

# The Commonwealth of Virginia



## Implementation Manual and Guidelines

For the

**Public-Private Transportation Act of 1995**

**(As Amended)**

**January 2016**



**Document Version control**

<b>Version</b>	<b>Date Issued</b>
1.0	October 2005
2.0	December 2008
3.0	December 2010
4.0	May 2012
5.0	November 2014
6.0	January 2016

## PREFACE

The Commonwealth of Virginia (Commonwealth) has been an international leader in the use of public-private partnerships (P3s) for the last two decades. While Virginians are able to enjoy a higher quality of transportation services and choices as a result of P3 projects, we also know a good program can always be improved. Thus, in 2014, we focused on strengthening three basic areas: (1) transparency; (2) competitiveness; and (3) public engagement.

Virginia remains committed to the use of P3s where we can attract private equity, appropriately transfer risks, incorporate life-cycle costs and advance projects in a timelier manner. This review and revision of our Virginia PPTA Implementation Manual and Guidelines (PPTA Manual and Guidelines) and the supplementary P3 documents are a major part of that commitment.

Among the most important changes to this PPTA Manual and Guidelines are: (1) more meaningful opportunities for public engagement and awareness, and (2) a stronger role for the Responsible Public Entity (RPE) Oversight Boards at critical decision points. The changes in our decision-making structures and implementation processes will ensure that critical projects throughout the Commonwealth proceed with the engagement and confidence of the Virginians the projects serve.

Comments and input from the public, policy and private sector stakeholders over the past several years have made this PPTA Manual and Guidelines and its programmatic documents more comprehensive and pragmatic. It is our sincere desire to solicit additional comments from the public, elected officials, General Assembly members, state RPE Administrators, and the Oversight Boards that govern them. Interested and affected stakeholders will have the ability to continuously provide input and comment by making use of the Virginia Office of Public-Private Partnerships (VAP3) website – [www.P3virginia.org](http://www.P3virginia.org)

**The Honorable Terence (Terry) R. McAuliffe**

Governor of the Commonwealth of Virginia

**The Honorable Aubrey L. Layne, Jr.**

Virginia Secretary of Transportation

**J. Douglas Koelemay**

Director, Virginia Office of Public-Private Partnerships

**TABLE OF CONTENTS**

<b>EXECUTIVE SUMMARY .....</b>	<b>7</b>
<b>1 INTRODUCTION .....</b>	<b>11</b>
1.1 PURPOSE OF THE PPTA MANUAL AND GUIDELINES.....	11
1.2 ORGANIZATION OF THE PPTA MANUAL AND GUIDELINES.....	12
1.3 P3 PROGRAM OBJECTIVES.....	12
1.4 ORGANIZATIONAL STRUCTURE .....	13
1.5 P3 PROJECT DELIVERY FRAMEWORK .....	15
1.6 PUBLIC PARTICIPATION.....	15
1.7 FUNDING FOR P3 PROJECT DEVELOPMENT .....	16
<b>2 PROJECT IDENTIFICATION .....</b>	<b>17</b>
2.1 SOLICITED PROJECTS.....	17
2.2 UNSOLICITED PROPOSALS .....	18
2.3 KEY ACTION ITEMS.....	19
<b>3 PROJECT SCREENING.....</b>	<b>20</b>
3.1 HIGH-LEVEL SCREENING AND POLICY REVIEW.....	20
3.2 DETAIL-LEVEL SCREENING PROCESS .....	23
3.3 RISK MANAGEMENT.....	25
3.4 REPORT TO OVERSIGHT BOARD.....	25
3.5 PROJECT PRIORITIZATION PROCESS .....	26
3.6 KEY ACTION ITEMS.....	26
<b>4 PROJECT DEVELOPMENT.....</b>	<b>28</b>
4.1 PROJECT DEVELOPMENT PROCESS.....	28
4.2 INITIAL VALUE-FOR-MONEY ANALYSIS .....	29
4.3 RISK ASSESSMENT.....	30
4.4 INITIAL FINDING OF PUBLIC INTEREST .....	30

4.5	REPORT TO OVERSIGHT BOARD.....	31
4.6	KEY ACTION ITEMS.....	31
<b>5</b>	<b>PROJECT PROCUREMENT.....</b>	<b>33</b>
5.1	TWO-STAGE PPTA PROCUREMENT PROCESS.....	33
5.2	REQUEST FOR QUALIFICATIONS .....	34
5.3	REQUEST FOR PROPOSALS.....	35
5.4	COMPETITION: SIGNIFICANT SCOPE CHANGE POLICY .....	36
5.5	FINAL VALUE-FOR-MONEY ANALYSIS.....	36
5.6	BASIS FOR AWARD AND SELECTION OF PREFERRED PROPOSER.....	36
5.7	PPTA AUDIT REQUIREMENTS .....	36
5.8	RISK MANAGEMENT.....	37
5.9	FINAL FINDING OF PUBLIC INTEREST.....	37
5.10	REPORT TO OVERSIGHT BOARD.....	37
5.11	CONTRACT FINALIZATION AND AWARD.....	37
5.12	POST-FINANCIAL CLOSE .....	38
5.13	KEY ACTION ITEMS.....	38
	<b>APPENDICES TABLE OF CONTENTS.....</b>	<b>40</b>
	<b>APPENDIX A .....</b>	<b>41</b>
	<b>APPENDIX B .....</b>	<b>43</b>
	<b>APPENDIX D .....</b>	<b>49</b>
	<b>APPENDIX E .....</b>	<b>51</b>
	<b>APPENDIX F .....</b>	<b>54</b>
	<b>APPENDIX G .....</b>	<b>56</b>
	<b>APPENDIX H .....</b>	<b>59</b>
	<b>APPENDIX I.....</b>	<b>60</b>
	<b>APPENDIX J.....</b>	<b>65</b>
	<b>ATTACHMENT A</b>	
	<b>VIRGINIA P3 GUIDANCE – DEFINITIONS .....</b>	<b>69</b>



## EXECUTIVE SUMMARY

The 2016 Virginia PPTA Implementation Manual and Guidelines (PPTA Manual and Guidelines) intends to provide an updated project delivery framework which actively identifies, evaluates, develops and delivers Virginia's public-private partnership (P3) transportation projects in a consistent, transparent, timely and cost effective manner. This is the responsibility of the Virginia Office of P3s (VAP3 - formerly known as the Office of Transportation Public-Private Transportation (OTP3)) and is accomplished using the 1995 (as amended) Public-Private Transportation Act (PPTA).

The Virginia P3 program's objectives and overall goals are:

- Create investment opportunities, which increase the quality of transportation services in Virginia
- Administer a fair and competitive project development and procurement process that encourages innovation, private sector investment and creates long-term value for the Commonwealth
- Achieve cost efficiencies throughout the life of a project using appropriate transfer of risk
- Establish reliable and uniform processes and procedures to encourage private sector investment
- Facilitate timely delivery of P3 projects within established laws and regulations
- Promote transparency and accountability coupled with informed and timely decision making
- Foster efficient management of Commonwealth financial and organizational resources

The Virginia P3 project delivery framework (Framework), shown in **Figure 1**, streamlines and standardizes the process to enhance delivery of transportation projects in the Commonwealth. It is designed to demonstrate the processes, multiple decision points, points of transparency and public engagement, and competitive nature of the procurement. Ultimately, these objectives result in the Commonwealth receiving the Best Value.

The revised PPTA Manual and Guidelines is organized into chapters that provide details on the P3 processes within the Framework and address roles and responsibilities for both Solicited Projects (i.e., projects initiated by the Commonwealth) and Unsolicited Proposals (i.e. proposals submitted by the private sector for consideration).

**Chapter 1** is an **introduction** to the PPTA Manual and Guidelines, The chapter explains the organizational structure of the PPTA Manual and Guidelines and the P3 program objectives. This chapter discusses the organizational and reporting structure of the VAP3, and describes the roles of the VAP3 Director, the Transportation Public-Private Partnership Advisory Committee (Committee), the Administrator of the Responsible Public Entity (RPE), and the various transportation agencies Oversight Boards. Public engagement opportunities and funding mechanisms for P3 project development are also discussed.

**Chapter 2** describes project **identification** phase for potential P3 projects. It outlines project identification process steps for both Solicited Projects and Unsolicited Proposals. This chapter also highlights the standard transportation planning documents, plans and processes where potential P3 projects originate (E.g. Metropolitan Planning Organization Long-Range Transportation Plan, etc.). During these processes, stakeholders including the public and elected officials' comments and feedback are sought out by the RPE Administrator and the VAP3.

**Chapter 3** contains information on the **project screening** phase for potential P3 projects. Initial project screenings include: the High-Level Screening Report performed for potential Solicited Projects and the Policy Review for Unsolicited Proposals. The purpose of these screenings is to evaluate at a high level, how the project would fare as a P3. The final screening is the Detail-Level Screening Report performed for both Solicited Projects and Unsolicited Proposals advancing

successfully through the High-Level Screening and Policy Review respectively. Both High-Level Screenings and Policy Reviews require approval from the RPE Administrator for advancement to the Detail-Level Screening (see **Figure 1**). The Detail-Level Screening considers the feasibility and desirability of the potential P3 project and forms the basis on which the RPE Administrator and the VAP3 briefs the Oversight Board to recommend whether a project would bring value by procuring under the PPTA. During the briefing, the VAP3 Director and the RPE Administrator will also seek the approval of the Oversight Board to proceed to the project development phase.

The Chairmen of the House and Senate Committees on Transportation, the House Committee on Appropriations and Senate Committee on Finance, will also be notified on the results of the [Detail-Level Screening Report](#) and the approval of the Oversight Board to proceed to the project development phase.

The Agencies, Affected Localities, and appropriate General Assembly members are notified of the Oversight Board's decision. The Detail-Level Screening Report and the Oversight Board decision are posted on the VAP3 website for public awareness and comment.

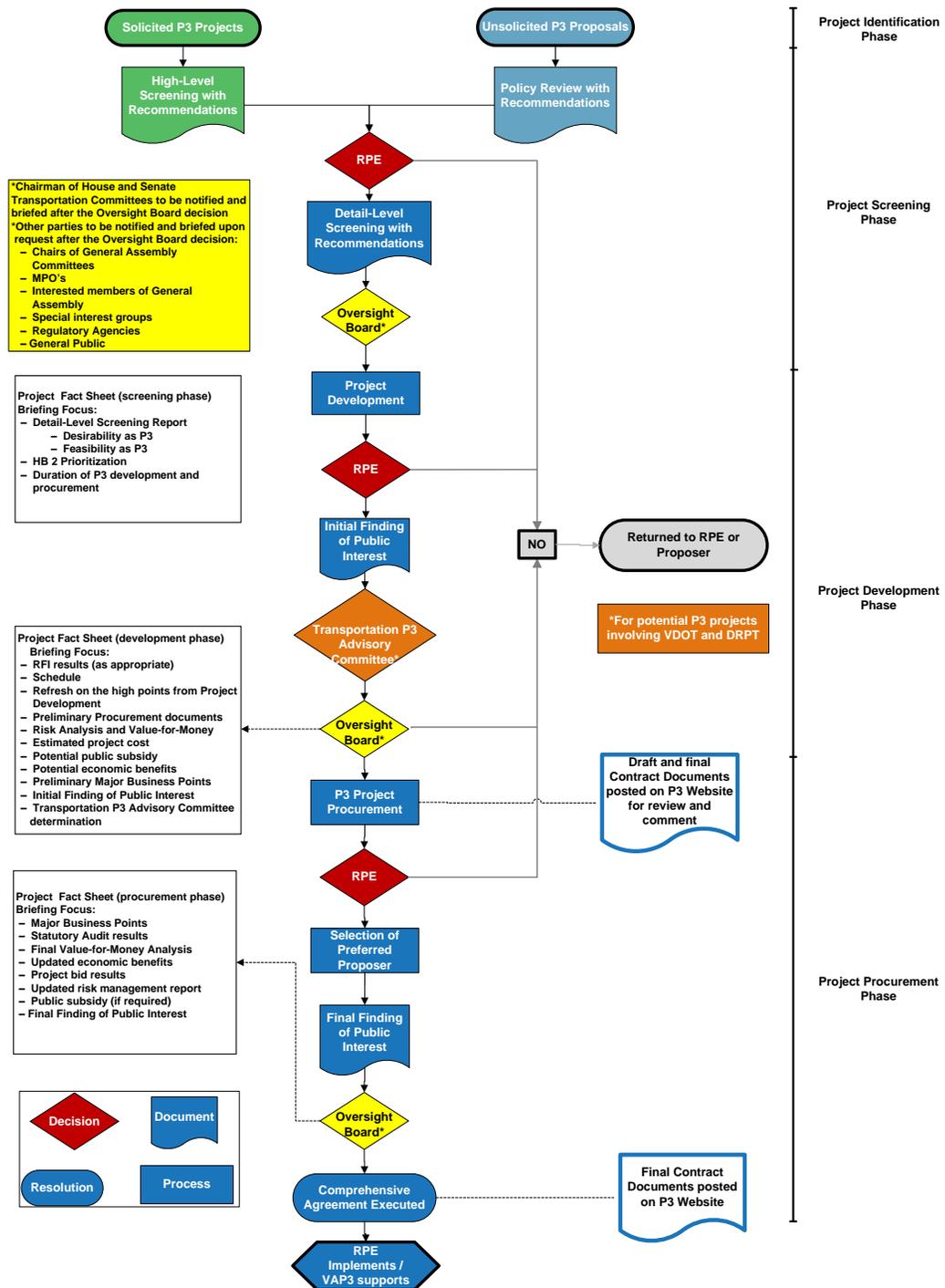
**Chapter 4** describes the P3 project **development** phase, which establishes the scope and feasibility of a project and prepares the project for procurement. Activities during the project development phase could include, where appropriate: releasing a Request for Information (RFI); developing an initial schedule for project delivery; drafting preliminary procurement documents; developing a risk register; conducting an Initial Value for Money (VfM) Analysis for the project; developing initial estimates of project costs and of public subsidy (if required); establishing the potential economic benefits of the project; and establishing preliminary business terms. At numerous designated points throughout the P3 project development phase, stakeholders (e.g., general public, elected officials, etc.) have the opportunity to provide comments and receive information about the various analyses underway as updates are posted to the VAP3 and/or project website. During the project development phase, the VAP3, in coordination with the RPE, will prepare an Initial Finding of Public Interest (Initial FOPI) to be signed by the RPE Administrator and the Secretary of Transportation. The Initial FOPI will affirm that the P3 delivery method is being conducted in a manner that brings value and is in the best interest of the Commonwealth.

For potential P3 projects involving VDOT or the Department of Rail and Public Transportation (DRPT), the Initial FOPI informs the determination of the Committee that procurement of the project under the PPTA serves the public interest. The Committee is composed of: two members of the Commonwealth Transportation Board (CTB); the staff director of the House Committee on Appropriations, or his designee; the staff director of the Senate Committee on Finance, or his designee; a Deputy Secretary of Transportation; the chief financial officer of either VDOT or the DRPT as appropriate; and a non-agency public financial expert, as selected by the Secretary of Transportation. The VAP3 Director and the RPE Administrator will include the Committee's report in their recommendation to the CTB to procure the project under the PPTA.

At the conclusion of the P3 project development phase, the appropriate Oversight Board reviews the information (including the Initial FOPI) prepared by the VAP3 Director and the RPE Administrator based on the project development activities to determine whether the project should continue to the procurement phase. The result of the Oversight Board's review is posted on the VAP3 website for public awareness and feedback. The Chairman of the House and Senate Transportation Committees, the House Committee on Appropriations and Senate Committee on Finance, are also briefed regarding the results of the project development activities and information by the VAP3 Director and the RPE Administrator. Other members of the General Assembly, Affected Localities and stakeholders are briefed upon request regarding the details of the project development activities by the VAP3 Director and the RPE Administrator.

**Chapter 5** describes the P3 project **procurement** phase, which includes issuing a Request for Qualifications (RFQ), short-listing qualified respondents and issuing a Request for Proposals (RFP). The project procurement process results in the selection of a Preferred Proposer. The basis for award and selection of a Preferred Proposer is described in detail in this chapter. During the project procurement phase, VAP3, in coordination with the RPE, prepare a Final FOPI, signed by the RPE Administrator and the Secretary of Transportation. The Final FOPI reaffirms that the P3 delivery method is consistent with the intent of the Initial FOPI and continues to bring value and is in the best interest of the Commonwealth. Once a Preferred Proposer has been identified and selected, the VAP3 Director and the RPE Administrator brief the appropriate Oversight Board. The briefing focuses on: the final major business points for the project; the Final FOPI; the results of the statutory audit; the Final VfM Analysis; the updated economic benefits; the results of the competitive bid; an update of the public subsidy (if required) for the project; and an updated report on the management of risk related to the project. During the briefing, the RPE Administrator will seek the Oversight Board's endorsement of the Final FOPI indicating support of the RPE Administrator's execution of a Comprehensive Agreement. The briefing report and Oversight Board's endorsement of the Final FOPI are posted on the VAP3 website. The Chairman of the House and Senate Transportation Committees, the House Committee on Appropriations and Senate Committee on Finance are briefed regarding results of the procurement efforts as described above. Other members of the General Assembly, Affected Localities and stakeholders will be briefed upon request regarding the details of the project procurement phase.

Figure 1: P3 Project Delivery Framework



# 1 INTRODUCTION

The PPTA, is the legislative framework enabling the Commonwealth of Virginia (Commonwealth), local governments, and certain other public entities as defined in the PPTA, to enter P3 agreements authorizing Private Entities to develop and/or operate Qualifying Transportation Facilities (P3 projects).

This updated PPTA Manual and Guidelines replaces earlier versions and shall constitute the guidelines required by the PPTA as set forth in § [33.2-1803](#) (formerly§ 56-560) of the Code of Virginia. For previous versions of the documents, refer to the website – [www.P3virginia.org](http://www.P3virginia.org). The PPTA Manual and Guidelines is updated periodically at the discretion of the VAP3 Director, to reflect changes in legislation, policies, procedures and industry practice..

This chapter describes the purpose and organization of the PPTA Manual and Guidelines, summarizes the Commonwealth’s objectives for the P3 program and presents the P3 Project delivery framework (Framework) of the program. The chapter also describes the VAP3’s organizational structure and reporting, public participation opportunities within the Framework and addresses the funding mechanism for the VAP3.

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

## 1.1 PURPOSE OF THE PPTA MANUAL AND GUIDELINES

The PPTA Manual and Guidelines provide direction regarding P3 project development and implementation for both Solicited Projects and Unsolicited Proposals across all modes of transportation, including multimodal and intermodal projects. The PPTA Manual and Guidelines outline P3 processes that are consistent, transparent, and stable, while encouraging private sector innovation and investment to address the transportation needs of the Commonwealth.

The PPTA requires that RPEs develop and/or adopt guidelines that establish the process for the acceptance and review of both Solicited Projects and Unsolicited Proposals from a Private Entity. The PPTA requires these guidelines to establish a specific schedule for review of a project or proposal by the RPE. It also requires a process for alteration of that schedule by the RPE if it deems that changes are necessary because of the scope or complexity of projects or proposals it receives and the type and amount of information that is necessary for adequate review of projects or proposals in each stage of review.

The processes outlined in this PPTA Manual and Guidelines may be used by other RPE’s, including local governments and transportation authorities, if adopted in accordance with the PPTA and regulations of the authority having jurisdiction over the project. This PPTA Manual and Guidelines can be used by Private Entities interested in submitting Proposals for P3 projects.

Each P3 project is unique and certain elements set forth in this PPTA Manual and Guidelines may not apply in all circumstances or may be subject to change in certain circumstances. Therefore, the VAP3 Director, in coordination with the RPE Administrator, 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 PPTA Manual and Guidelines by the VAP3 or the RPE Administrator 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 PPTA Manual and Guidelines by means of a statement issued with the Request for Qualifications (RFQ) document, outlining and explaining the modification/s.

The PPTA Manual and Guidelines does not modify or override requirements of the PPTA, and the PPTA shall govern in the event of any conflicts between the PPTA and this PPTA Manual and Guidelines. The processes and requirements included in this PPTA Manual and Guidelines will not apply retroactively to P3 projects for which either an Interim Agreement or Comprehensive Agreement has been entered into by the RPE as of the date of issuance, or update as applicable, of this PPTA Manual and Guidelines.

P3 projects tend to have a different risk exposure than traditionally delivered projects due to the relative complexity of procuring a single contract for the delivery of multiple and relatively diverse services. The VAP3 has developed the P3 Risk Management Guidelines which serve as an effective guide for the management of various risks throughout the entire lifecycle of a P3 project. The P3 Risk Management Guidelines will be used in conjunction with the PPTA Manual and Guidelines. RPEs adopting the PPTA Manual and Guidelines will also be deemed to have adopted the P3 Risk Management Guidelines.

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

This PPTA Manual and Guidelines is organized into chapters that specifically address the roles and responsibilities associated with the Framework. These chapters include: 2. [Project Identification](#); 3. [Project Screening](#); 4. [Project Development](#); and 5. [Project Procurement](#). Supporting technical documentation is provided in [Appendices](#) A through K.

Defined terms capitalized in this document are available in Attachment A - [Virginia P3 Guidance - Definitions](#).

Green boxes located throughout the body of the document provide high-level guidance regarding the intent of the process. The Appendices contain detailed guidance on the more complex parts of the process. Diagrams illustrating the steps in the process are provided and key decision points are highlighted. At the end of each of these chapters are a summary of key action items and the list of entities responsible for each item.

## **1.3 P3 PROGRAM OBJECTIVES**

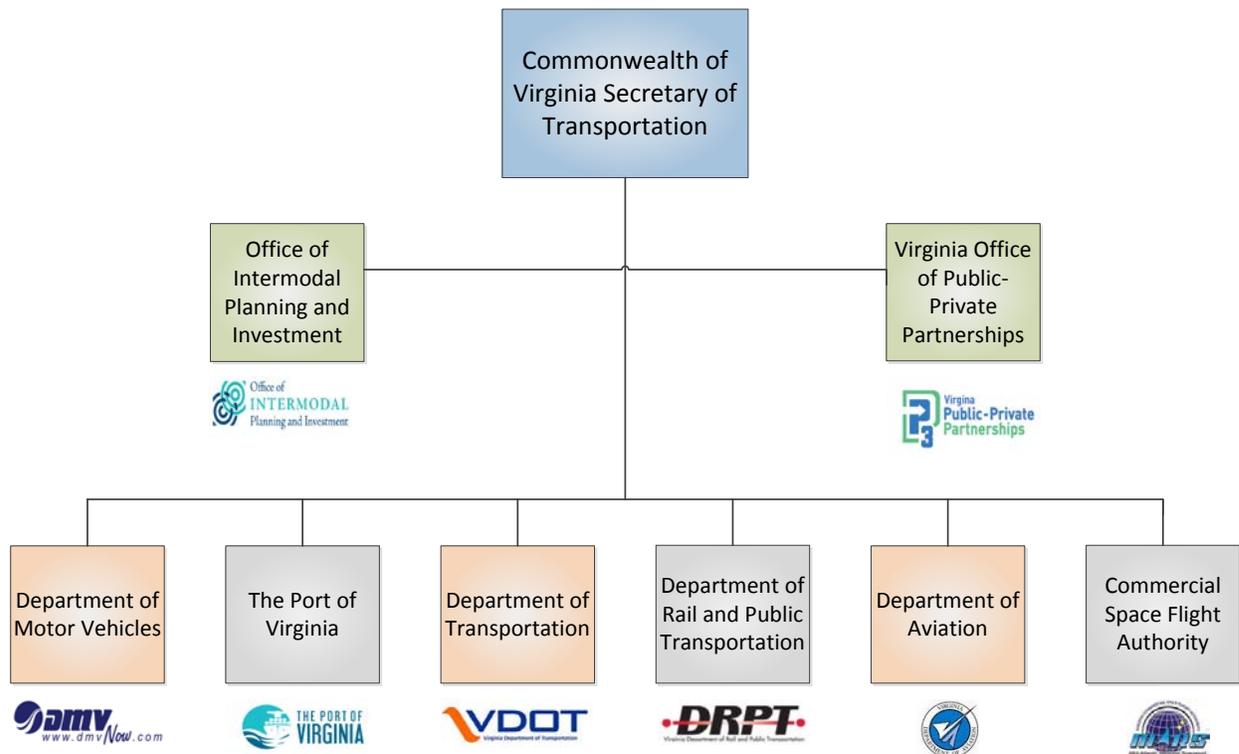
The Commonwealth's transportation goals are: improving safety and security; reducing congestion; system maintenance and preservation; mobility, connectivity, and accessibility; environmental stewardship; economic vitality; and coordination of transportation, land use and program delivery. To ensure that 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 Virginia
- Administer a fair and competitive project development and procurement process that encourages innovation, private sector investment and creates long-term value for the Commonwealth
- Achieve lifecycle cost efficiencies through appropriate risk transfer
- Establish reliable and uniform processes and procedures to encourage private sector investment
- Facilitate timely delivery of P3 projects, within established laws and regulations
- Promote transparency and accountability, coupled with informed and timely decision making
- Foster efficient management of Commonwealth financial and organizational resources

## 1.4 ORGANIZATIONAL STRUCTURE

The VAP3 reports to and works directly with the Secretary of Transportation. The organizational structure provides the flexibility to leverage resources and expertise across all modes of transportation, identifying multimodal and intermodal solutions.

**Figure 2: Organizational Structure**



Many of the Commonwealth's transportation agencies qualify as RPEs<sup>1</sup> as defined by the PPTA (§33.2 – 1800), examples include; Virginia Department of Transportation (VDOT) and Virginia Department of Rail and Public Transportation (VDRPT). For transportation agencies qualifying as RPEs the VAP3 will work directly with the respective Agency Administrator for each P3 project that corresponds with a particular transportation mode. For example, for a rail-related P3 project, the VAP3 Director will work with the Director of the VDRPT.

Some of the Commonwealth's transportation agencies, while not qualifying as RPEs play an important role in facilitating the development of P3 projects. The Department of Aviation (DOAV) is an example of a transportation agency which could facilitate a P3 project while not qualifying as a RPE as defined by the PPTA. For transportation agencies not qualifying as RPEs the VAP3 will work collaboratively with the Agency Administrator and the RPE Administrator. For example, for an aviation-related P3 project, the

<sup>1</sup> A RPE is a public entity that has the authority to develop and/or operate a qualifying transportation facility (§ 33.2-1800).

VAP3 Director will work collaboratively with the Director of Aviation as the Agency Administrator and Virginia airport sponsors which qualify as RPEs as defined in the PPTA.

#### **1.4.1 VAP3 Director**

The VAP3 Director is responsible for overseeing all aspects of the P3 program. This includes outreach and stakeholder coordination and reporting all program and project activities to the Secretary of Transportation and RPE Administrators.

The VAP3 Director is also responsible for working collaboratively with other public agencies and the industry regarding the Commonwealth P3 program and P3 projects, complying with applicable statutes, regulations, and policies; and ensuring that external stakeholders, such as impacted public entities, local stakeholders, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), the Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), the Federal Maritime Commission (FMC) and the Office of the Attorney General (OAG) are represented, as appropriate, during the various stages of P3 project identification, screening, development, procurement and implementation processes.

#### **1.4.2 RPE Administrators**

The RPE Administrator has the responsibility and legal authority to make decisions on commercial and contractual terms related to the P3 projects.

#### **1.4.3 Transportation Public-Private Partnership Advisory Committee (Committee)**

The Committee is established for P3 projects where VDOT and/or the DRPT are RPE. The RPE Administrator and the VAP3 Director will brief the Committee on the Initial FOPI, enabling the Committee to make a determination about whether procuring a project under the PPTA serves the public interest.

The Committee will consist of two members of the CTB; the staff director of the House Committee on Appropriations, or his designee; the staff director of the Senate Committee on Finance, or his designee; a Deputy Secretary of Transportation; the chief financial officer of either VDOT or the DRPT as appropriate; and a non-agency public financial expert, as selected by the Secretary of Transportation.

Committee meetings will be scheduled on an as-needed basis and will be open to the public. A notice of upcoming Committee meetings will be posted on the VAP3 website – [www.P3virginia.org](http://www.P3virginia.org) at least 30-days prior to the meeting.

Within 10 business days of meeting, the Committee will report to the Chairmen of the House and Senate Committees on Transportation, the House Committee on Appropriations, and the Senate Committee on Finance; on whether or not the projects evaluated by the Committee have been found to serve the public interest. The reports and meeting minutes of the Committee will be posted to the VAP3 website.

#### **1.4.4 Oversight Boards**

Multimodal P3 projects may rely on direction from various Oversight Boards. For example, the CTB serves as the Oversight Board for VDOT and the DRPT, the Virginia Aviation Board (VAB) serves as the Oversight Board for the Department of Aviation, the Virginia Port Authority Board of Commissioners (VPAB) serves as the Oversight Board for the Virginia Port Authority and the Commercial Space Flight Authority Board of Directors serves as the Oversight Board for the Virginia Commercial Space Flight Authority.

The VAP3 Director will work collaboratively with the RPE Administrator to keep the respective Oversight Board/s informed regarding the status of a P3 project at major milestones as shown in **Figure 1**.

### **1.5 P3 PROJECT DELIVERY FRAMEWORK**

The Framework (see **Figure 1**) is intended to streamline and standardize the P3 process in order to enhance the delivery of transportation infrastructure projects within the Commonwealth. It was developed to capture the processes and decision points inherent in a P3 project development lifecycle for both Solicited Projects and Unsolicited Proposals, namely **project identification, project screening, project development, project procurement, and contract award**.

**Guidance: A detailed map of each action and decision point within the Framework can be found in [Appendix B](#) of this PPTA Manual and Guidelines.**

### **1.6 PUBLIC PARTICIPATION**

Numerous opportunities exist for public engagement at different times during planning, identification, development, procurement and implementation of transportation projects. Each RPE will have specific public involvement guidance related to its sector of transportation which may become P3s. Below is a general description of opportunities for engagement in roadway and rail/transit projects.

The general public, elected officials, localities, regional transportation authorities and regional planning organizations (i.e., Planning District Commissions (PDCs) and Metropolitan Planning Organizations (MPOs)), have numerous opportunities during the traditional planning process to influence the identification of transportation needs and recommendations for improvements. The development of long-range transportation system plans provides initial opportunities for public and interagency input, including review and comment on draft transportation plans. Typical plans include, but are not limited to local government comprehensive plans, PDC rural long-range plans, MPO Constrained Long-Range Plans, VTrans and the Virginia Surface Transportation Plan. Proposed P3 projects should demonstrate consistency with the goals outlined in such plans.

For Unsolicited Proposals in accordance with § 33.2-1820 of the Code of Virginia, the relevant RPE is required to post a notice when they accept an Unsolicited Proposal under the PPTA and allow a 120-day submission period for competing Proposals. The notice will include information on the Proposal and the public comment opportunities. The public will have the opportunity to provide comments on a continuous basis by making use of the VAP3 website. In addition, the relevant RPE and VAP3 will post the major business points of the agreement and outline how the public can submit comments.

For all projects requiring federal action, the relevant RPE initiates and completes an environmental document in accordance with the National Environmental Policy Act (NEPA), prior to inviting proposals for projects. At this point, the purpose and need for the project have 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, and, 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.

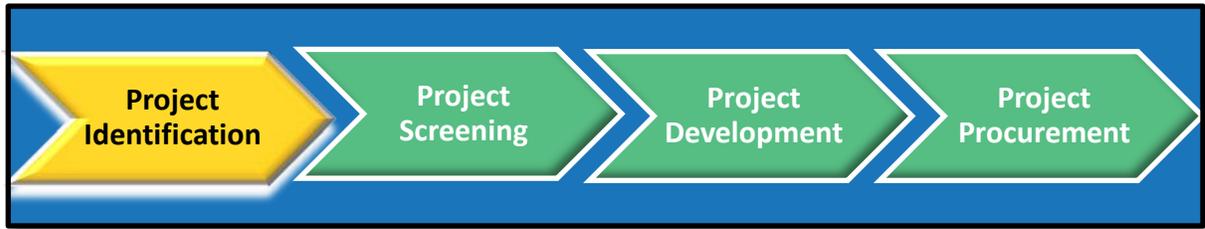
On a bi-annual basis, the VAP3 also updates the P3 project pipeline document to identify potential candidate projects. During the development and review of the draft P3 project pipeline document there are several opportunities for public involvement and feedback.

The first opportunity occurs when the draft Virginia P3 project pipeline is released and comments and feedback are welcomed within a 30-day period. Within two weeks of releasing the draft pipeline, the VAP3 will host a webinar open to the public and industry to discuss the draft pipeline in detail. The webinar provides a forum for questions and answers. The pipeline is finalized, taking into consideration the feedback received from stakeholders, at the end of the 30-day comment period and posted to the VAP3 website.

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

The VAP3 will fund the work to advance candidate Solicited Projects and Unsolicited Proposals to the end of the project screening phase. If the RPE Administrator elects to advance the project as a P3 after the Detail-Level Screening, the relevant RPE will then be responsible for identifying and securing the funding necessary to support the project development (i.e., preliminary engineering and studies) and procurement phase activities, as well as any public funding contribution required. The VAP3 Director will coordinate with the RPE Administrator to ensure that the RPE identifies and plans for funding needs in a timely manner to allow P3 Projects to move efficiently through the Framework.

## 2 PROJECT IDENTIFICATION



Project identification is the first phase of the Framework. As mentioned in [Chapter 1](#) Organizational Structure and Reporting, the VAP3 and the relevant RPE's planning divisions are responsible for managing the project identification process.

P3 candidate transportation projects are identified from two primary sources.

- **Solicited Projects**

The planning staffs across all transportation RPEs, offices and MPOs are encouraged to identify projects for PPTA consideration. Planning staffs should review the High-Level Screening criteria discussed in [Chapter 3](#) Project Screening as they consider suitable P3 candidate projects. On a bi-annual basis, the VAP3 also updates the P3 project pipeline document to identify potential candidate projects.

- **Unsolicited Proposals**

Unsolicited Proposals are submitted by Private Entities.

The specific steps to be followed for each of the two sources are outlined in more detail below.

### 2.1 SOLICITED PROJECTS

Comprehensive transportation planning is carried out at the state, regional, local and municipal levels throughout the year by the Commonwealth's transportation RPEs and offices that have the legal authority to develop and/or operate P3 projects. Examples of sources for candidate P3 projects include, but are not limited to, the various planning documents and entities listed below in **Table 1**.

**Table 1: Potential Sources of Solicited Candidate Projects**

Potential Sources of Solicited Candidate P3 projects
<b>PPTA Priority of the Commonwealth</b> – priority transportation projects critical to safeguarding the Commonwealth's long-term economic competitiveness, environment, safety and security, and improving mobility and overall quality of life for Virginians.
<b>Six-Year Improvement Program (SYIP)</b> – a program managed by the CTB for allocating funding for rail, public transportation, commuter assistance, bicycle, pedestrian, interstate and primary highway transportation projects in future years.

### Potential Sources of Solicited Candidate P3 projects

Legislative Mandate – any legislation passed by the General Assembly requiring the VAP3 to consider improvements to a transportation facility under the P3 program.

[Virginia Multimodal Long-Range Transportation Plan](#) – provides an overall framework and facilitates development of policy for identifying and integrating transportation needs, allowing the Commonwealth’s investments to be prioritized based on defined Commonwealth transportation goals.

**Virginia Surface Transportation Plan** – provides information for potential long-term transportation project development and investment based on the goals identified in Virginia’s statewide multimodal transportation policy plan.

[Port of Virginia Master Plan](#) – focuses on the capital projects and investments needed to develop and maintain terminal capacity in order to continue to generate and increase economic benefits for Virginia.

**Six-Year Airport Capital Improvement Plan** – identifies and prioritizes planning and engineering projects that focus on airport facility development over a six-year period and provides cost estimates, anticipated sources of funding and justifications for project implementation.

**Statewide Transportation Improvement Program (STIP)** – a short-range fiscal planning document that represents the first three years of the twenty-year Long Range Transportation Plan. The STIP includes safety projects, transportation enhancement, aviation projects, rail projects, bicycle and pedestrian projects and public transit projects.

**Metropolitan Planning Organization Constrained Long-Range Transportation Plan** – identifies a constrained capital investment strategy to meet existing and future regional transportation needs over the next twenty years in an efficient and effective manner.

The RPEs that are interested in submitting candidate Solicited Projects for P3 consideration should select projects that meet P3 suitability criteria as outlined in [Chapter 3](#) Project Screening. The VAP3 will maintain a portfolio of current candidate P3 projects and perform High-Level Screenings, as described in [Chapter 3](#) Project Screening, to determine their feasibility.

## 2.2 UNSOLICITED PROPOSALS

The PPTA permits RPEs to receive and evaluate Unsolicited Proposals from Private Entities to develop and/or operate P3 projects under their jurisdiction.

Private Entities may submit Unsolicited Proposals for all transportation modes to the RPE at any time, pursuant to the PPTA, the Code of Virginia (Title 62.1) and this PPTA Manual and Guidelines. All Unsolicited Proposals shall be submitted to the RPE for forwarding to the VAP3. A copy of the Unsolicited Proposal may also be mailed to the VAP3 for the attention of the VAP3 Director at the following address.

### Virginia Office of Public-Private Partnerships

**600 E. Main Street, Suite 2120**

**Richmond, VA 23219**

In accordance with § 62.1-132.19(D) which states that “neither the Commonwealth nor the Authority (Virginia Port Authority) shall accept any unsolicited proposal under the PPTA (§ 33.2-1800 et seq.)

regarding the ownership or operation of any seaport or port facility,” Unsolicited Proposals regarding the ownership and/or operation of any seaport or port facility can no longer be accepted by the VPA or VAP3.

**Guidance: Requirements for Unsolicited Proposal preparation can be found in [Appendix D](#) of this PPTA Manual and Guidelines.**

### 2.2.1 Proposal Review Fee

Private Entities interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee of \$50,000 at the time of submitting the Unsolicited Proposal to the RPE. The form and manner of the Proposal Review Fee payment submission shall be determined and specified by the RPE. Proposers submitting multiple Proposals for unrelated P3 projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.

## 2.3 KEY ACTION ITEMS

**Table 2: Key Action Items for Project identification during the Project Identification Phase**

Project Identification Activity	Responsibility	Targeted Timeframe
Solicited Projects - Identify projects for P3 consideration	RPE Planning Staff and MPOs, VAP3	As appropriate
Unsolicited Proposals – submission by Private Entities	Private Entity	As appropriate
Update P3 project pipeline	VAP3	Bi-annually

### 3 PROJECT SCREENING



The project screening phase within the Framework is designed to assist the VAP3 and the RPE in determining the suitability of delivering projects under the PPTA. The P3 project screening methodology is also a means of systematically and consistently applying evaluation criteria to Solicited Projects and Unsolicited Proposals submitted as candidates for P3 consideration.

Project screening is organized into two phases.

1. Solicited Projects will go through a [High-Level Screening](#) and Unsolicited Proposals will go through a [Policy Review](#).
2. Those Solicited Projects and Unsolicited Proposals that are recommended to advance for further consideration will go through a Detail-Level Screening.

#### 3.1 HIGH-LEVEL SCREENING AND POLICY REVIEW

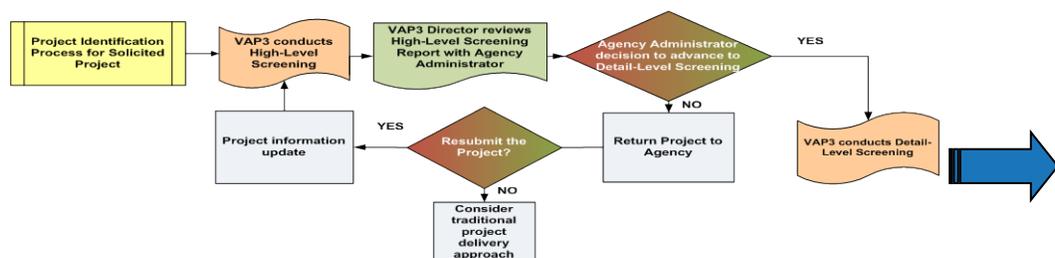
The [High-Level Screening](#) and [Policy Review](#) represent the first stage of the two-step screening process for Solicited Projects and Unsolicited Proposals, respectively. The steps outlined below are designed to help the VAP3 and the RPE evaluate candidate P3 projects.

##### 3.1.1 Solicited Projects - High Level Screening

The VAP3 will take the lead in conducting the [High-Level Screening](#) of Solicited Projects identified as candidates for P3 delivery.

**Figure 3** depicts steps taken during the [High-Level Screening](#).

**Figure 3: High-Level Screening Process**



**Table 3** below provides guidance for the high-level project screening criteria intended to assess whether a project is a potential candidate P3 project.

**Table 3: High-Level Screening Criteria for Solicited Projects**

<b>High-Level Project Screening Criteria</b>	
<b>Project Complexity</b>	Is the project sufficiently complex in terms of technical and/or financial requirements to effectively leverage private sector innovation and expertise?
<b>Accelerating Project Development</b>	If the required public funding is not currently available for the project, could using a P3 delivery method accelerate project delivery?
<b>Transportation Priorities</b>	Is the project consistent with the overall transportation objectives and missions of the Commonwealth and the RPE? Is the project consistent with priorities identified by the appropriate transportation plans and programs, such as SYIP, STIP, and MPO plans and programs? Does the project adequately address transportation needs?
<b>Project Efficiencies</b>	Would the P3 delivery method help foster efficiencies through the most appropriate transfer of risk over the project lifecycle? Is there an opportunity to bundle projects?
<b>Ability to Transfer Risk</b>	Would the P3 delivery method help transfer project risks and potential future responsibilities to the private sector on a long-term basis?
<b>Funding Requirement</b>	Does the project have the revenue generation potential to partially offset the public funding requirement, if necessary? Could a public agency pay for the project over time, such as through an availability payment, as opposed to paying for the entire cost upfront?
<b>Ability to Raise Capital</b>	Would delivering the project under the PPTA help free up capital from other sources for other transportation priorities within the Commonwealth? Is the project consistent with federal requirements and potential agreements for federal funding and/or approval for P3 projects?

The VAP3 will rely on these High-Level Screening criteria to initially assess the suitability of candidate projects for P3 delivery and to determine which projects should advance to a Detail-Level Screening. The VAP3, in consultation with the RPE Administrator, may amend these High-Level Screening criteria to address unique aspects of each candidate project, such as but not limited to mode of transportation, Greenfield vs. Brownfield project characteristics, and revenue vs. non-revenue risk profile, or a change in the Commonwealth's transportation goals or policies.

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

If the candidate project is not recommended by the VAP3 for advancement to the Detail-Level Screening, the RPE may resubmit a similar project at a later date, so long as the project characteristics have changed or more information is available to demonstrate that the project more closely satisfies the High-Level Screening criteria.

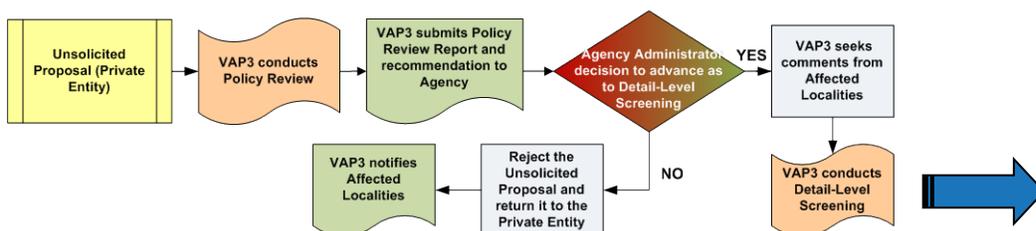
### 3.1.2 Unsolicited Proposals: Policy Review

Private Entities may submit Unsolicited Proposals to the RPE at any time pursuant to the PPTA (§ [33.2-1803](#)) and this PPTA Manual and Guidelines. Private Entities should note the requirements with respect to submission of Unsolicited Proposals are described in [Appendix D](#).

Within 90 calendar days of receiving an Unsolicited Proposal from a Private Entity via an RPE, the VAP3 will perform a [Policy Review](#) and brief evaluation of the concept and benefits to ensure the Proposal is in accordance with the Code of Virginia and this PPTA Manual and Guidelines and is consistent with the Commonwealth’s transportation policy goals. The findings of the evaluation and the VAP3’s recommendation’s will be documented in a Policy Review Report which will be submitted to the RPE Administrator.

**Figure 4** below represents the steps to be taken during the Policy Review process.

**Figure 4: Policy Review Process**



**Table 4** provides guidance for the [Policy Review](#) criteria intended to assess whether a project is a potential candidate P3 project.

**Table 4: Policy Review Criteria for Unsolicited Projects**

Policy Review Criteria
<ul style="list-style-type: none"> <li>▪ The Proposal conforms to the Commonwealth’s transportation goals and the policy objectives of the administration</li> </ul>
<ul style="list-style-type: none"> <li>▪ The Proposal satisfies a public need for timely development and/or operation of a Qualifying Transportation Facility</li> </ul>
<ul style="list-style-type: none"> <li>▪ The Proposal addresses a demonstrated need as identified in a state, regional, and/or local transportation plans</li> </ul>
<ul style="list-style-type: none"> <li>▪ The Proposal interfaces with existing and planned transportation systems</li> </ul>
<ul style="list-style-type: none"> <li>▪ The Proposal is at a sufficient level of development that a procurement process can be run that</li> </ul>

Policy Review Criteria
includes an element of price competition
<ul style="list-style-type: none"> <li>▪ The Proposal would 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</li> </ul>
<ul style="list-style-type: none"> <li>▪ The Proposal is 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>▪ The Proposal is not currently on the list of proposed Solicited Projects.</li> </ul>

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

If the VAP3 determines that the Unsolicited Proposal does not meet the requirements of the PPTA and Policy Review criteria, or if the Unsolicited Proposal pertains to a project for which the VAP3 or the RPE plans to issue a RFQ, the VAP3 in coordination with the RPE will return the Unsolicited Proposal to the Private Entity that submitted it.

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

### 3.2 DETAIL-LEVEL SCREENING PROCESS

The [Detail-Level Screening](#) criteria shall form the basis upon which the VAP3 determines the desirability and feasibility of delivering transportation projects utilizing the P3 delivery method.

The VAP3 intends to evaluate Solicited Projects and Unsolicited Proposals against the same criteria wherever possible. Due to differences in project characteristics across transportation modes however, screening criteria may be added or removed depending on the project.

**Guidance: The specific detail-level project screening criteria can be found in [Appendix E](#) of this PPTA Manual and Guidelines.**

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

The VAP3 will conduct a [Detail-Level Screening](#) for Solicited projects which have successfully passed through the High-Level Screening and Unsolicited Proposals which have successfully passed through the [Policy Review](#). As part of the [Detail-Level Screening](#), the VAP3 will assess each Solicited Project and Unsolicited Proposal for its feasibility as a P3 project, current status and potential risk elements. The VAP3 will capture the output of the Detail-Level Screening and summarize the results in a [Detail-Level](#)

[Screening Report](#) for each project or Proposal evaluated. The final report and recommendation will be presented by the VAP3 Director to the RPE Administrator.

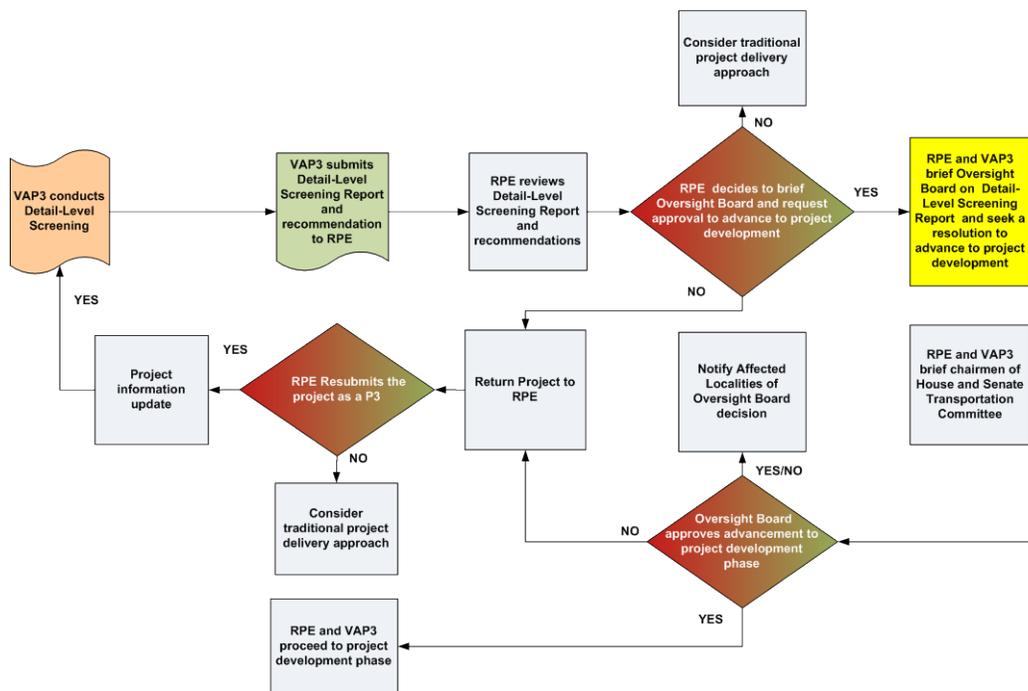
The RPE Administrator may decide to advance the Solicited Project or Unsolicited Proposal based on the findings presented in the Detail-Level Screening Report. In that case the VAP3 Director and the RPE Administrator will, within 15 calendar days of the RPE Administrator’s decision, submit the findings and recommendations of the Detail-Level Screening Report to the Oversight Board.

The Detail-Level Screening forms the basis on which the RPE Administrator and the VAP3 briefs the Oversight Board to recommend whether a project would bring value by procuring under the PPTA. During the briefing, the VAP3 Director and the RPE Administrator will also seek the approval of the Oversight Board to proceed to the project development phase.

Oversight Board will determine whether to develop a project or advance a Proposal under the PPTA. Within 5 calendar days of the Oversight Board’s approval to advance to the project development phase, the Affected Locality will be notified by the VAP3 in writing. If the Oversight Board does not approve the Solicited Project or Unsolicited Proposal for advancement to the project development phase, it is returned to the RPE, which may resubmit it for consideration at a later date or implement it through another planning and procurement process.

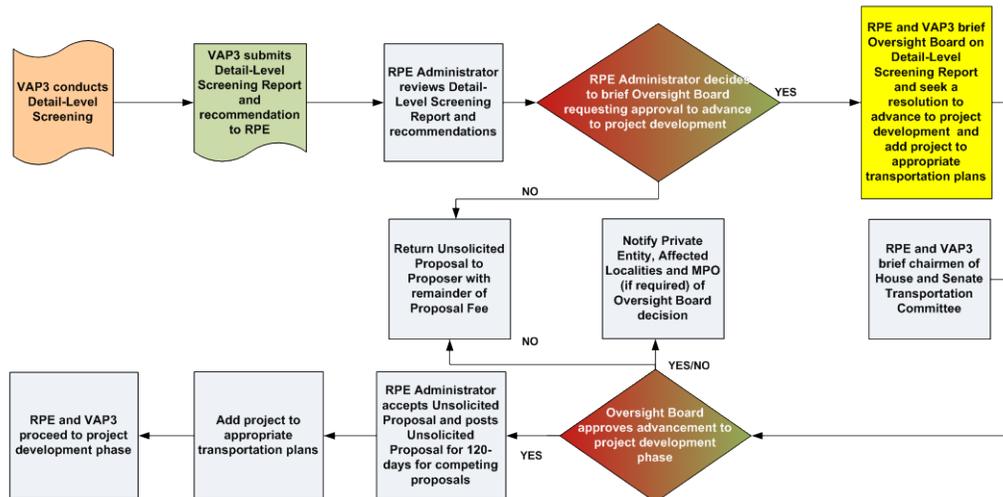
**Figure 5** below represents the steps to be taken during the Detail-Level Screening process for Solicited Projects:

**Figure 5: Detail-Level Screening Process – Solicited Projects**



**Figure 6** represents the steps to be taken during the Detail-Level Screening process for Unsolicited Proposals:

**Figure 6: Detail-Level Screening Process – Unsolicited Proposals**



### 3.3 RISK MANAGEMENT

As part of the Detail-Level Screening desirability and feasibility analysis, the VAP3 will convene an initial risk workshop to identify and assess risks specific to the development of the project. A Risk Register for the project is created during this phase of the Framework, an assessment of the risks is carried out and risk responses and potential risk allocations are determined (see [P3 Risk Management Guidelines](#)). Risks identified during this phase will be updated and refined as the project moves through subsequent phases of the Framework.

### 3.4 REPORT TO OVERSIGHT BOARD

The VAP3 Director and the RPE Administrator will present a Project Fact Sheet (screening phase) to the Oversight Board and brief them on the results of the [Detail-Level Screening Report](#); duration of the P3 development and procurement; and the prioritization of the project at the next available scheduled meeting of the Oversight Board. During the briefing, the VAP3 Director and the RPE Administrator will also seek the approval of the RPE's Oversight Board to proceed to the project development phase and present an estimated budget for approval to complete the project development activities. If the Oversight Board approves the advancement of an Unsolicited Proposal it is accepted by the RPE Administrator. Once the Unsolicited Proposal is accepted in writing by the RPE Administrator, a notice is posted for a period of 120-days to allow for the submission of competing proposals (§ 33.2-1820). If a project was initiated as an Unsolicited Proposal and not originally in the Commonwealth's transportation RPE's approved transportation plan or program, such as the Surface Transportation Plan or Six-Year Improvement Program for VDOT, the RPE will seek approval from their Oversight Board to add the project to all appropriate plans or programs. The RPE Administrator and the Director of the VAP3 will notify and brief the Chairman of the House and Senate Transportation Committees regarding the results

of the [Detail-Level Screening Report](#) and recommendation of the Oversight to proceed to the project development phase. Other members of the General Assembly and stakeholders will be notified and briefed upon request.

For the projects presented as Unsolicited Proposals, the VAP3 will notify the Private Entity and each Affected Locality identified in the Proposal of the Oversight Board'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 reflected in the financial plan that accompanies the MPO's constrained long-range plan and transportation improvement plan at the appropriate time.

The Project Fact Sheet (screening phase) and the record of the Oversight Board decision will be posted on the VAP3 website ([www.P3virginia.org](http://www.P3virginia.org)) for public awareness and feedback.

### 3.5 PROJECT PRIORITIZATION PROCESS

For projects that are accepted to move through the Framework, the VAP3 and RPE are responsible for ensuring compliance with the RPE's process associated with the prioritization of transportation projects.

### 3.6 KEY ACTION ITEMS

**Table 5: Key Action Items for Project Development Phase**

Project Screening Activity	Responsibility	Targeted Timeframe
Conduct a <a href="#">High-Level Screening</a> of Solicited Projects	VAP3	As appropriate
Conduct a <a href="#">Policy Review</a> of Unsolicited Proposals	VAP3	Within 90 calendar days of receipt of an Unsolicited Proposal by an RPE and forwarded to VAP3 for review
Release Unsolicited Proposal to Affected Locality	VAP3	Within 5 calendar days of the Oversight Board's decision to advance to the project development phase or not
For Unsolicited Proposals obtain comments from Affected Locality	VAP3	Within 60 calendar days of release Unsolicited Proposal to Affected Locality
For Solicited Projects and Unsolicited Proposals - approve advancement of project to <a href="#">Detail-Level Screening</a>	RPE Administrator	Within 10 calendar days of completion of Policy Review Report submitted to RPE Administrator by VAP3 Director

Project Screening Activity	Responsibility	Targeted Timeframe
Conduct a <a href="#">Detail-Level Screening</a> of Solicited Projects and Unsolicited Proposals	VAP3	As appropriate
Submit the findings, Project Fact Sheet and recommendation of <a href="#">Detail-Level Screening</a> , and project development budget for approval to Oversight Board	VAP3 Director/RPE Administrator	At the next scheduled and available Oversight Board meeting after the Committee's approval to advance the project to the project development phase.
Notify the relevant Affected Locality	VAP3 Director	Within 5 calendar days of Oversight Board decision
Ensure that the project is included in the appropriate transportation plan/program	VAP3	As defined by MPO
Post notification of accepted Unsolicited Proposal for 120-day period to allow for submission of competing proposals	VAP3 Director/RPE Administrator	Within 10 calendar days of Committee decision to advance Unsolicited Proposal.

## 4 PROJECT DEVELOPMENT



This chapter describes the project development process and related activities for projects that are selected for implementation under the P3 program.

### 4.1 PROJECT DEVELOPMENT PROCESS

The VAP3 Director appoints a project manager for each project selected for screening and development. The project manager is responsible for getting the project ready for procurement with assistance from relevant disciplines within the RPE and external advisors as necessary.

The VAP3 Director is responsible for maintaining appropriate coordination with other Agencies, elected officials and the Oversight Board throughout the project development lifecycle and for providing, as appropriate, project information such as budget, scope, and schedule, to the RPE Administrator.

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

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 VAP3 Risk Management Guidelines)
▪ Performing an initial Value-for-Money (VfM) analysis (see VAP3 Value-for-Money Guidelines)
▪ Determining the optimal procurement delivery method
▪ Soliciting information from the private sector through a Request for Information (RFI)
▪ Preparation of an Initial FOPI for presentation to the Committee

For P3 projects requiring federal action, the VAP3 will ensure that decisions regarding mode, location, user fees and capacity are made after adequate consideration of potential alternatives to address needs

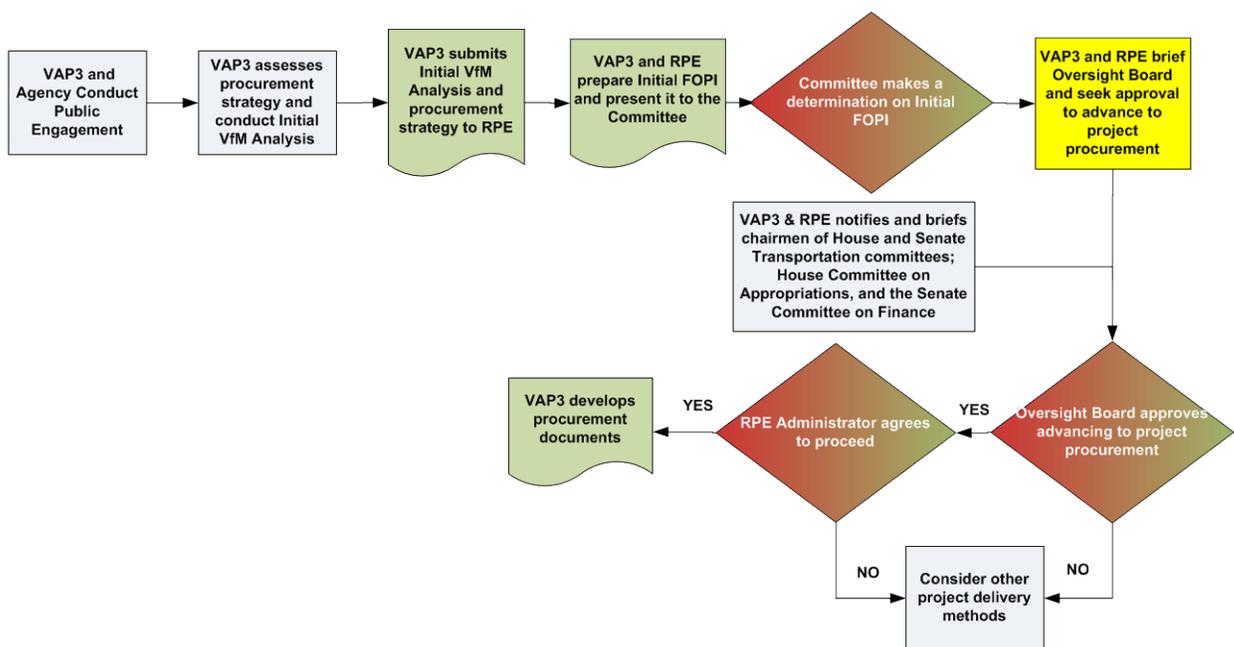
and impacts of the project. The VAP3, in coordination with the RPE Administrator and other state, local and federal Agencies, as appropriate, may modify the project scope to meet the Commonwealth's transportation goals and the priorities of the administration.

At the discretion of the VAP3 and the RPE Administrator, a RFI may be issued to obtain additional information and comment from the private sector and other interested stakeholders. RFI's 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 of the project being developed.

Once the project development work has reached a sufficient level to support an initial VfM analysis, the VAP3 will arrange for one to be performed to provide information, both quantitative and qualitative, regarding the relative value of a P3 delivery method versus a more traditional method of delivering the project.

**Figure 7** represents the steps during the project development process for P3 projects.

**Figure 7: Project Development Process**



## 4.2 INITIAL VALUE-FOR-MONEY ANALYSIS

As part of the project development phase, the VAP3 will conduct an Initial VfM Analysis to determine whether a project provides more benefits to its users and to the Commonwealth when delivered through the P3 delivery process than when delivered through a traditional method. This information is a useful decision-making tool for the VAP3 and the RPE Administrator to determine whether value is gained by continuing to invest in a project as a P3 project. The procurement of a P3 project represents Value-for-

Money when, relative to the most likely alternative delivery method, it delivers a better combination of lifecycle costs and quality to meet the objectives of the project and the Commonwealth.

The Oversight Board will be briefed on the results of the VfM analysis before the project is advanced to the procurement phase of the P3 Framework.

The appropriate VfM methodology will vary across modes and payment mechanisms (E.g., the analysis for privately-tolled concessions will differ from that for availability payment transactions in which the RPE retains some or all revenue risk). The Initial VfM 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.

### **4.3 RISK ASSESSMENT**

During the project development phase, the VAP3 will convene and participate in an interim risk workshop to update the project risks identified in the [Detail-Level Screening](#) and identify any additional risks. At this phase in the Framework a quantitative assessment of all identified risks is carried out and the risk response and preferred risk allocation are updated. This better defines the approach to risk allocation and management for the project (see [P3 Risk Management Guidelines](#) Risk Management Guidelines).

### **4.4 INITIAL FINDING OF PUBLIC INTEREST**

During the project development phase, VAP3, in coordination with the RPE, will prepare an Initial Finding of Public Interest (Initial FOPI) document for the signature of the RPE Administrator and the Secretary of Transportation. The Initial FOPI is an affirmation that the P3 delivery method is being conducted in a manner that brings value and is in the public interest of the Commonwealth. The Initial FOPI will include at a minimum, the following information:

1. A description of the benefits expected to be realized by the RPE through the use of the PPTA compared with the development and operation of the transportation facility through other options available to the RPE.
2. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity, which will include the following:
  - a. A discussion of whether revenue risk will be transferred to the private entity and the degree to which any such transfer may be mitigated through other provisions in the interim or comprehensive agreements;
  - b. A description of the risks, liabilities and responsibilities to be retained by the RPE; and
  - c. All relevant analyses and information supporting the use of a P3 delivery method with a statement that the RPE Administrator has a clear understanding regarding the elements included in the Initial FOPI.
3. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how the determination was made. If the P3 project is determined to contain high risk, a description of how the public's interest will be protected through the transfer, assignment, or assumption of risks or responsibilities by the private entity in the event that issues arise with the development and operation of the P3 project.
4. If the RPE proposes to enter into an interim or comprehensive agreement through competitive negotiation the Initial FOPI will contain information and rationale demonstrating that procuring the P3 project this way is more beneficial than proceeding with competitive sealed bidding.

For P3 projects where VDOT and/or the DRPT are the RPE, the RPE Administrator will submit the Initial FOPI to the chairperson of the Committee. The chairperson of the Committee will distribute the Initial FOPI to the other members of the Committee for review and consideration; and coordinate with the VAP3 and RPE Administrator for a public notice to be posted on the VAP3 website at least 30 – days prior to the meeting of the Committee.

The Committee will determine whether moving to develop a project under the PPTA serves the public interest. Within 10 business days of meeting, the Committee will report to the Chairmen of the House and Senate Committees on Transportation, the House Committee on Appropriations, and the Senate Committee on Finance; on whether or not the projects evaluated by the Committee have been found to serve the public interest. The reports and meeting minutes of the Committee will be posted to the VAP3 website.

#### 4.5 REPORT TO OVERSIGHT BOARD

At the conclusion of the P3 project development phase, the VAP3 Director and the RPE Administrator will present a Project Fact Sheet (development phase) to the Oversight Board and brief it on studies and activities such as 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 VfM study for the project; an initial estimation of the project cost; an initial estimate of the public subsidy for the project; 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 process. The VAP3 Director and the RPE Administrator will also present the Initial FOPI signed by the Secretary of Transportation indicating concurrence. The VAP3 Director and the RPE Administrator will seek the approval of the Oversight Board to proceed to the P3 project procurement phase. The Project Fact Sheet (development phase), Initial FOPI and the decision of the Oversight Board is posted on the VAP3 website ([www.P3virginia.org](http://www.P3virginia.org)) for public awareness and feedback. The RPE Administrator and the Director of the VAP3 will notify and brief the Chairman of the House and Senate Transportation Committees; the House Committee on Appropriations and Senate Committee on Finance regarding the details of the project development phase. Other members of the General Assembly and stakeholders will be notified and briefed upon request.

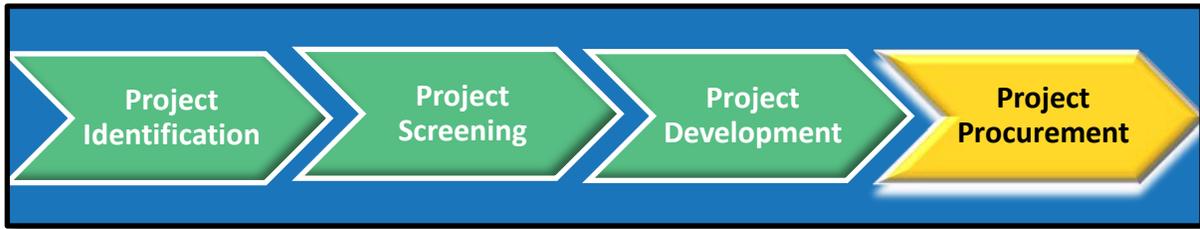
#### 4.6 KEY ACTION ITEMS

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

Project Development Activity	Responsibility	Targeted Timeframe
Perform project development activities (e.g., geotechnical testing, environmental, preliminary engineering, risk analysis, etc.)	The RPE with assistance from the VAP3 project manager	Determined by project specific scope
Conduct initial VfM analysis	VAP3	60 calendar days
Update project risks and identify new project risks	VAP3	Continuous through project development phase
Prepare Initial FOPI	VAP3 Director/ RPE Administrator	Determined by completion of project development activities

Project Development Activity	Responsibility	Targeted Timeframe
Submit the Initial FOPI to the Committee (for P3 projects where VDOT and/or DRPT are the RPE)	VAP3 Director/ RPE Administrator	Determined by completion of project development activities
Determination that advancing P3 project is in public interest	Committee	As appropriate
Report to Oversight Board	VAP3 Director/ RPE Administrator	Determined by completion of project development activities

## 5 PROJECT PROCUREMENT

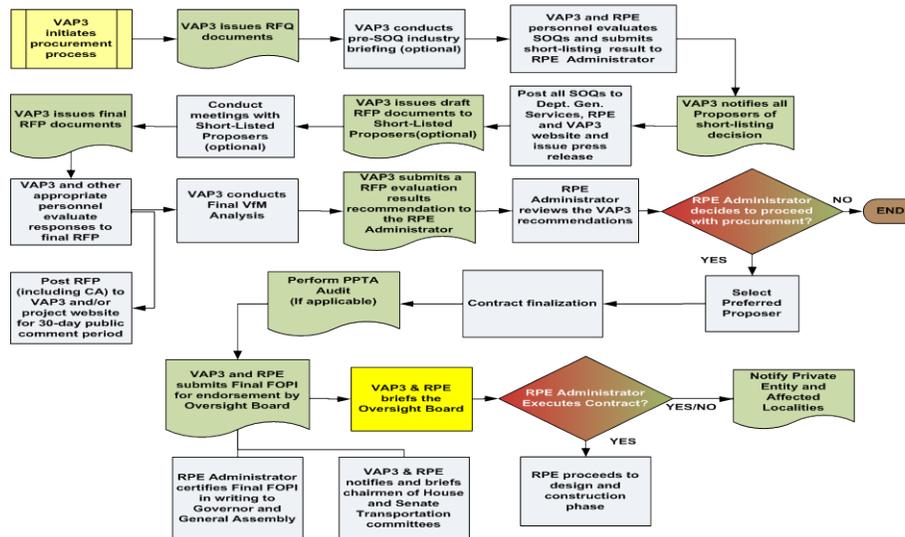


This chapter describes the P3 competitive procurement process and provides guidance on related activities for all projects that have been selected for procurement under the PPTA. While the discussion below describes a two-stage P3 procurement, it may be more beneficial in certain cases (i.e. when an Unsolicited Proposal is submitted, or for less complex P3 projects) to use a single-stage procurement if the RFQ can be omitted. This is done if it is determined that doing so is in the best interest of streamlining the procurement process. In either case, the VAP3 is responsible for leading the procurement process.

### 5.1 TWO-STAGE PPTA PROCUREMENT PROCESS

The P3 procurement process (see **Figure 8**) consists of (1) issuing a RFQ and (2) issuing a Request for Proposals (RFP). The VAP3 serves as the primary point of contact for P3 procurements, in consultation with the RPE and Office of the Attorney General (OAG), and ensures that the process is administered in accordance with applicable law. The VAP3 Director is responsible for managing a consistent, transparent and well-defined procurement process.

**Figure 8: Two-Stage Project Procurement Process**



## **5.2 REQUEST FOR QUALIFICATIONS**

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

### **5.2.1 Statement of Qualifications Evaluation**

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

The RFQ documents will be posted on the Department of General Services central procurement website and the VAP3 website. These documents shall (1) provide for a minimum 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 will have the opportunity to provide comments on a continuous basis by making use of the VAP3 website.

### **5.2.2 Short-Listing of Qualified Respondents**

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

The VAP3, in coordination with the RPE, will notify all Proposers in writing whether they have been short-listed. Additionally, the VAP3 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 Department of General Services central procurement website and the VAP3 website within 10 business days of the completion of the SOQ evaluation. A press release will also be issued.

If after the competitive response period the RPE receives a single responsive submittal to its RFQ, then the VAP3, in coordination with the RPE, will conduct an evaluation and market assessment to determine if the responsive submittal brings value to the Commonwealth, or if the proposed procurement should be terminated. If the procurement is terminated, the RPE will make a determination if modifications are required to the timing, scope and nature of the project to promote greater competition. The RPE will make a presentation of its determination to its Oversight Board and seek a resolution from the Oversight Board to advance a modified procurement. The RPE's presentation will be at a regularly scheduled meeting open to the public. If there is only one Short-Listed Proposer, or none, that submit proposals for a particular RFQ, the VAP3 Director may decide in consultation with the RPE Administrator to meet with private industry to determine why they were not more responsive to the RFQ. From those discussions the scope may be modified taking into account the feedback from the private sector. The VAP3, in coordination with the RPE, may reissue the modified RFQ or re-procure the project at a later date after obtaining a resolution from the Oversight Board to advance a modified procurement.

### 5.2.3 Interim Agreement

The PPTA (§ [33.2-1809 of the Code of Virginia](#)) allows an RPE to enter into an Interim Agreement with a Private Entity or multiple Private Entities if the RPE determines in writing that it is in the public interest to do so.

In certain circumstances the RPE Administrator in consultation with the VAP3 Director, may choose to enter into an Interim Agreement with the Private Entities proposing the development and/or operation of a project prior to and in connection with the negotiation of the Comprehensive Agreement (CA) for those P3 projects that were selected for procurement through competitive sealed bidding or competitive negotiation as defined and subsection B of § 2.2-4301 of the Code of Virginia.

For 30 calendar days prior to entering into an interim agreement, the RPE will provide an opportunity for public comment on the proposals by posting the proposed interim agreement on the project website and/or the VAP3 website.

**Guidance: Further detail about the issuance of RFQ documents and requirements for SOQs can be found in Appendix F of this PPTA Manual and Guidelines.**

## 5.3 REQUEST FOR PROPOSALS

The VAP3 may choose to issue the RFP including the CA documents in draft format to Short-Listed 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 Proposers and other appropriate parties, the VAP3 will issue the final RFP documents to Short-Listed Proposers. The VAP3 and other appropriate personnel will evaluate responses to the RFP from Short-Listed Proposers based on defined criteria. The VAP3 reserves the right to run a Best and Final Offer (BAFO) process with the Short-Listed Proposers (see Appendix G for more details on the use of the BAFO process)

Pursuant to § 33.2-1820.B.2 of the Code of Virginia, for 30 days prior to the planned issuance of a final RFP, the RPE will provide an opportunity for public comment on the draft CA. The VAP3 provides opportunities for public comment on the project and proposals on a continuous basis by making use of the VAP3 and/or project website. The RFP, including the CA documents will be posted to the VAP3 and/or project website.

If after the competitive response period, an RPE receives a single responsive submittal to its RFP, the RPE will conduct a full value assessment of the proposal received to determine if the responsive submittal brings value to the Commonwealth. The value assessment will include, at a minimum, an assessment of risk allocations and the Final VfM Analysis described in Section 5.5. Once the value assessment has been completed, the RPE will make a presentation to the RPE's Oversight Board to present the value assessment and seek a resolution from the Oversight Board to accept the responsive proposal or terminate the procurement. The RPE's presentation to the Oversight Board will be at a regularly scheduled meeting open to the public.

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

**Guidance: Further detail about the RFP process can be found in [Appendix G](#) of this Manual and Guidelines.**

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

If the RPE, during the procurement of a P3 project, modifies the procurement documents in such a manner as to materially change the scope or alter the proposed delivery method, then the RPE shall conduct a full value assessment of the current and proposed procurements, to include at a minimum, a VfM analysis. Once the value assessment has been completed, the RPE will make a presentation to the RPE's Oversight Board to present the value assessment and seek a resolution from the Oversight Board to continue the procurement with the proposed material changes or terminate the procurement. The RPE's presentation to the Oversight Board will be at a regularly scheduled meeting open to the public.

#### **5.5 FINAL VALUE-FOR-MONEY ANALYSIS**

Prior to recommending the selection of the Preferred Proposer to the RPE's Oversight Board, the VAP3 will perform a Final VfM Analysis, taking into account any additional project information that has become available since the initial VfM Analysis (as described in Section 4.2) was performed. This Final VfM Analysis compares the RPE's updated Public Sector Comparator (PSC) and the Apparent Best Value Proposal. The results are taken into account in the briefing by the VAP3 Director and RPE Administrator's report to the Oversight Board. The Final VfM Analysis is a final check to ensure the award of the project as a P3 project provides VfM to the Commonwealth.

#### **5.6 BASIS FOR AWARD AND SELECTION OF PREFERRED PROPOSER**

The RPE Administrator will take into account the recommendation of the VAP3, the evaluation criteria and the VfM analysis when selecting a Preferred Proposer. The VAP3 will inform the Preferred Proposer that it has been selected and initiate the finalization of the terms of the CA. The VAP3, in coordination with the RPE, will notify all other Proposers in writing regarding the RPE Administrator's decision to award the project to the Preferred Proposer. The VAP3 will also provide briefings to the Oversight Board as noted in Section 5.8, appropriate members of the General Assembly, MPO's, and other previously identified stakeholders.

#### **5.7 PPTA AUDIT REQUIREMENTS**

[Section 33.2-1803.E](#) of the Code of Virginia requires any P3 project with an estimated construction cost of over \$50 million that the RPE shall require the Private Entity to pay the costs of an independent audit of any and all traffic and cost estimates associated with the Private Entity'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 Private Entity to reimburse the RPE for services provided, and potential risk and liability in the event the Private Entity defaults on the Comprehensive Agreement or on bonds issued for the project. The VAP3 will appoint an independent consultant to conduct this audit prior to the final contract award to the Preferred Proposer. Additionally, the VAP3 will disclose all information from such a review within 30 calendar days of completion by posting it on the VAP3 website.

**Guidance: PPTA Audit requirements can be found in [Appendix H](#) of this Manual and Guidelines.**

During the project procurement phase, the VAP3 will convene and participate in a final risk workshop to refresh the risk register and confirm the final project risk assessment and allocation. The final risk register and risk management plan are applied to the CA. The VAP3 Director certifies the final risk management plan and the RPE Administrator endorses the final risk management plan for application during the implementation stages of the project. (see [P3 Risk Management Guidelines](#)).

## **5.9 FINAL FINDING OF PUBLIC INTEREST**

During the project procurement phase, VAP3, in coordination with the RPE, will prepare a Final Finding of Public Interest (Final FOPI) document for the signature of the RPE Administrator and the Secretary of Transportation, which is a reaffirmation that the transfer, assignment, and assumption of risks, liabilities and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the Initial FOPI have not materially changed and are still valid. Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk shall not be considered material changes to the Initial FOPI, provided that such changes have been presented to the Oversight Board in a public meeting. The Final FOPI is presented to the Oversight Board along with the major business points of the CA. The RPE will not enter into a CA unless the RPE Administrator certifies in writing to the Governor and General Assembly, by means of the Final FOPI, that the transfer, assignment, and assumption of risks, liabilities and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the Initial FOPI have not materially changed and are still valid

## **5.10 REPORT TO OVERSIGHT BOARD**

Near the conclusion of the P3 project procurement process and after the Final VfM Analysis, the RPE's selection of the Preferred Proposer and PPTA Audit have been completed, the VAP3 Director and the RPE Administrator will present a Project Fact Sheet (procurement phase) to the Oversight Board. The Oversight Board will be briefed on the Final FOPI; final schedule for project delivery; the CA documents; the final risk management report; the Final VfM Analysis; the projected final and total project cost; including the projected public contribution for the project; the updated economic benefits and the final major business points. During the briefing, the RPE Administrator will seek the Oversight Board's endorsement of the Final FOPI indicating support of the RPE Administrator's execution of a Comprehensive Agreement. The Project Fact Sheet (procurement phase) and Oversight Board's endorsement of the Final FOPI are posted on the VAP3 website for public awareness. The RPE Administrator and the Director of the VAP3 will notify and brief the Chairman of the House and Senate Transportation Committees; the House Committee on Appropriations and Senate Committee on Finance on the Final FOPI; final schedule for project delivery; the CA documents; the final risk management report; the Final VfM Analysis; the projected final and total project cost; including the projected public contribution for the project; the updated economic benefits and the final major business points. Other members of the General Assembly and stakeholders will be notified and briefed upon request.

## **5.11 CONTRACT FINALIZATION AND AWARD**

Prior to developing or operating a P3 project, the successful Proposer must enter into a Comprehensive Agreement with the RPE. The RPE Administrator has the statutory authority to enter into the Comprehensive Agreement, as applicable, pursuant to the PPTA.

If, at any point in the contract finalization phase, the VAP3 and the RPE Administrator determines that the Preferred Proposer will not provide the Commonwealth with the Best Value, then the RPE Administrator may suspend or terminate the procurement, or choose to finalize a contract with the next highest ranking Proposer. This process may continue until the VAP3 reaches an agreement or ultimately decides to terminate the procurement

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

Once the contract is finalized and a decision to award has been made, the RPE will post major business points of the CA, including any projected public funds used on the project and the signed contract on the VAP3 and/or project website.

### 5.12 POST-FINANCIAL CLOSE

Once the contract documentation, including the CA is signed, the RPE is responsible for coordinating the implementation of the P3 project (e.g. if the contract is with the VDOT, the contract will be administered by the responsible District Office).

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

### 5.13 KEY ACTION ITEMS

**Table 8: Key Action Items for Project Procurement Phase**

Project Procurement Activity	Responsibility	Targeted Timeframe
Develop RFQ documents	VAP3 with assistance from the RPE	Completion targeted for 60 days after RPE Administrator's decision to proceed from project development phase to project procurement phase
Release of RFQ	VAP3 with assistance from the RPE	Released after Oversight Board decision to proceed from project development phase to project procurement phase
For Unsolicited Proposals post RFQ to Department of General Services central procurement website and VAP3 website	VAP3	120 day minimum duration
Develop RFP documents	VAP3 with assistance from the RPE	Completion targeted for 120 days after release of RFQ

Project Procurement Activity	Responsibility	Targeted Timeframe
Evaluate responses and short-list qualified Proposers	VAP3 with assistance from the RPE	Completion targeted for 60 days after receipt of SOQ
RPE approves Short-Listed Proposers	RPE	Within 10 days of completion of SOQ evaluation
Short-Listed Proposers announced	VAP3	Within 10 days of RPE approval of Short-Listed Proposers
Release RFP	VAP3 with the RPE	Release targeted for 30 days after completion of SOQ evaluation
Request comments from Affected Localities	VAP3	Within 10 days of release of the RFP
Comments received from Affected Localities	VAP3	60 days after request for comments by VAP3
Evaluate the RFPs	VAP3 with the RPE	Completion targeted for 90 days after receipt of RFP
Conduct the VfM analysis	VAP3	Completion targeted for 60 days after completion of evaluation of RFPs
Select a Preferred Proposer	RPE Administrator	Targeted for 90 days after receipt of RFP
Conduct PPTA Audit	VAP3	Completion targeted for 30 days after selection of Preferred Proposer
Issue Public Notice of PPTA Audit	VAP3	Within 30 days of completion of PPTA Audit
Prepare Final FOPI for presentation to Oversight Board and certification to Governor and General Assembly	VAP3 Director and RPE Administrator	Determined by completion of project development activities
Report to Oversight Board on selection of Preferred Proposer, and seek approval to award	VAP3 Director and RPE Administrator	Determined by completion of project procurement activities and timing of next public meeting
Finalize and Award the Contract	VAP3 with assistance from the RPE	30 days after Oversight Board's briefing

## APPENDICES TABLE OF CONTENTS

[Appendix A](#) – Rights and Disclaimers

[Appendix B](#) – P3 project Delivery Framework Flowchart

[Appendix C](#) – Guidance on Approach to Commercial Terms

[Appendix D](#) – Guidance for Unsolicited Proposal Preparation

[Appendix E](#) – Guidance on Detail-Level Screening Criteria

[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](#) – Legislative and Legal Terms

## APPENDIX A

### Rights and Disclaimers

#### RIGHTS RESERVED

1. The VAP3, in coordination with each RPE, reserves all rights available by law in processing 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 PPTA Manual and Guidelines;
11. Decline to return any and all fees required to be paid by Private Entities 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

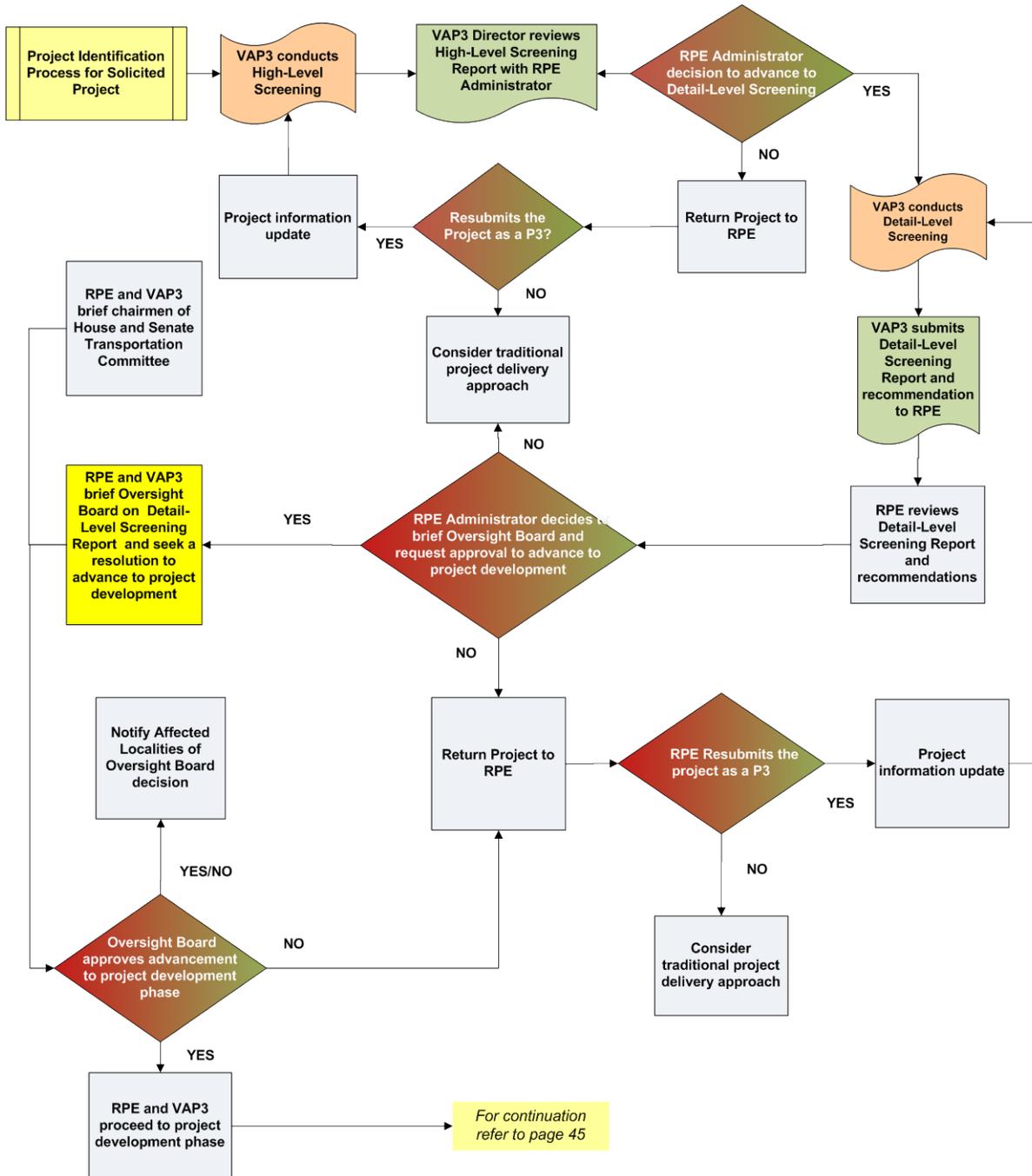
1. Neither the Commonwealth nor any of its political subdivisions, agencies, or employees shall be liable for, or reimburse, the costs incurred by Respondents or Proposers, whether or not selected for negotiations, in developing and submitting Proposals or in negotiating agreements.

2. 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.
3. Respondents and Proposers must submit questions concerning the PPTA process in writing to the point of contact referenced in the procurement documents, which will coordinate a response in writing; Proposers may not rely on oral responses to inquiries.
4. The Commonwealth, the Secretary of Transportation, the VAP3 Director or the RPE Administrator 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 PPTA Manual and Guidelines.

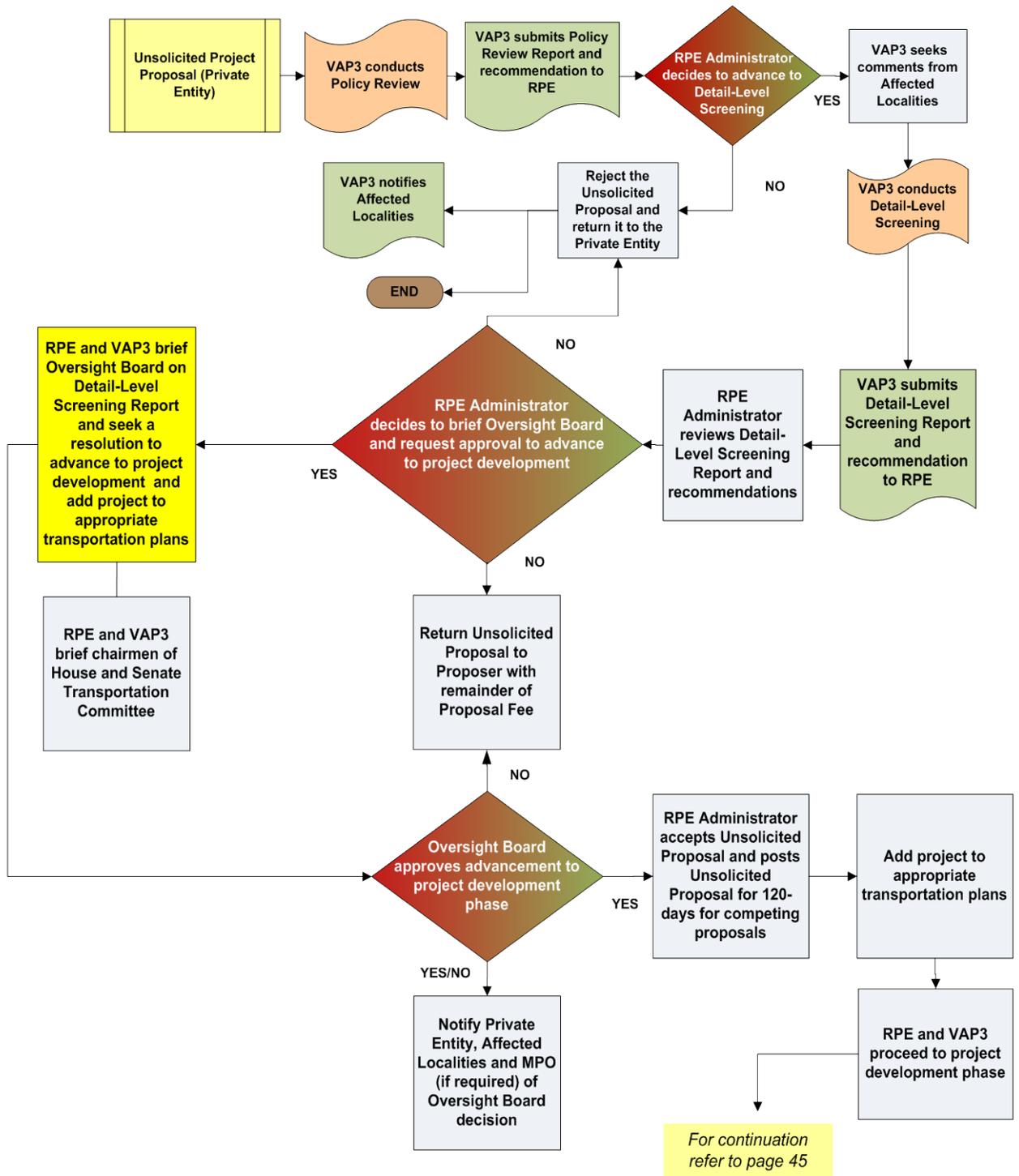
## APPENDIX B

# P3 Project Delivery Framework Flowchart

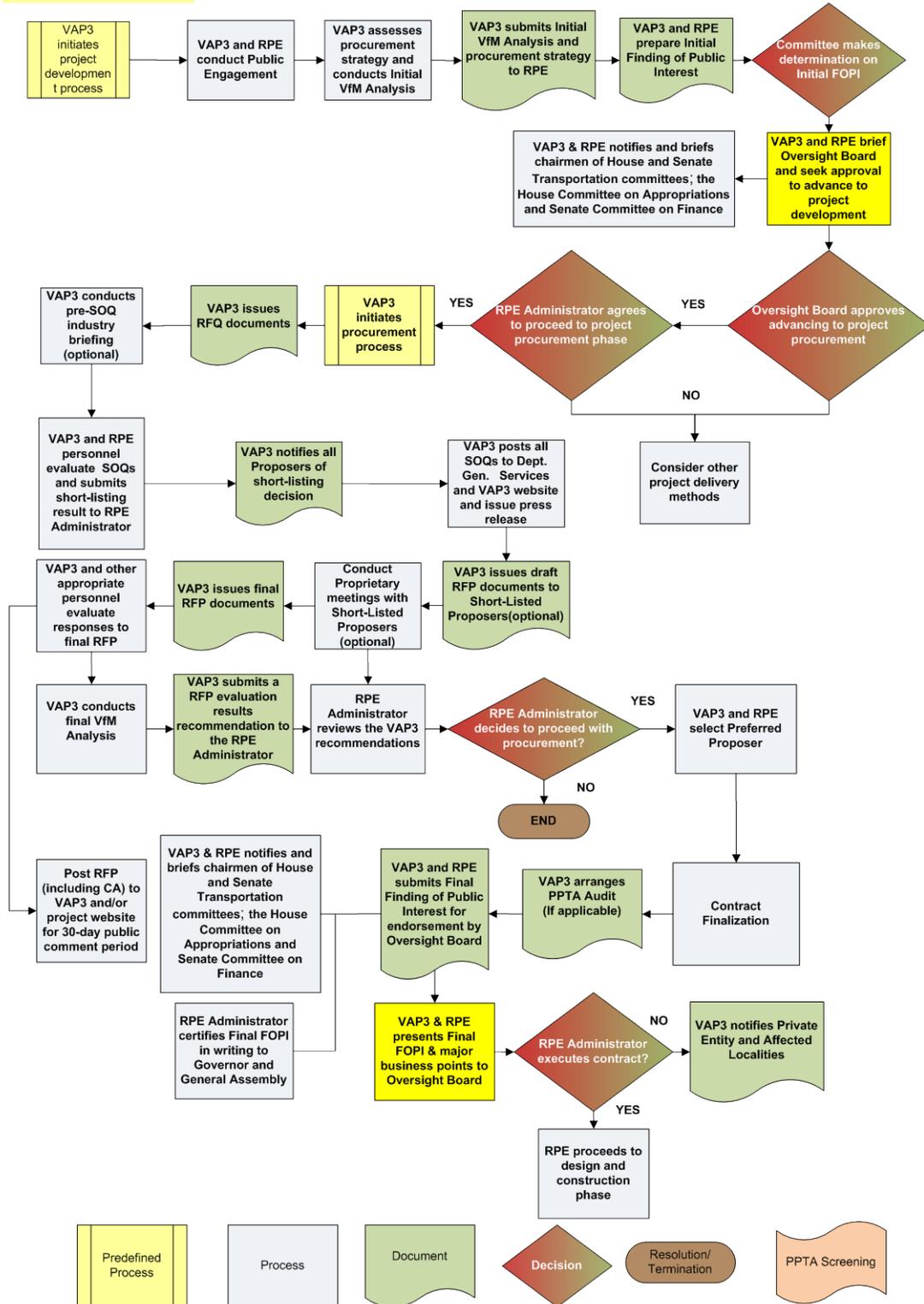
### PPTA Framework for Solicited Projects



PPTA Framework for Unsolicited Projects



Continuation from page 42 & 43



## APPENDIX C

### Guidance on Approach to Commercial Terms

The guidance below presents the VAP3's approach to developing commercial terms that forms the basis for Interim Agreements and Comprehensive Agreements governing P3 projects. In developing commercial terms, the VAP3 seeks to strike a balance between (i) providing the private sector with enough transparency regarding the Commonwealth's principles and processes so as to promote and preserve its confidence and participation in the P3 program and (ii) preserving the VAP3's flexibility across modes and projects to 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 VAP3 intends to apply these principles during the process of developing commercial terms for P3 projects across modes and methods of project delivery:

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

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

## **DEVELOPMENT OF COMMERCIAL TERMS**

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

Prior to the issuance of the final RFP documents for a particular P3 project, the VAP3 will maintain open lines of communication within the parameters and restrictions set forth in the procurement documents with Short-Listed Proposers. The VAP3 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 VAP3 expects the key commercial terms that will form the basis for an Interim Agreement or Comprehensive Agreement will be determined prior to issuance of the final RFP documents. The contract finalization phase will provide an opportunity to make modifications necessary to react to events, such as changes in law, litigation, significant shifts in market conditions, new facts, and considerations raised by significant third party participants as appropriate. During the contract finalization phase, the VAP3 in coordination with the RPE will work with the Preferred Proposer to agree upon an ordered and efficient review and comment process to resolve any outstanding issues and/or refine the language of the documents in a manner which is timely, cost effective and reflects the importance of achieving commercial and financial closings.

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

During the process of drafting the primary commercial documents, the VAP3, the RPE and external advisors will be guided by the 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 VAP3 will develop standard contractual language to address matters that will be part of any transaction, regardless of the nature of the P3 project or the RPE involved.

The VAP3, in conjunction with its constituent agencies and external advisors, will engage the private sector on an ongoing basis to evaluate shifting market conditions and will conduct periodic internal reviews of its principles and processes. Furthermore, the VAP3 will reach out to both the private sector and similar public-private partnership offices in other states to discuss shifting market dynamics and/or conditions that may impact the P3 program.

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

## APPENDIX D

### Guidance for Unsolicited Proposal Preparation

The PPTA permits Private Entities to submit Unsolicited Proposals to develop and/or operate P3 projects at any time, pursuant to the PPTA and this PPTA 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 RPE with a copy to the VAP3. Private Entities are encouraged to contact the VAP3 to arrange a meeting to discuss their ideas and concepts prior to submitting an Unsolicited Proposal. The VAP3 Point of Contact to arrange a meeting in this regard is:

**Ms. Jackie Cromwell**

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

#### PROPOSAL PREPARATION

Private Entities submitting an Unsolicited Proposal should ensure that the Proposal includes a comprehensive project description and provides enough information about the proposed project for the VAP3 in coordination with the RPE to determine whether the Proposal satisfies the review and evaluation criteria as set out in 33.2-1801 and 33.2-1803 of the Code of Virginia. Private Entities should also provide sufficient information to facilitate a [Policy Review](#) as detailed in Section 3.1.2 of this PPTA Manual and Guidelines and a Detail-Level Screening as described in [Appendix E](#). 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, Private Entities are required to organize contents of the Unsolicited Proposal as follows:

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

The VAP3 in coordination with the RPE may require Private Entities submitting an Unsolicited Proposal to give one or more oral presentations of their Proposal to the VAP3, the RPE and/or the public. Such presentations will provide opportunities to educate the RPE and the public and/or to clarify aspects of the

Proposal. All pages of the Proposal should be numbered. Each copy of the Proposal should be placed in a three-ring binder and contained in a single volume where practical.

## **PROPOSAL SUBMISSION**

Private Entities submitting Unsolicited Proposals are required to deliver ten (10) hard copies and one (1) electronic copy in Portable Document Format (PDF) to the RPE for forwarding to VAP3. 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 the RPE, with a copy sent to the attention of the VAP3 Director at the address listed above for the VAP3 Point of Contact.

Private Entities interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee as specified in Section 2.2.1 of this PPTA Manual and Guidelines at the time of submitting the Unsolicited Proposal to the RPE. Proposers submitting multiple Proposals for unrelated P3 projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.

Upon receipt, the RPE will notify the VAP3. Upon notification by the RPE the VAP3 will notify any appropriate federal agency, and other stakeholders that the Unsolicited Proposal has been submitted for a given transportation project and that the VAP3 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 PPTA Manual and Guidelines.

The Private Entity submitting a copy of the Unsolicited Proposal to the VAP3 pursuant to § 33.2-1803 of the Code of Virginia shall coordinate with the VAP3 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 VAP3 in coordination with the RPE 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 RPE at its sole discretion, then the Private Entity will be notified by the VAP3 so that the Proposal may be resubmitted at a later date.

## APPENDIX E

### Guidance on Detail-Level Screening Criteria

Those Solicited Projects that have passed through the [High-Level Screening](#) process and those Unsolicited Proposals that have passed through the [Policy Review](#) are eligible for [Detail-Level Screening](#). The Detail-Level Screening Criteria form the basis upon which the VAP3 evaluates the feasibility of delivering transportation projects across all transportation modes using the P3 project delivery method. The screening criteria reflect the Commonwealth's transportation goals and policy priorities of the Administration for delivering transportation projects in a timely and cost-effective manner.

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

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

**Table 9: Detail-Level Screening Criteria - Desirability**

<b>Detail-Level 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, such as congestion relief, safety, new capacity and preservation of existing assets?</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 Private Entities are demonstrating market demand through the submission of their Proposal.</li> </ul>

<b>Detail-Level 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 (FHWA, FTA, MARAD, FAA, FRA, etc.)?</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> </ul>

**Table 10: Detail-Level Screening Criteria - Feasibility**

<b>Detail-Level 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>Detail-Level 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>▪ 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>
Legal/Legislative Feasibility	<ul style="list-style-type: none"> <li>▪ Is legislation needed to complete the project?</li> </ul>
Project Risks	<ul style="list-style-type: none"> <li>▪ Are there any particular risks unique to the project that has not been outlined above that could impair project viability?</li> <li>▪ Are there any project risks proposed to be transferred to the RPE 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 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 VAP3, in consultation with the RPE Administrator and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The VAP3 will issue a public notice on the VAP3 website and the state [eVA system](#) to announce the issuance of the RFQ documents. The VAP3 will notify General Assembly Members and MPOs. 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 [VAP3 website](#). The VAP3 may arrange for a pre-Proposal conference or webinar, as deemed appropriate, to present and clarify information about the project and procurement process and respond to any questions that prospective 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 VAP3 website.

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

#### SUBMISSION OF SOQS

In response to the issuance of an RFQ, Private Entities that are interested in the project will be required to submit an SOQ. SOQs should be prepared in accordance with the timelines and requirements of the RFQ document. For those Unsolicited Proposals that have been accepted by the RPE for a competitive procurement, the individual or Private Entity that submitted the original Unsolicited Proposal will be required to submit a SOQ with other prospective Respondents to an RFQ if the individual or Private Entity 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 structure used. 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 Private Entity submitting a response has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule. The VAP3 in coordination with the RPE may require the submission of financial statements (including audited financial statements), letters of support from providers of payment

and performance security and/or disclosure of material changes in the 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 (VFOIA) provisions to ensure that documents identified as confidential or proprietary will not be subject to disclosure pursuant to VFOIA prior to submitting their responses and to otherwise understand which documents may be subject to disclosure pursuant to the VFOIA.

## APPENDIX 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 RPE in coordination with the VAP3 may begin the RFP process. The purpose of the RFP process is to create competition among a short-list of the most qualified Proposers to create value for the Commonwealth.

The RPE in coordination with the VAP3 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 RPE in coordination with the VAP3 will issue final RFP documents to Short-Listed Proposers.

The RPE in coordination with the VAP3 will evaluate responses to the RFP from Short-Listed Proposers based on appropriate criteria. The RPE in coordination with the VAP3 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;
- The RPE's preferred allocation of project risks and commercial terms via a draft Comprehensive Agreement;
- Clear instructions on the content and format of each Proposal; and
- A clear and reasonable timetable for submitting the Proposals.

#### PROPOSAL SUBMISSION

In response to the issuance of the final RFP documents, Short-Listed 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 PPTA Manual and Guidelines.

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

### **TECHNICAL PROPOSAL**

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

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

### **FINANCIAL PROPOSAL**

The content requirements of the Financial Proposal will vary with the type of 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 method and current market conditions, the requirements for the contents and level of detail of the financial plan could be substantially different. The Financial Proposal may require that the Proposer update the financial qualification information provided with the SOQ. The RFP documents will include the financial plan requirements.

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

### **PROPOSAL EVALUATION CRITERIA**

The evaluation methodology for Proposals will depend largely on the nature of the project, the scope of work and details set forth in the RFP documents. The VAP3 is encouraged to use Best Value as the basis for award. However, the VAP3 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 VAP3 in coordination with the RPE to be in the best interests of the project and the Commonwealth.

The specific criteria and methodology for evaluating Proposals will be included in the RFP documents of the specific PPTA procurement and will vary depending on the scope and complexity of a project, transportation mode and project delivery approach. The RFP evaluation criteria allow the VAP3, the

RPE, and the Commonwealth to clearly communicate the project objectives and priorities of the RPE to the private sector.

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

## APPENDIX H

# Guidance for the PPTA Audit Requirements

### GENERAL AUDIT SCOPE

1. Audit of the traffic and cost estimates provided by the Private Entity named as the Preferred Proposer in its Proposal to the RPE;
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 VAP3 or the RPE.

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 RPE. 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 VAP3 will engage the consultant, commission and pay for the audit. The Preferred Proposer will reimburse the VAP3 for the cost of the audit. The payment due date will be as determined by the VAP3, but in no event later than financial close.

### AUDITOR SELECTION

The VAP3 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 VAP3 or the Preferred Proposer; and
3. The consultant shall not have otherwise performed services or have other relationships with either the VAP3 or the Preferred Proposer (or the Preferred Proposer's affiliates) that, in the VAP3'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> </ul>

		<ul style="list-style-type: none"> <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> <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> </ul>

		<ul style="list-style-type: none"> <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 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> <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, offeror, 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 Governor, his political action committee, or any of his pertinent Secretaries</li> <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	March 2015	<ul style="list-style-type: none"> <li>- Public-Private Transportation Act; finding of public interest. Establishes the requirements for a finding of public interest and requires such a finding prior to an initiation of procurement. The bill also establishes the Transportation Public-Private Partnership Advisory Committee to determine by a majority vote whether a VDOT or DRPT project is in the public interest and to report such determination to the General Assembly. The bill also requires certification of the finding prior to the execution of an interim or comprehensive agreement and requires the public-private partnership guidelines to incorporate the requirements for the finding. The bill also 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>

## APPENDIX J

### Legal Framework – PPTA of 1995 (as Amended)

The [Public-Private Transportation Act of 1995](#) (§§ 33.2-1800 to 33.2-1824 of the Code of Virginia), as amended, is intended, among other things, to encourage investment in the Commonwealth by Private Entities in order to facilitate the development and/or operation of P3 projects.

The PPTA provides flexibility in contracting to public and Private Entities for the provision of public services, which includes developing financing methods, including user fees and service payment mechanisms, combining private financing with public funds/financing and issuing debt, equity or other financial securities. The PPTA allows both Solicited Projects and Unsolicited Proposals.

An RPE may request Solicited Proposals from Private Entities for the development and/or operation of P3 projects. Alternatively, any Private Entity seeking authorization to develop and/or operate a P3 project may submit an Unsolicited Proposal to the RPE as described in more detail in Chapter 3 [Project Identification](#).

Furthermore, the PPTA requires that the RPE develop guidelines that establish the process for the acceptance and review of both Solicited Projects and Unsolicited Proposals from a Private Entity. The PPTA requires that the guidelines establish a specific schedule for review of a Proposal by the RPE, a process for alteration of that schedule by the RPE if it deems that changes are necessary because of the scope or complexity of Proposals it receives and the type and amount of information that is necessary for adequate review of Proposals in each stage of review.

For P3 projects that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other characteristics that could reasonably reduce the amount of time to develop and/or operate the Qualifying Transportation Facility in accordance with the PPTA, the VAP3 will coordinate a prioritized documentation, review, and selection process.

#### **Contractual Framework**

Pursuant to the PPTA, a Comprehensive Agreement between the Private Entity and the RPE governs the development and operation of the Qualifying Transportation Facility. Pursuant to §33.2-1808 of the Code of Virginia, the Comprehensive Agreement establishes the duties of the Private Entity and may contain such other terms and conditions that the RPE determines serve the public purpose of the PPTA. The Comprehensive Agreement requires, as appropriate, that the Private Entity provide for certain performance and payment security, project insurance and reimbursement to the RPE for its services.

In addition, the Comprehensive Agreement provides for, as appropriate, the establishment of user fees in respect of the project, contributions of public funding to the project, terms of distribution of earnings of the Private Entity, certain rights of review, inspection and audit in favor of the RPE and provisions concerning notice of default and cure rights for the benefit of other Private Entities, such as lenders, that are providing financing for the Qualifying Transportation Facility. The Comprehensive Agreement may also contain such other lawful terms and conditions to which the Private Entity and the RPE mutually agree.

The development of commercial terms is a fluid, bi-lateral process governed by considerations of public policy and market conditions. While maintaining flexibility in structuring Comprehensive Agreements, the RPE will generally seek to follow and benefit from national and international precedents, including prior P3 projects. In certain circumstances, the RPE may elect to enter into an Interim Agreement with one or more Private Entities to pre-develop certain aspects of a particular project.

**Guidance:** [Appendix C](#) summarizes an approach to developing commercial terms based on the principles adopted by the Commonwealth for entering into Interim or Comprehensive Agreements with Private Entities to develop and/or operate P3 projects.

### **Conflicts of Interest and Other Considerations**

The Office of the Secretary of Transportation and RPE Administrators realize that actual, potential or perceived conflicts of interest may be encountered during P3 project delivery. The Secretary of Transportation intends for each RPE to assume a proactive stance with regard to actual, potential or perceived conflicts. To assure transparency, accountability, and objectivity, any Proposal submitted to the RPE or VAP3 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](#), 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 VAP3 Director and coordinate any such communications through the VAP3. Contact details for VAP3 personnel are available on the VAP3 website. Proposers must direct their communications and advocacy efforts to VAP3 points of contact designated by the VAP3 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 VAP3 Director, in consultation with the Office of the Attorney General, the RPE Administrator 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 RPE or VAP3 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).

Private Entities submitting Unsolicited Proposals or responding to solicitation requests issued by the VAP3 or an RPE 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 RPE, in consultation with the VAP3 Director, the Office of the Attorney General, and other state, local and federal agencies, as appropriate, will determine whether the materials requested by the Private Entities are exempt from disclosure under applicable law and, if appropriate, the scope of such protection.

In the event that the RPE elects to disclose the requested materials, the RPE will provide the Proposer notice of its intent to disclose.

In no event shall the Commonwealth, the Secretary of Transportation, the VAP3 Director or the RPE Administrator be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted to the VAP3 pursuant to the PPTA and guidelines included in this PPTA Manual and Guidelines.

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

1. The Private Entity will submit a written request to the RPE and the VAP3 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 VAP3 Director and the Office of the Attorney General, has made a determination on whether materials requested by the Private Entities are exempt from disclosure under applicable law
2. Upon request by the RPE and/or the VAP3 Director, make oral presentation to the VAP3 and legal counsel;
3. Receive written notification from the RPE 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 outline 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 VAP3, in coordination with the RPE Administrator, 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 Private 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 RPE or the Private Entity would be adversely affected.

Where interpretation of these statutes is required, the policy goals of transparency and accountability in this PPTA 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 VAP3, shall comply with applicable federal, state and local laws.

Likewise, in submitting Proposals and in developing or operating P3 projects pursuant to the PPTA, Private Entities 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 VAP3 and the RPE that is associated with developing, reviewing or selecting submitted project Proposals has access to proprietary and confidential information. Any misuse by employees or representatives of the RPE of such information or other materials, information and data provided to the RPE by a Proposer is strictly prohibited.

The VAP3 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.

## ATTACHMENT A

# VIRGINIA P3 GUIDANCE – DEFINITIONS

These definitions are applicable to all guidance documentation published by the Virginia Office of Public-Private Partnerships (VAP3). This includes the [PPTA Implementation Manual and Guidelines](#), the PPTA Project Identification and Screening Guidelines, the [Value for Money Guidelines](#), the Public Engagement Guidelines and the Risk Management Guidelines. These definitions will be attached to all the VAP3 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 VAP3 website: [www.P3virginia.org](http://www.P3virginia.org).

- **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 VAP3 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.
- **Agency** means either the [Virginia Department of Transportation](#), the [The Port of Virginia](#), the [Virginia Department of Rail and Public Transportation](#), the [Virginia Department of Aviation](#), [Virginia Commercial Space Flight Authority](#), or the [Virginia Department of Motor Vehicles](#). For the purposes of this PPTA Manual and Guidelines the term Agency will be used for all references in the PPTA of 1995 (as Amended).
- **Agency Administrator** means the Commissioner, Director, Chairman of the Board of Commissioners, or chief executive officer who is responsible for making decisions for his/her respective Agency. For example, the Commissioner of Highways is the Department Administrator for the VDOT, and the Chairman of the Board of Commissioners is the Department Administrator for the Virginia Port Authority.
- **Availability Payments:** Annual payments made by an RPE 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 RPE 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 VAP3 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.
- **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.
- **Committee** means Transportation Public-Private Partnership Advisory Committee consisting of the following representatives: two members of the CTB; the staff director of the House Committee on Appropriations, or his designee; the staff director of the Senate Committee on Finance, or his designee; a Deputy Secretary of Transportation; the chief financial officer of either VDOT or the DRPT as appropriate; and a non-agency public financial expert, as selected by the Secretary of Transportation.
- **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 private entity and the Responsible Public Entity, 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).
- **Detail-Level Screening Report** means the form on which the VAP3 documents its findings and recommendations regarding the Detail-Level Screening process for a candidate P3 project.
- **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.
- **Final VfM Analysis** means an analysis of the VfM of a P3 project carried out during the Procurement phase of the Framework, after proposals have been received and an Apparent Best Value Proposal has been identified.
- **Final Finding of Public Interest (Final FOPI)** means a document prepared by the VAP3 and the RPE, wherein the RPE Administrator reaffirms that the transfer, assignment, and assumption of risks, liabilities and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the Initial FOPI have not materially changed and are still valid. The Final FOPI is signed by the RPE Administrator 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.
- **Framework (P3 project delivery framework)** means the Commonwealth’s structured procurement process designed to assist in the evaluation and selection of P3 projects in which projects must pass through a series of decision points in order to progress towards final approval and contract award.
- **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.
- **High-Level Screening Report** means the form on which the VAP3 documents its findings and recommendation regarding the High-Level Screening process for a candidate P3 project.
- **Initial VfM Analysis** means an early analysis of the VfM of a P3 project carried out during the project development phase of the Framework, before the actual procurement process has been initiated
- **Initial Finding of Public Interest (Initial FOPI)** means a document prepared by the VAP3 and the RPE, wherein the RPE Administrator affirms that the transfer, assignment, and assumption of risks, liabilities and permitting responsibilities or the mitigation of revenue risk by the private sector will provide sufficient benefits to the public. The Initial FOPI is signed by the RPE Administrator and the Secretary of Transportation and is produced during the project development stage.
- **Interim Agreement** means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity 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 RPE 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)
- **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.
- **Oversight Board** means the Oversight Board for the respective RPE. For example the CTB serves as the Oversight Board for the Virginia Department of Transportation and the Department of Rail and Public Transportation, the Virginia Aviation Board (VAB) serves as the Oversight Board for the Department of Aviation, the Virginia Port Authority Board of Commissioners (VPAB) serves as the Oversight Board for the Virginia Port Authority and the Commercial Space Flight Authority Board of Directors serves as the Oversight Board for the Virginia Commercial Space Flight Authority.
- **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 VAP3 documents its findings and recommendations regarding the Policy Review process for an Unsolicited Proposal.
- **Public-Private Partnership (P3)** means a project or service which is funded and operated through a partnership of government and one or more Private Entities. In Virginia, the PPTA is the enabling legislation that enables P3 agreements.
- **PPTA** means the [Public-Private Transportation Act of 1995, as amended](#), which is a legislative framework enabling Responsible Public Entities to enter into agreements authorizing Private Entities to develop and/or operate Qualifying Transportation Facilities.
- **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 RPE in coordination with the VAP3.
- **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 Sponsor** means an RPE that has submitted a candidate P3 project or Private Entity that has submitted an Unsolicited Proposal to the VAP3 for consideration as a P3 project.
- **Project Fact Sheet** means a document presented by the RPE Administrator and the VAP3 Director to the RPE Oversight Board at the end of the project screening phase, project development phase and project procurement phase.

- **Proposal** means the documents submitted by a Proposer in response to an RFP issued by the VAP3.
- **Proposal Review Fee** means the non-refundable, non-negotiable fee to be remitted to the RPE with the submission of an Unsolicited Proposal.
- **Proposer** means the Private Entity submitting an Unsolicited Proposal, or a Proposal for a PPTA project in response to an RFP issued by the VAP3.
- **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 an RPE. See also definitions of Raw PSC and Risk Adjusted PSC.
- **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 RPE in coordination with the VAP3.
- **Respondent** means any Private Entity, company, firm, consortium or other legal entity that submits a response to a document issued by the RPE in coordination with VAP3.
- **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 an RPE’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 RPE and would not be transferred under a P3 project because the RPE 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 RPE and would not be transferred under a P3 contractual arrangement because the RPE 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 an RPE. 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 Framework** 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 Private Entity bidding for a particular PPTA 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.
- **Solicited Project** means a project developed and procured by the RPE in coordination with the VAP3 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 RPE in coordination with the VAP3.
- **Transferable Risks** mean those risks that are selected to be transferred from the RPE 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 Private Entity 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 VfM Assessment based on Final RFP.
- **Updated Shadow Bid** means the Shadow Bid updated with the latest cost and revenue information prior to the Final VfM Assessment based on Final RFP.
- **[Value-for-Money \(VfM\)](#)** means the process used to compare the impacts of a P3 project against those for the traditional public delivery alternative. The methodology for carrying out a VfM is discussed in the Value for Money Guidelines. analysis involves:

- **VAP3** means the Virginia Office of Public-Private Partnerships established under the guidance of the Commonwealth's Secretary of Transportation which is responsible for developing, implementing and administering the procurement of P3 projects across all modes of transportation. Formerly known as the Virginia Office of Transportation Public-Private Partnerships.
- **VAP3 Director** means the highest ranking individual within the VAP3 responsible for overseeing all aspects of the P3 program.