportation facilities to include parking and port facilities, deleted the provision that no tolls or user fees may be imposed by an operator on an existing road without consent of the affected locality, and clarified that the provisions of the Virginia Public Procurement Act (VPPA) did not apply to the Transportation Act</li> <li>- Provides for timely acquisition of needed transportation facilities by enabling Private Entities to acquire, construct, improve, maintain and/or operate transportation facilities upon authorization of a Responsible Public Entity (RPE) and to arrange financing for the acquisition, construction, and improvement of toll roads, bridges, tunnels, airports, and mass transit and port facilities</li> <li>- Requires approval of "privatization" by public entities that have responsibility for the applicable transportation projects and an agreement between the private operator and the applicable public entity to ensure that the private transportation facility is properly constructed and maintained.</li> <li>- Authorized governmental bodies to take advantage of new federal assistance for innovative financing projects by facilitating the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991</li> <li>- Provides method to return private transportation facility to public use upon default</li> <li>- Provides that the private transportation facility becomes dedicated to public use within 10 years after the financing for the facility has been retired</li> <li>- Permits a governmental entity to convey public property to the Private Entity permitting privatization of existing facilities</li> <li>- Does not allow tolls on existing interstate highway and requires that user fees could be imposed on other existing highways only if they are reconstructed to provide for increased capacity</li> <li>- Privatized transportation facilities will be governed by the terms of individual comprehensive agreements negotiated between the applicable RPE and the Private Entity for each such transportation facility</li> </ul>
HB 2717	March 2001	<ul style="list-style-type: none"> <li>- Repealed the prohibition on considering "rail mass transit facilities owned by an interstate compact agency" to be transportation facilities for purpose of the Act</li> </ul>

SB 674	April 2002	<ul style="list-style-type: none"> <li>- Defined “asset management,” “competitive sealed bidding,” and “construction” and provides limitations on how certain VDOT maintenance contracts are to be procured</li> <li>- Provides that under certain conditions maintenance and asset management services are not subject to the VPPA</li> </ul>
HB 1373	April 2002	<ul style="list-style-type: none"> <li>- Authorized tolling for use of Interstate 81 by vehicles other than passenger cars, pickup or panel trucks, and motorcycles, in connection with a facility operated under the Public-Private Transportation Act of 1995 (PPTA)</li> <li>- Allows tolling on any interstate to provide for increased capacity.</li> <li>- Requires that an RPE may enter into a comprehensive agreement in accordance with the following procedure:             <ol style="list-style-type: none"> <li>1. an RPE may enter into a comprehensive agreement in accordance with procedures that are consistent with procurement through “competitive sealed bidding,” and</li> <li>2. an RPE may enter into a comprehensive agreement in accordance with procedures that are consistent with procurement of “other than professional services” through competitive negotiation</li> </ol> </li> <li>- If a state agency is the RPE, the approval of the Secretary of Transportation is required before the comprehensive agreement is signed.</li> <li>- Defined “asset management” and “maintenance” as used in the PPTA.</li> </ul>
SB 1229	March 2003	<ul style="list-style-type: none"> <li>- Eliminated proposal application or submission fees for solicited transportation projects under the PPTA</li> </ul>
HB 1545	April 2003	<ul style="list-style-type: none"> <li>- Amended PPTA and the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) to enable public access to procurement records once a comprehensive agreement has been made</li> <li>- Procurement records are not to be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the Private Entity as evidence of its qualifications</li> </ul>
SB 1108	March 2005	<ul style="list-style-type: none"> <li>- Authorized the establishment of an interim agreement to provide for partial planning and development activities while other aspects of a project are being negotiated</li> <li>- Authorized a Private Entity to request approval of multiple RPEs in proposed projects involving multimodal transportation facilities</li> <li>- Authorized RPEs to enter into comprehensive agreements with multiple Private Entities</li> <li>- Requires the RPE to protect confidential information submitted by a Private Entity</li> <li>- Adds factors that an RPE may consider when selecting proposals</li> <li>- Identical to HB 2666</li> </ul>
HB 2666	March 2005	<ul style="list-style-type: none"> <li>- Authorized the establishment of an interim agreement to provide for partial planning and development activities while other aspects of a project are being negotiated and analyzed</li> <li>- Authorized a Private Entity to request approval of multiple RPEs</li> <li>- Authorized RPEs to enter into comprehensive agreements with multiple Private Entities</li> <li>- Requires the RPE to protect confidential information submitted by a Private Entity</li> <li>- Adds factors that an RPE may consider when selecting proposals</li> </ul>

		<ul style="list-style-type: none"> <li>- Identical to SB 1108</li> </ul>
SB 5011	March 2006	<ul style="list-style-type: none"> <li>- During periods when the financial interest or bargaining position of the public or Private Entity could be adversely affected memorandum, staff evaluations, or other records are excluded from public disclosure</li> <li>- An independent review panel may meet in closed session to review confidential information</li> <li>- All procurement records of an interim or comprehensive agreement entered into by an RPE become public upon completion of all bargaining of the agreement under the PPTA or PPEA</li> <li>- Allowed procurement records under PPTA to be withheld, even after a comprehensive agreement has been signed, if the process of bargaining of other interim agreements related to the qualifying transportation facility or all phases or aspects of the comprehensive agreement are not complete</li> <li>- Provisions expired on July 1, 2007</li> </ul>
SB 666	April 2006	<ul style="list-style-type: none"> <li>- Authorized "concessions" agreements under the PPTA</li> <li>- Defined "concession" and described the rights and requirements of the Private Entity as relates to the impacted jurisdiction's comprehensive plan</li> <li>- Defined how concessions are to be taxed, gave direction on how concession payments are to be fiscally administered and provided guidance on allocations by the Commonwealth Transportation Board (CTB)</li> <li>- Revised definition of "transportation facility" to state that a commercial or retail use or enterprise not essential to transportation of persons or goods shall not be a "transportation facility"</li> </ul>
SB 76	May 2006	<ul style="list-style-type: none"> <li>- Revised FOIA exemption for records submitted by a Private Entity to an RPE under the PPTA and PPEA and formalized the earmarking process or the protection of trade secrets, financial records, and other records submitted by a Private Entity, by requiring a written request for an exclusion from disclosure by the Private Entity and a written determination by the RPE that such records will be protected from disclosure</li> <li>- Requires a public entity to post all accepted conceptual proposals</li> <li>- Requires RPEs that are state agencies, departments, and institutions to post to post a summary of the proposals and the location where copies of the proposals are available for public inspection on the Department of General Service's web-based electronic procurement program (eVA)</li> <li>- Requires RPEs that are local public bodies to post a summary of the proposals and the location where copies of the proposals are available for public inspection on the RPE's website or by publication in a newspaper of general circulation in the area where the contract is to be performed</li> <li>- At least one copy of the proposal shall be made available for public inspection</li> <li>- Provides that nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the RPE so as to provide maximum notice to the public of the opportunity to inspect the proposals</li> <li>- Requires the RPE to provide an opportunity for public comment 30 days before the execution of an interim or comprehensive agreement</li> </ul>

		<ul style="list-style-type: none"> <li>- Provides that once the process of bargaining of all phases or aspects of an interim or comprehensive agreement is complete, but before the agreement is entered into, an RPE shall post the proposed agreement</li> <li>- After an interim or comprehensive agreement has been executed, all procurement records, excluding trade secrets, financial information, and cost estimates, shall be available to the public upon request</li> </ul>
SB 1002	March 2007	<ul style="list-style-type: none"> <li>- Removed the sunset clause of SB 5011 so the provisions would not expire</li> <li>- Allows memoranda, staff evaluation, or other records prepared by the RPE, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals filed under the PPTA and PPEA to be withheld from public disclosure if such records would adversely affect the financial interest or bargaining position of the public entity</li> <li>- Allows for closed meetings of the Independent Review Panel to discuss confidential information</li> </ul>
HB 627	March 2008	<ul style="list-style-type: none"> <li>- Requires proposals presented pursuant to the PPTA with an estimated construction of over \$50 million be subject to an independent audit of any and all traffic and cost estimates associated with the proposal. The RPE must require the Private Entity to pay the costs for the audit</li> <li>- The Private Entity must provide a full accounting of all public costs and potential liabilities and such information must be disclosed prior to entering into any interim agreement.</li> <li>- The independent audit must be conducted by an independent consultant selected by the RPE</li> <li>- Provisions apply to solicited and unsolicited proposals</li> <li>- Requires projects undertaken pursuant to the PPTA to be part of the CTB's six year improvement program</li> <li>- Requires the RPE to conduct a traditional public hearing prior to executing agreement</li> <li>- Requires the RPE to give priority to proposals that provide for equity investment in a toll project by the Private Entity or the agreement by the Private Entity to purchase certain percentage of bonds to be issued in connection with a toll project</li> </ul>
HB 1516	March 2008	<ul style="list-style-type: none"> <li>- Identical to SB 754</li> <li>- Prohibits CTB or a Private Entity from imposing tolls or user fees under the PPTA on all or part of I-81 without prior approval of the General Assembly</li> </ul>
SB 754	April 2008	<ul style="list-style-type: none"> <li>- Identical to HB 1516</li> <li>- Prohibits CTB or a Private Entity from imposing tolls or user fees under the PPTA on all or part of I-81 without prior approval of the General Assembly</li> </ul>
SB 506	April 2010	<ul style="list-style-type: none"> <li>- Neither the Governor, his political action committee, nor any pertinent Secretaries shall knowingly solicit or accept a contribution, gift, or other item with a value greater than \$50 from any bidder, Offerors, or Private Entity who has submitted a bid or proposal pursuant to the VPPA, the PPTA, or the PPEA during the bidding period</li> <li>- Restrictions only apply if the stated or expected value of the contract is \$5 million or more and do not apply to contracts awarded as the result of competitive sealed bidding</li> <li>- No bidder, offeror, or Private Entity who has submitted a bid or proposal under such acts shall offer or promise to make a gift to the</li> </ul>

		<p>Governor, his political action committee, or any of his pertinent Secretaries</p> <ul style="list-style-type: none"> <li>- Any violation shall be a civil penalty of \$500 or up to two times the amount of the contribution or gift</li> </ul>
HB 1658	March 2011	<ul style="list-style-type: none"> <li>- Provides that any RPE that is a state agency receiving a detailed proposal from a Private Entity for a qualifying transportation facility that is a port facility shall provide notice to the Public-Private Partnership Advisory Commission</li> </ul>
HB 1592	March 2011	<ul style="list-style-type: none"> <li>- Requires all state authorities, agencies, institutions, departments, and other units of state government to put requests for proposals and invitations to bid on the Department of General Services' website</li> <li>- Encourages, but does not require, local public bodies to do the same</li> </ul>
HB 2448	March 2011	<ul style="list-style-type: none"> <li>- Clarifies that a person must knowingly violate the prohibition against making or soliciting certain political contributions during the procurement process to the Governor, his political action committee, or the Governor's Secretaries in order to be subject to the civil penalty</li> <li>- Requires that the party receiving a prohibited contribution must return it or, if the contributor cannot be identified, donate it to charity</li> <li>- In order to trigger the prohibition against political contributions, the bid or proposal must be submitted to an executive branch agency that is directly responsible to the Governor</li> </ul>
SB 977	March 2013	<ul style="list-style-type: none"> <li>- Requires public entities to post a notice, when they receive an Unsolicited Proposal under the PPTA, and allow a 120-day submission period for competing proposals.</li> <li>- Requires the notice to include information on the proposal and the public comment opportunities.</li> <li>- Requires that after negotiations are complete and a decision to award is made, that the public entity post the major business points of the agreement and outline how the public can submit comments.</li> <li>- This bill is identical to HB 1692</li> </ul>
HB 2276	April 2013	<ul style="list-style-type: none"> <li>- Prevents the Commonwealth and the Virginia Port Authority from accepting any unsolicited proposal under the Public-Private Transportation Act regarding the ownership or operation of any seaport or port facility.</li> <li>- This bill is identical to SB 1305</li> </ul>
HB 1886	2015	<ul style="list-style-type: none"> <li>- Establishes the requirements for a finding of public interest and requires such a finding prior to an initiation of procurement.</li> <li>- Establishes the Transportation Public-Private Partnership Advisory Committee to determine by a majority vote whether a VDOT or Department of Rail and Public Transportation project meets the finding of public interest and to report such determination to the General Assembly.</li> <li>- Certification of the finding prior to the execution of a comprehensive agreement and requires the public-private partnership guidelines to incorporate the finding.</li> <li>- Requires VDOT to establish (i) a process for identifying high-risk projects and (ii) procurement processes and guidelines for such projects to ensure that the public interest is protected.</li> </ul>
HB 2244/SB 1322	2017	<ul style="list-style-type: none"> <li>- Changes to the Transportation Public-Private Partnership Advisory Committee to the Transportation Public-Private Partnership Steering Committee and provides that a Deputy Secretary of Transportation serves as chairperson.</li> </ul>

		<ul style="list-style-type: none"> <li>- Responsible public entity may grant approval for the development/operation of a transportation facility by private entity if that entity can develop/operate the transportation facility for less cost than VDOT / DRPT.</li> <li>- Requires the CEO of VDOT / DRPT to certify in writing to the Governor and the General Assembly that there has been no material change since the finding of public interest and that the public contribution requested by the private entity does not exceed the maximum public contribution.</li> <li>- Clarifies that the Finding of Public Interest by the Steering Committee shall be made after receipt of responses to the request for qualifications and prior to the issuance of the first draft request for proposals.</li> <li>- Requires VDOT / DRPT to ensure competition through the procurement process and develop a public sector analysis of the cost for the VDOT / DRPT to develop a public sector analysis of the cost to VDOT / DRPT to develop/operate the transportation facility.</li> <li>- VDOT / DRPT and the Steering Committee to review the public sector analysis prior to the initiation of any procurement.</li> </ul>
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**APPENDIX J**

**PPTA STATUTORY REQUIREMENTS & TIME CONSTRAINTS FOR VDOT**

No.	Requirement	Relevant Statute(s)	Time Constraint	Manual & Guidelines References
1	Public Sector Analysis and Competition	Va. Code §33.2-1803.1:1	Must precede the first Steering Committee meeting	See Section 2.3.1 Public Sector Analysis and Competition, Section 3.2 Public Sector Analysis and Competition (Continued); Section 4.2.4 Public Sector Analysis and Competition; Short-listing of Qualified RFQ Proposers; Section 4.5 Public Sector Analysis and Competition (Final)
2	Finding of public interest ("FOPI") by CEO & concurrence of Secretary	Va. Code §33.2-1803(B)(2)  Va. Code §33.2-1803.1	Must precede issuance of RFP  Must also precede Voting Meeting of the Steering Committee	See Section 3.4 Finding of Public Interest

3	Immaterial changes to FOPI presented to CTB	Va. Code §33.2-1803(D)	Timing not specified but likely must precede execution of Comprehensive Agreement	See Section 3.4 Finding of Public Interest
4	Written determination by CEO to use the competitive negotiation process	Va. Code §33.2-1819(2)	Timing not specified but would likely precede issuance of draft RFP	See Section 3.4 Finding of Public Interest
5	First Steering Committee meeting to concur with the Public Sector Analysis and Competition ("Concurrence Meeting")	Va. Code §33.2-1803.2(B)	Must precede the initiation of any procurement	See Section 3.5 Report to PPTA Steering Committee

6	Post SOQs (for Solicited Projects) and Conceptual Proposals (for Unsolicited Proposals) to DGS website	Va. Code §33.2-1820(A)	Timing not clear for Solicited Proposals but would likely be 10 days from evaluation of responses to RFQ  Within 10 working days after acceptance of Unsolicited Proposal.	For Solicited Projects, see Section 4.2.2 Qualification of RFQ Proposers  For Unsolicited Proposals, see Section 4.13 Procurement for Unsolicited Proposals
7	Second Steering Committee meeting to vote on whether public interest is served and whether to proceed with procurement (“Voting Meeting”)	Va. Code §33.2-1803.2(C)	After responses to RFQ are received but before draft RFP is issued	See Section 4.2.5 Presentation to the CTB and to the PPTA Steering Committee
8	Steering Committee meeting to determine “best interest of public”	Va. Code §33.2-1803(B)(1)	Must precede issuance of RFP. Considered the same as the Voting Meeting	See Section 4.2.5 Presentation to the CTB and to the PPTA Steering Committee
9	Post draft Comprehensive Agreement for public comment	Va. Code §33.2-1820(B)	30 days prior to issuance of final RFP	See Section 4.3 Request for Proposals

10	Post major business terms on DGS website, outline how public can submit comments, present major business points to CTB	Va. Code §33.2-1820(C)	Once decision to award has been made	See Section 4.11 Contract Finalization and Award
11	CEO written certification to Governor and General Assembly that FOPI still valid	Va. Code §33.2-1803(D)	Must precede execution of the Comprehensive Agreement	See Section 4.8 Certification of Finding of Public Interest
12	VDOT/DRPT approval of a qualifying transportation facility upon determination that is in "best interest of public"	Va. Code §33.2-1803(C)	Timing is not specified but would likely precede contract finalization and award	See Section 4.8 Certification of Finding of Public Interest
13	Audit of proposal's traffic and cost estimates	Va. Code §33.2-1803(F)	Timing not specified but likely must precede execution of Comprehensive Agreement	See Section 4.9 PPTA Audit Requirement
14	Third Steering Committee meeting ("Agreement Briefing Meeting")	Va. Code §1803.2(F)	Within 60 days of execution of a Comprehensive Agreement	See Section 4.12 Report to PPTA Steering Committee



## APPENDIX K

# Conflicts of Interest and Other Legal Considerations

### Conflicts of Interest and Other Considerations

The Office of the Secretary of Transportation and VDOT / DRPT CEOs realize that actual, potential or perceived conflicts of interest may be encountered during the P3 project delivery model. The Secretary of Transportation intends for each Agency to assume a proactive stance with regard to actual, potential or perceived conflicts. To assure transparency, accountability, and objectivity, any Proposal submitted to the Agency or VDOT P3 Office pursuant to the PPTA 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.

To protect the integrity, fairness and competitive spirit of the procurement process for P3 projects, each Proposer is required to agree to limit all communications within the Executive Branch regarding their Proposals, including all advocacy efforts, to the individuals or entities designated by the P3 Office Director and coordinate any such communications through the P3 Office. Contact details for VDOT P3 Office personnel are available on the VDOT P3 Office website. Proposers must direct their communications and advocacy efforts to VDOT P3 Office points of contact designated by the P3 Office Director to lead the procurement effort. Any requirements and restrictions related to communications will be specified in the procurement documents for a particular P3 project.

The VDOT P3 Office Director, in consultation with the Office of the Attorney General, the VDOT/DRPT CEO and other state, local and federal agencies, as appropriate, 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.

### Virginia Freedom of Information Act

All Proposals submitted by Private Entities to the Agency or VDOT P3 Office pursuant to the PPTA 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).

Proposers submitting Unsolicited Proposals or responding to solicitation requests issued by the VDOT P3 Office or an Agency are advised to familiarize themselves with the VFOIA provisions to ensure that they are taking the necessary steps to protect documents identified as confidential or proprietary from disclosure pursuant to the VFOIA.

The Agency, in consultation with the VDOT P3 Office Director, the Office of the Attorney General, and other state, local and federal agencies, as appropriate, will determine whether the materials requested by the Proposers are exempt from disclosure under applicable law and, if appropriate, the scope of such protection. In the event that the Agency elects to disclose the requested materials, the Agency will provide the Proposer notice of its intent to disclose.

In no event shall the Commonwealth, the Secretary of Transportation, the VDOT P3 Office Director or the VDOT/DRPT CEO be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted to the VDOT P3 Office pursuant to the PPTA and guidelines included in this 2017 Manual and Guidelines.

In order to assert that any material submitted by a Proposers should be deemed confidential and proprietary information, a Proposers will need to consider the following options prior to submitting their Proposal:

1. The Proposers will submit a written request to the Agency and the VDOT P3 Office Director identifying the data or other materials for which protection from disclosure is sought and the reasons why such protection is necessary and then to the extent that the RPE, in consultation with the VDOT P3 Office Director and the Office of the Attorney General, has made a determination on whether materials requested by the Proposers are exempt from disclosure under applicable law
2. Upon request by the Agency and/or the P3 Office Director, make oral presentation to the VDOT P3 Office and legal counsel;
3. Receive written notification from the Agency accepting or rejecting a confidentiality request; and

Failure to take such precautions prior to the submission of a Proposal or other such documentation may subject all information to disclosure under the VFOIA.

Sections 2.2-3705.6 and 33.2-1820 of the Code of Virginia outlines the application of the VFOIA to the PPTA process:

Once a Comprehensive Agreement has been executed and the process of negotiating all phases or aspects of the Comprehensive Agreement is complete, the VDOT P3 Office, in coordination with the VDOT / DRPT CEO, will make procurement records available in accordance with § 2.2-4342 of the Code of Virginia;

Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements or trade secrets that may be provided by the Proposers Entity as evidence of its qualifications; and

Certain confidential and proprietary information, and related records, may remain confidential if the financial interests of the Commonwealth, the Agency or the Proposer would be adversely affected.

Where interpretation of these statutes is required, the policy goals of transparency and accountability in this 2017 Manual and Guidelines shall prevail. Additional information regarding the VFOIA can be found in §2.2-3700 of the Code of Virginia.

### **Applicability of Laws**

The Virginia Public Procurement Act (§ 2.2-4300 et seq. of the Code of Virginia; VPPA) does not apply to the PPTA, except to the extent specified in § 33.2-1819 of the Code of Virginia. Additionally, in soliciting or reviewing project Proposals under the PPTA, the Commonwealth's transportation agencies and offices, including the VDOT P3 Office, shall comply with applicable federal, state and local laws.

Likewise, in submitting Proposals and in developing or operating P3 projects pursuant to the PPTA, Proposers shall comply with applicable federal, state and local laws. Such laws may include, but not necessarily be limited to, requirements for workers' compensation insurance coverage, compliance with prompt payment, compliance with ethics in public contracting and compliance with environmental laws,

workplace safety laws, and state or local laws governing contractor or trade licensing, codes and permit requirements.

**Pledge of Confidentiality**

Each member of the VDOT P3 Office and the VDOT / DRPT associated with developing, reviewing or selecting submitted project Proposals has access to proprietary and confidential information. Any misuse by employees or representatives of the VDOT / DRPT of such information or other materials provided by a Proposer is strictly prohibited.

The VDOT P3 Office will institute proper safeguards concerning Proposal security for each P3 project, including where materials will be stored, who can have access to them and under what circumstances. Anyone 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 require 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.