

# The Commonwealth of Virginia



## PPTA Implementation 2017 Manual and Guidelines

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

October 2017

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## EXECUTIVE SUMMARY

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

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

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

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

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

**Chapter 2** contains information on the **project screening and identification** phase for potential P3 projects. At the conclusion of this phase, the VDOT P3 Office develops a Project Screening Report, which is an assessment of whether a potential P3 project is desirable, feasible, and is in the best interest of the public based on qualitative and quantitative criteria.

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

**Chapter 4** describes the P3 **project procurement** phase – which is generally a two-stage process that may be modified if necessitated by the unique characteristics of a P3 project.

**Chapter 5** describes the **project implementation** phase, which commences after the execution of the Comprehensive Agreement until the completion of both (i) VDOT / DRPT and (ii) the selected Proposer's contractual obligations.

# 1. INTRODUCTION

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

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

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

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

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

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

## 1.1 PURPOSE OF THE MANUAL AND GUIDELINES

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

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

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

In no way does the Manual and Guidelines modify or override requirements of the PPTA, and the PPTA governs in the event of any conflicts between the PPTA and the Manual and Guidelines. The processes and requirements included in the Manual and Guidelines will not apply retroactively to P3 projects for which either an Interim Agreement or Comprehensive Agreement has been entered into by VDOT / DRPT prior to July 1, 2017.

## 1.2 ORGANIZATION OF THE MANUAL AND GUIDELINES

This Manual and Guidelines is organized into chapters that specifically address the roles and responsibilities associated with the Process. These chapters include: 2. **Project Identification and**

**Screening; 3. Project Development; 4. Project Procurement, and 5. Project Implementation.** At the end of chapters 2-5 are summaries of key action items and the entities responsible for each item. Supporting technical documentation is provided in the **Appendices**.

### **1.3 P3 PROGRAM OBJECTIVES**

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

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

### **1.4 ORGANIZATIONAL STRUCTURE**

The VDOT P3 Office reports directly to the VDOT Chief of Innovation, who in turn, reports to the Chief Deputy Commissioner. The VDOT P3 Office also supports DRPT in multi-modal projects undertaken through the P3 process.

#### **1.4.1 PPTA Steering Committee**

The PPTA Steering Committee consists of the following representatives:

- A Deputy Secretary of Transportation, serving as chairperson;
- Two members of the CTB;
- Staff Director of the House Committee on Appropriations, or designee;
- Staff Director of the Senate Committee on Finance, or designee;
- Chief Financial Officer (CFO) of VDOT / DRPT, as appropriate; and
- Non-Agency public financial expert, as selected by the Secretary of Transportation.

The PPTA Steering Committee is briefed by VDOT / DRPT in meetings that are open to the public, unless otherwise determined by the PPTA Steering Committee (Va. Code §33.2-1803.1(B)(1)). The PPTA Steering Committee may consult with resident experts and external advisors on an as-needed basis.



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

A notice of PPTA Steering Committee meetings will be posted on the Commonwealth Calendar of Events and the VDOT P3 Office website prior to a meeting. Documentation for PPTA Steering Committee meetings will be posted to the VDOT P3 Office website at least 5 days prior to the meeting.

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

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

#### **1.4.3 CEOs**

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

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

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

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

### **1.5 GENERAL P3 PROCESS**

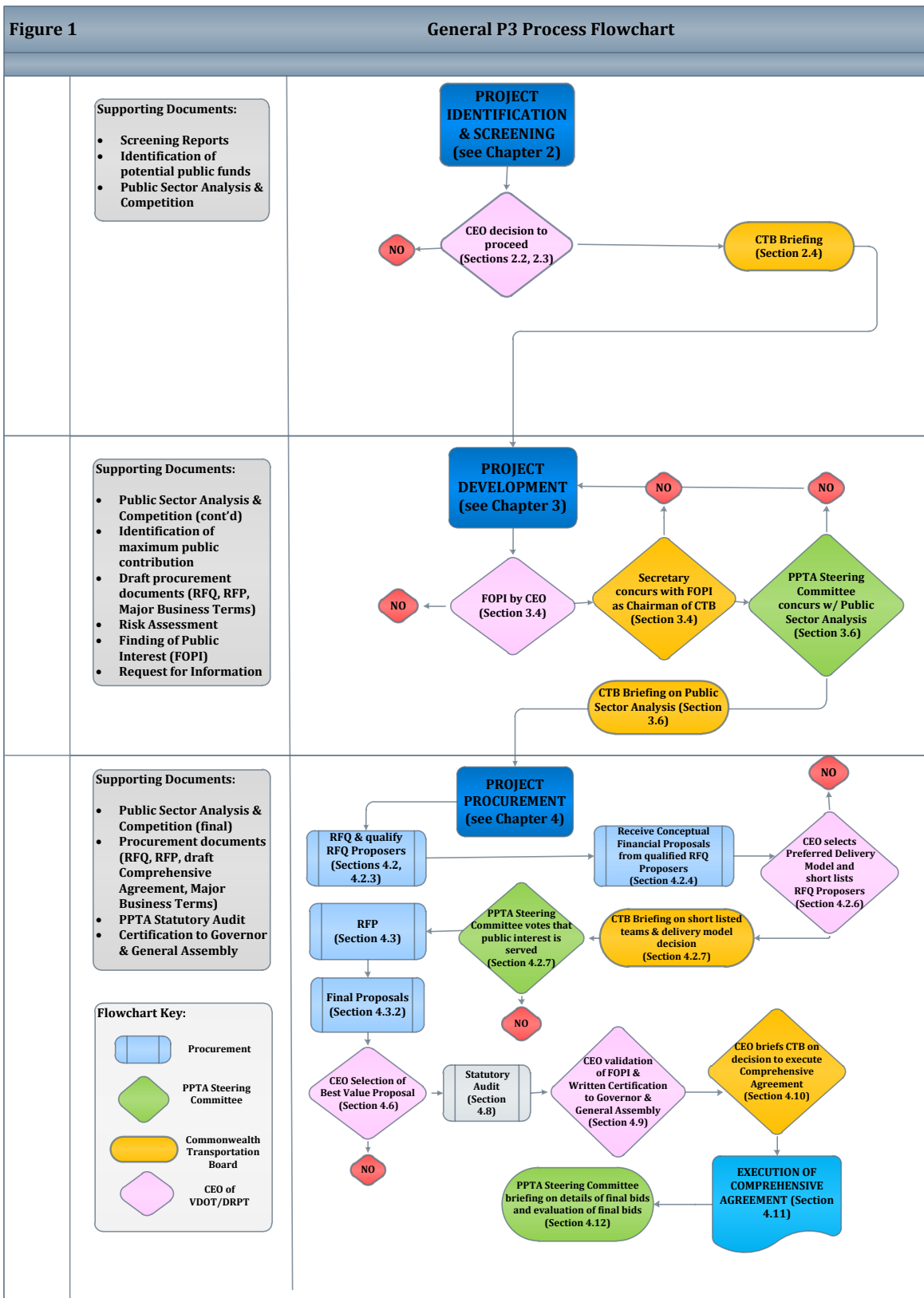
The General P3 process (Figure 1) is intended to streamline and standardize the overall process to enhance the delivery of P3 transportation projects within the Commonwealth. It was developed to capture the processes and decision points inherent in a P3 project involving both Solicited Projects and Unsolicited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

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

- The General P3 Process Flowchart (Figure 1) depicts at a high level, the steps and decision points.
- This flowchart is the "general" process for screening, developing, and procuring P3 projects. However, the PPTA allows flexibility to modify the process for unique projects.
- "No" symbols on the flowchart can indicate a point in the process where the CEO, PPTA Steering Committee, and/or Secretary determine a P3 project will not advance further. Or, in other circumstances, "No" arrows take the process back to a previous phase (e.g. Project Development),

indicating that decision makers require additional studies and analyses before they are able to make their decision.

- There are citations in the flowchart that allow readers to quickly find more detailed information on that element of the flowchart.



## **1.6 PUBLIC PARTICIPATION**

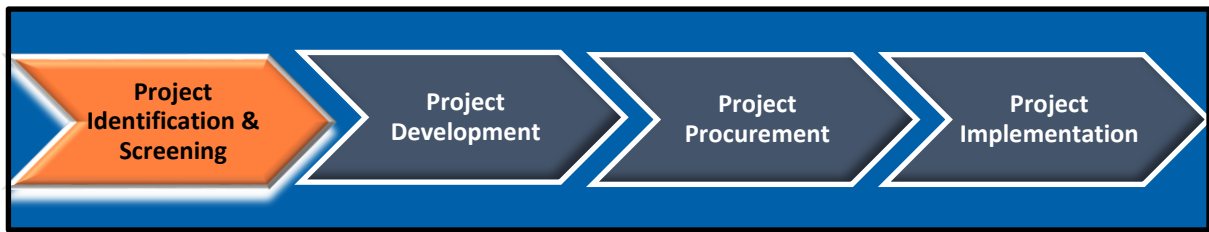
Numerous opportunities exist for public engagement at different times during the identification and screening, development, procurement and implementation phases of transportation projects. VDOT and DRPT's respective Public Involvement Manual and VDOT's P3 Office Public Engagement Guidance outline the opportunities in the process for public participation. Some of these opportunities are discussed in Chapters 2 to 4 of this Manual and Guidelines.

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

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

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

## 2. PROJECT IDENTIFICATION & SCREENING



This chapter describes the project identification and screening phase, and discusses the procedures and related activities for P3 projects initiated as a Solicited Project or as an Unsolicited Proposal.

### 2.1 PROJECT IDENTIFICATION AND SCREENING PROCESS

The VDOT P3 Office is responsible for the project identification and screening process. The project identification and screening phase is designed to assist VDOT / DRPT in determining the desirability, suitability, and feasibility of delivering projects as P3's. The P3 project identification and screening methodology is also a means of systematically and consistently applying evaluation criteria to Solicited Projects and Unsolicited Proposals submitted as candidates for consideration. Projects that are identified for development must address the needs outlined in the Statewide Transportation Plan (<http://www.vtrans.org>), and local and regional programs on safety, reducing congestion, increasing capacity and enhancing economic efficiency.

P3 candidate projects are identified from two primary sources:

- **Solicited Projects**

A Solicited Projects is when VDOT / DRPT develops a project concept and invites Private Entities to compete for the right to develop/operate the project.

- **Unsolicited Proposals**

An Unsolicited Proposal is when a Private Entity develops a project concept on its own and submits a proposal to VDOT / DRPT for consideration.

Both Solicited Projects and Unsolicited Proposals are assessed in two-parts. The first part is different depending on whether it is a Solicited Project (for which a Qualitative Project Screening is used) or an Unsolicited Proposal (for which a Policy Review is used). But the second part is the same for both. The specific identification and screening steps are outlined in more detail below.

### 2.2 SOLICITED PROJECTS

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

At the conclusion of its assessment, the VDOT P3 Office will prepare a Project Screening Report. The Project Screening Report will provide a recommendation to the CEO on whether a project should advance to the project development phase. The CEO makes the final decision. Should the CEO disagree with the recommendation, the project may be re-submitted if new information demonstrates the criteria have now been adequately addressed. A copy of the Project Screening Report template is posted on the VDOT P3 Office website for public comment.

### **2.2.1 Qualitative Project Screening**

Qualitative Project Screening is a process that examines whether a project meets broader, policy considerations including the criteria in Appendix D. The criteria may also take into account such considerations as mode of transportation, Greenfield project versus Brownfield project characteristics, revenue versus non-revenue risk profile, or changes in the Commonwealth's transportation goals or policies.

### **2.2.2 Quantitative Project Screening**

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

#### **2.2.2.1 Public Sector Analysis and Competition**

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

The Public Sector Analysis and Competition is an ongoing process that is initiated during the Quantitative Project Screening, and continues to the project development and project procurement phases until the Comprehensive Agreement is executed. At a minimum, the Public Sector Analysis contains the following information:

1. How the risk of user-fee financing is mitigated. This information is based on assumptions on competing facilities, projected compensation for high usage of the facility by high-occupancy vehicles (HOV), or other considerations.
2. Whether VDOT / DRPT intends to maintain/operate the facility itself, or if the Public Sector Option is based on the transfer of these responsibilities to the private sector.
3. The amount, if any, of public contributions in excess of revenue-producing capital project debt authorized under Article X Section 9 (c) of the Constitution of Virginia would still be required to cover project costs. This analysis assumes such revenue-producing capital project debt would be authorized.
4. Whether funds to support non-user fee generating components of the project will contribute to increased person throughput, reduction in congestion, improved safety and other expected benefits under Va. Code §33.2-1803.1(B)(1).

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

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

#### **2.2.2.2 Risk Assessment**

As part of the Quantitative Project Screening, the VDOT P3 Office will hold an initial risk workshop to identify and assess risks relating to the development, procurement, implementation and operation of the project. A Risk Register is created, which is a tool to capture risk information, consequences, responses and potential risk allocations (see VDOT P3 Office Risk Management Guidelines). Risks identified during this phase will be updated and refined as the project moves through subsequent phases of the process.

#### **2.2.3 Notification to Affected Localities and public entities**

As part of the Qualitative Project Screening, the VDOT P3 Office coordinates with identified Affected Localities and public entities to determine the extent of stakeholder support for the Solicited Project. This is a continuation of the coordination with these stakeholders (including Planning District Committees (PDCs) and Municipal Planning Organization (MPOs)) commenced during the development of long-range state, regional, and local plans. Coordination between VDOT and DRPT is crucial in projects with identified transit components. See the P3 Public Engagement Guidelines for further information.

### **2.3 UNSOLICITED PROPOSALS**

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

The private sector may submit Unsolicited Proposals to the CEO (Va. Code § 33.2-1803(A)), with a copy sent to the attention of the VDOT P3 Office Director at the following address:

**Commissioner of Highways/Director of Rail and Public Transit**  
**ATTENTION: Director of VDOT P3 Office**  
**Virginia Department of Transportation**  
**1401 E. Broad Street, Suite 1306**  
**Richmond, VA 23219**  
**(804) 786-0455**

The VDOT P3 Office shall be responsible for the evaluation of an Unsolicited Proposal. Evaluation of Unsolicited Proposals also follows a two-part assessment which involves looking into Policy Review criteria and Quantitative Screening criteria. The VDOT P3 Office's findings will also be documented in a Project Screening Report. Based on the Project Screening Report, the VDOT P3 Office Director will submit a recommendation to the CEO on whether a project should advance to the project development phase. The

CEO makes the final decision. If the CEO does not approve the advancement of the Unsolicited Proposal to the project development phase, or if the Unsolicited Proposal pertains to a project for which the VDOT P3 Office plans to issue a Request for Qualifications (RFQ), the VDOT P3 Office will return the Unsolicited Proposal to the Proposer that submitted it.

### 2.3.1 Policy Review

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

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

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

### 2.3.2 Quantitative Project Screening

If the findings from the Policy Review indicate the project remains suitable for P3 project delivery, the VDOT P3 Office will continue to look at the technical and financial feasibility of the project under a Quantitative Screening process similar to that for Solicited Projects, as provided in Section 2.2.1 and in Appendix D.

### 2.3.3 Proposal Review Fee

The VDOT P3 Office may charge reasonable amounts to cover the costs of processing, review, and evaluation of the Unsolicited Proposal. Evaluation will commence upon payment of an initial, non-refundable, and non-negotiable fee of \$50,000. During its evaluation, the VDOT P3 Office will assess whether additional fees will be needed to cover the costs to complete the evaluation. The assessment will



include coordination with the Proposer of the Unsolicited Proposal to determine a reasonable fee to cover additional costs.

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

### 2.3.4 Notification to Affected Localities and public entities

Any Proposer requesting approval for an Unsolicited Proposal shall furnish a copy of its proposal to each Affected Locality or public entity identified in its proposal. Prior to furnishing a copy of its proposal, the Proposer shall coordinate with the VDOT P3 Office Director. Within sixty (60) calendar days of receipt of the Unsolicited Proposal, the Affected Locality or public entity shall submit any comments in writing to the VDOT P3 Office.

The VDOT P3 Office will notify the Proposer and each Affected Locality identified in the Proposal of the CEO's decision to advance the Unsolicited Proposal to the project development phase. If the project is advanced and located in a metropolitan area, coordination with the Metropolitan Planning Organization (MPO) may be required to ensure that the project is included in the financial plan that accompanies the MPO's transportation plan.

## 2.4 REPORT TO CTB

If the CEO approves a project to be advanced to the project development phase, then VDOT / DRPT will present a briefing to the CTB on the results of the Project Screening Report.

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

## 2.5 KEY ACTION ITEMS

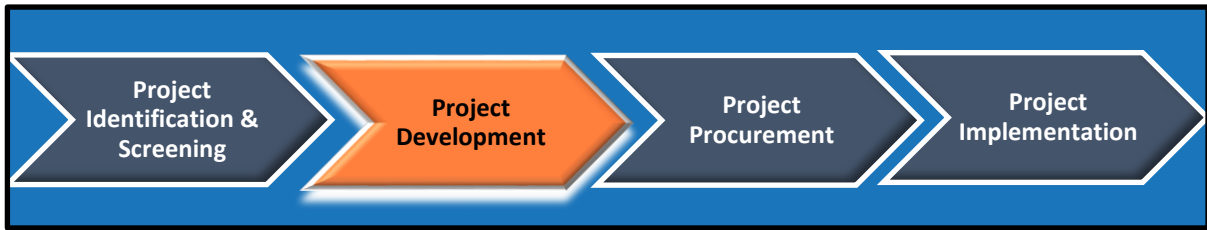
### Key Action Items

Table 2

Project Screening Activity	Responsibility	Targeted Timeframe
<b><i>Solicited Projects</i></b>		
Conduct Qualitative Screening of Solicited Projects	VDOT P3 Office	As appropriate
Continue coordination with Affected localities and public entities	VDOT / DRPT (especially in projects with identified transit components)	As appropriate
<b><i>Unsolicited Proposals</i></b>		
Initiate a Policy Review of Unsolicited Proposals	VDOT P3 Office	Within 90 calendar days of receipt of an Unsolicited Proposal

Obtain comments from each Affected Locality and public entity	VDOT P3 Office	Within 60 calendar days of release of Unsolicited Proposal to each Affected Locality and public entity
<b><i>Solicited Projects and Unsolicited Proposals</i></b>		
Conduct Quantitative Project Screening of Unsolicited Proposals	VDOT P3 Office	As appropriate
Prepare Project Screening Report	VDOT P3 Office	As appropriate
Recommend advancement to project development phase	VDOT P3 Office Director	As appropriate
Approve advancement of project to project development phase	CEO	Within 10 calendar days of recommendation of VDOT P3 Office Director
Report to the CTB	VDOT / DRPT	After CEO's approval to advance to project development phase
Notify the relevant Affected Locality (for Unsolicited Proposals)	VDOT P3 Office Director	Within 5 calendar days of the CEO's decision

### 3. PROJECT DEVELOPMENT



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

#### 3.1 PROJECT DEVELOPMENT PROCESS

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

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

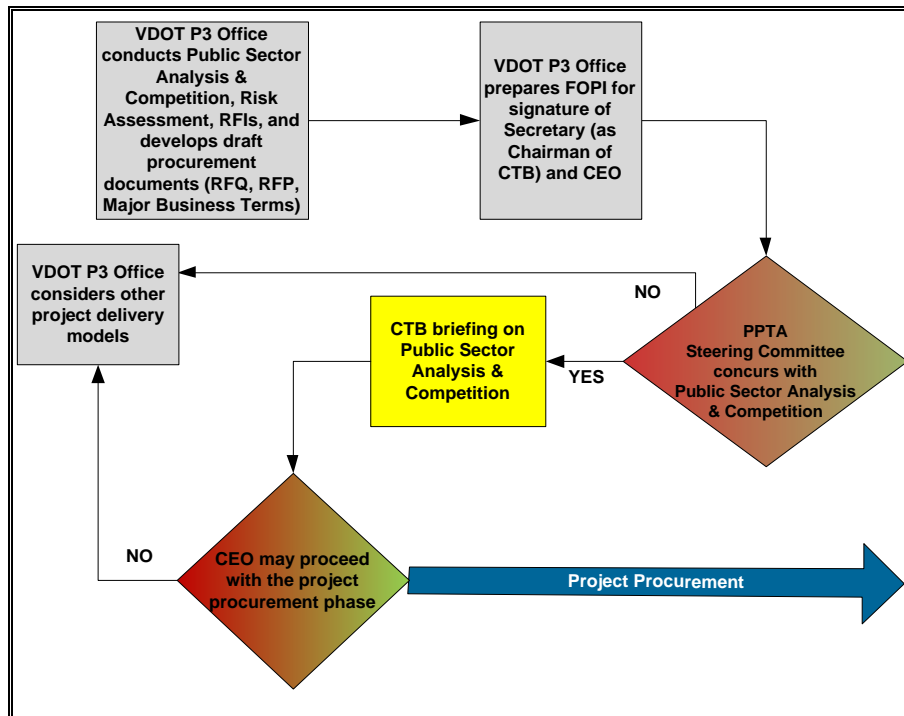
During the project development phase, a number of activities typically take place to prepare the project for the project procurement phase depending on the characteristics of the project. These include, but are not limited to:

**Table 3**

Project Development Activities
▪ Further defining project scope, design concept and phasing schedule
▪ Analyzing compliance with environmental and transportation planning requirements
▪ Analyzing technical feasibility and operations and maintenance evaluations
▪ Refining project cost, revenue estimates and lifecycle costing
▪ Submitting funding and grant applications, as required
▪ Performing outreach, coordinating public involvement and building stakeholder support
▪ Defining an approach to risk allocation and management (see VDOT P3 Office Risk Management Guidelines)
▪ Continuing the Public Sector Analysis and Competition initiated at the project identification and screening phase
▪ Continue to determine the optimal procurement delivery method(s)
▪ Soliciting information from the private sector through a Request for Information (RFI)
▪ Soliciting comments/feedback from the public through the VDOT P3 Office website

For P3 projects requiring federal action, the VDOT P3 Office will ensure that decisions regarding mode, location, user-fees and capacity are made after adequate consideration of potential alternatives to address needs and impacts of the project. The VDOT / DRPT may modify the project scope to meet the Commonwealth's transportation goals and the priorities of the administration.

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



Note that “No” symbols on the flowchart can indicate a point in the process where the CEO or the PPTA Steering Committee determine a P3 project will not advance further. Or, in other circumstances, “No” arrows take the process back to previous steps or the previous phase (i.e., Project Identification and Screening), indicating that decision makers require additional studies and analyses before they are able to make their decision.

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

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

### **3.3 RISK ASSESSMENT (CONTINUED)**

During the project development phase, the VDOT P3 Office will conduct an interim risk workshop to update the Risk Register. The Risk Register is updated through a quantitative assessment of all risks identified, the corresponding risk response and preferred risk allocation. Identified risks include risks already identified in the initial risk workshop (Section 2.2.2.2), as well as additional risks identified through project development activities. In addition, the VDOT P3 Office develops a Risk Management Plan which is a detailed plan of action for the management of project risks, and includes the recommended levels of contingency to maintain for a project in order to reflect its risk exposure.

### **3.4 FINDING OF PUBLIC INTEREST (FOPI)**

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

At a minimum, the FOPI shall provide the following information:

1. A description of the benefits expected to be realized by VDOT / DRPT through the development and/or operation of the transportation facility, including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use.
2. An analysis of the public contribution necessary for the development and/or operation of the facility or facilities identified under the Public Sector Analysis and Competition, including a maximum public contribution that will be allowed under the procurement.
3. A description of the benefits expected to be realized by VDOT / DRPT through a procurement under the PPTA compared with the development and/or operation of the transportation facility through other options available.
4. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the Private Entity, which shall include the following:
  - a. A discussion of whether revenue risk will be transferred to the Preferred Proposer 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 VDOT / DRPT; and
  - c. Other items determined appropriate by VDOT / DRPT.
5. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how such determination was made. If the 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 Preferred Proposer in the event that issues arise with the development and/or operation of the transportation facility.

6. If VDOT / DRPT proposes to enter into an Interim or Comprehensive Agreement using competitive negotiations, information and the rationale demonstrating that proceeding in this manner is more beneficial than proceeding pursuant to a competitive sealed bidding.

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

### **3.5 REQUEST FOR INFORMATION**

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

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

Pursuant to Va. Code § 33.2-1803.2(B), at the conclusion of P3 project development and before initiating the project procurement phase, VDOT / DRPT will present the Public Sector Analysis and Competition at a meeting of the PPTA Steering Committee. At this meeting, the PPTA Steering Committee will decide whether to concur that:

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

VDOT / DRPT may also brief the PPTA Steering Committee on studies and activities, including the results of a Request for Information (RFI); an initial schedule for project delivery; preliminary procurement documents; activities related to risk assessment for the project; an initial estimation of the project cost; the potential economic benefits for the project, and the preliminary business points for the project to determine whether the project should continue to the procurement phase.

The project briefing and the decision of the PPTA Steering Committee is posted on the Commonwealth Calendar and the VDOT P3 Office website for public awareness and feedback five calendar days prior to/after the PPTA Steering Committee meeting.

VDOT / DRPT will also brief the CTB on the FOPI and the Public Sector Analysis and Competition prior to proceeding with the project procurement phase. The project briefing to the CTB will likewise be posted on the VDOT P3 Office website five calendar days prior to/after CTB meeting.

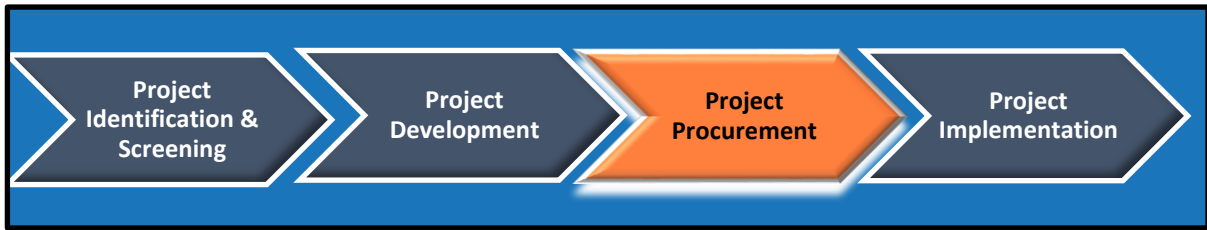
### 3.7 KEY ACTION ITEMS

Key Action Items

**Table 4**

Project Development Activity	Responsibility	Targeted Timeframe
Perform project development activities (e.g., geotechnical testing, environmental, preliminary engineering, risk assessment, etc.)	The VDOT / DRPT with assistance from the VDOT P3 Office	Determined by project specific scope
Continue Public Sector Analysis and Competition	VDOT P3 Office	During project development phase
Update Risk Register	VDOT P3 Office	Continuous through project development phase
Conduct an RFI to solicit public comment and private sector feedback	VDOT P3 Office	As appropriate
Present the Public Sector Analysis and Competition to the PPTA Steering Committee  PPTA Steering Committee concurs with Public Sector Analysis and Competition	VDOT / DRPT  PPTA Steering Committee	Determined by completion of project development activities
Post project briefing and decision of the PPTA Steering Committee on the VDOT P3 Office website	VDOT P3 Office	5 calendar days prior to/after the PPTA Steering Committee meeting
Brief the CTB on the FOPI and the Public Sector Analysis and Competition	VDOT / DRPT	Determined by completion of project development activities

## 4. PROJECT PROCUREMENT



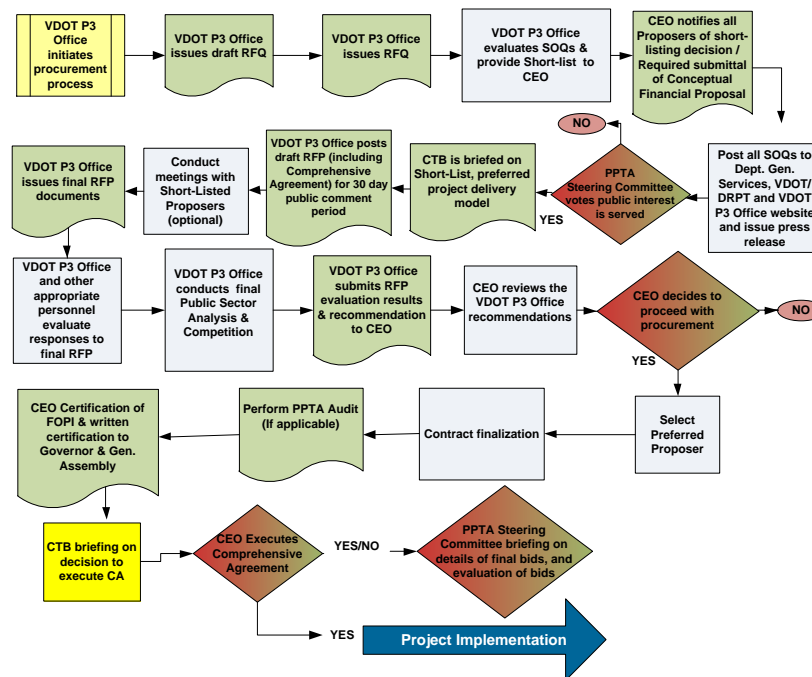
This chapter describes the competitive P3 procurement phase and provides guidance on related activities for projects that have been selected for procurement under the PPTA.

### 4.1 TWO-STAGE PPTA PROCUREMENT PROCESS

The VDOT P3 Office serves as the primary point of contact for P3 procurements, and acts in consultation with the Office of the Attorney General (OAG) to ensure that the procurement process is administered in accordance with applicable law and this Manual and Guidelines. The VDOT P3 Office Director is responsible for managing a consistent, transparent, competitive, and well-defined procurement process.

The P3 procurement phase (Figure 3) generally consists of: 1) issuing a RFQ, and 2) issuing a RFP. As an exception and as determined by the CEO, it may be more beneficial in certain cases to use a single-stage procurement. A single-stage procurement may be appropriate if a RFQ can be omitted to streamline the process and is in the best interest of the public (e.g., when an Unsolicited Proposal is submitted, or for less complex P3 projects). In either case, the VDOT P3 Office is responsible for leading the procurement with support from appropriate District(s).



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

Note that “No” symbols on the flowchart can indicate a point in the process where the CEO or the PPTA Steering Committee determine a P3 project will not advance further. Or, in other circumstances, “No” arrows take the process back to previous steps or the previous phase (i.e., Project Development), indicating that decision makers require additional studies and analyses before they are able to make their decision.

## 4.2 REQUEST FOR QUALIFICATIONS

The VDOT P3 Office initiates the first stage of the P3 procurement process by issuing the RFQ. The primary objective of the RFQ is to define a pool of qualified, potential Proposers for the project. Private Entities interested in participating in the procurement respond to a RFQ through the submission of a Statement of Qualification (SOQ). In procurements where multiple delivery models are being considered, the RFQ may require, as a second step, the submission of a Conceptual Financial Proposal. Conceptual Financial Proposals inform VDOT / DRPT’s decision on the preferred project delivery model.

### 4.2.1 Draft RFQ and RFQ

Prior to the issuance of the RFQ, the VDOT P3 Office may post the RFQ in a draft format in the VDOT P3 website. The public has the opportunity to provide comments on a continuous basis by making use of the VDOT P3 Office website comment form during the process.

The RFQ documents will be posted on the Department of General Services (DGS) central procurement website and the VDOT P3 Office website. These documents will: 1) provide for a 30 to 60 day competition period, and 2) include information regarding the scope, nature and timing of development and/or operation of the proposed project.

#### **4.2.2 SOQ Evaluation**

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

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

#### **4.2.3 Qualification of Proposers**

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

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

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

#### **4.2.4 Evaluation of Conceptual Financial Proposal**

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

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

#### **4.2.5 Public Sector Analysis and Competition (Continued)**

Among other things, the information in Conceptual Financial Proposals received will be used for the ongoing Public Sector Analysis and Competition process (see Sections 2.2.2.1, 3.2, and 4.5). Findings from the Public Sector Analysis and Competition will be the basis for a final determination by the CEO of the preferred project delivery model.

#### **4.2.6 Short-Listing Qualified Proposers**

Once the CEO has made a determination, Qualified Proposers that had submitted Conceptual Financial Proposals under the preferred project delivery model will be short-listed. Short-Listed Proposers will advance to the RFP stage.

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

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

Prior to the issuance of the Draft RFP (Section 4.3.1), at a meeting of the PPTA Steering Committee, the VDOT / DRPT will also present the results of its evaluation of the SOQs and the Conceptual Financial Proposals, as well as its determination to continue with, terminate, or pursue a modified procurement (including its selection of a preferred project delivery model). If the PPTA Steering Committee makes an affirmative determination that the proposals serve a public interest pursuant to the Va. Code § 33.2-1803.2(C), as evidenced by a majority vote of its members, the VDOT / DRPT may proceed with the procurement, or modified procurement. The PPTA Steering Committee may convene a closed door session to review the SOQs received.

#### **4.2.8 Interim Agreement**

Prior to or in connection with the negotiation of a Comprehensive Agreement, VDOT / DRPT may enter into an Interim Agreement with a Proposer or multiple Proposers if VDOT / DRPT determines in writing that it is in the public interest to do so (Va. Code § 33.2-1809).

The interim agreement (i) permits the Proposer to commence activities for which it may be compensated relating to the proposed transportation facility (including project planning and development, advance right-of-way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities); and (ii) contain provisions related to any aspect of the development and/or operation of a transportation facility that the parties may deem appropriate. But, such interim agreement shall not (i) establish a process and timing of the negotiations of the Comprehensive Agreement or (ii) allow for competitive negotiations as set forth in Va. Code § 2.2-4302.2.

VDOT / DRPT shall provide an opportunity for public comment on the proposals 30 days prior to entering into an interim agreement. The public comment period may include a public hearing, at the sole discretion of VDOT / DRPT.

Once the negotiation phase for the development of the interim agreement is complete and a decision to award has been made, VDOT / DRPT shall post the major business points of the interim agreement in accordance with Va. Code § 33.2-1820(C).

### **4.3 REQUEST FOR PROPOSALS**

The second stage of procurement consists of the issuance of the RFP, the evaluation of proposals submitted pursuant to the RFP, and the selection of the Apparent Best Value Proposal which offers the most overall public benefits.

During this stage, the VDOT P3 Office provides opportunities for public comment on the project and proposals on a continuous basis by making use of the VDOT P3 Office and/or project website. The RFP documents will be posted to the VDOT P3 Office and project website.

#### **4.3.1 Draft RFP**

VDOT / DRPT may choose to issue the RFP in draft format to Short-Listed Proposers (Draft RFP) and hold proprietary one-on-one meetings to solicit feedback on these proposed documents.

The Draft RFP will be issued together with the draft Comprehensive Agreement. Pursuant to Va. Code § 33.2-1820(B)(2), 30 calendar days prior to issuance of the finalized RFP documents (Final RFP), VDOT / DRPT must post the draft Comprehensive Agreement and provide an opportunity for public comments. The public has the opportunity to provide comments on a continuous basis by making use of the VDOT P3 Office website comment form during the process.

VDOT / DRPT will also notify Affected Localities and public entities that a copy of the Draft RFP has been posted for comment.

#### **4.3.2 Final RFP**

After receipt and due consideration of feedback and comments, the VDOT P3 Office will issue the finalized Final RFP to Short-Listed RFQ Proposers.

#### **4.3.3 Evaluation of responses to Final RFP**

The VDOT P3 Office and other appropriate personnel will evaluate responses to the Final RFP based on defined criteria in the RFP documents. The VDOT P3 Office reserves the right to run a Best and Final Offer (BAFO) process with the Short-Listed Proposers (see Appendix G).

If after the competitive response period, VDOT / DRPT receives at least a single responsive Proposal, the VDOT P3 Office will conduct an assessment to determine if the Proposal received is in the best interest of the public. This assessment will include, at a minimum, an evaluation of risk allocations. VDOT / DRPT may decide to continue, terminate or modify the procurement.

### **4.4 MATERIAL CHANGES**

If VDOT / DRPT modifies the procurement documents in such a manner as to materially change the project scope, assignment of risks or liabilities, or mitigation of revenue risk, VDOT / DRPT will report such modifications to the CTB and seek a resolution to continue the procurement with the material changes. The report will include an assessment on the original and modified procurements.

The presentation to the CTB will be at a scheduled meeting on the Commonwealth Calendar and open to the public.

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

Prior to contract finalization and award, the VDOT P3 Office will perform a final Public Sector Analysis and Competition, taking into account any additional project information that has become available since the initial Public Sector Analysis and Competition was performed. This final Public Sector Analysis and Competition compares the VDOT / DRPT updated Public Sector Option and the Apparent Best Value

Proposal. The final Public Sector Analysis and Competition is a final check to ensure the award of the project as a P3 project remains in the best interest of the public.

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

The CEO's selection of the Apparent Best Value Proposal VDOT / DRPT shall also be based upon a determination that it is in the best interest of the public. An Apparent Best Value Proposal is in the best interest of the public if:

1. The Preferred Proposer can develop and/or operate the transportation facility or facilities with a public contribution amount that is less than the maximum public contribution determined under the Public Sector Analysis and Competition;
2. There is a public need for the transportation facility or facilities and they meet a need included in the Statewide Transportation Plan;
3. The Apparent Best Value Proposal is anticipated to have significant benefits as determined under the FOPI;
4. The Apparent Best Value Proposal will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation;
5. The risks, liabilities, and responsibilities transferred, assigned, or assumed by the Preferred Proposer provide sufficient benefits to the public to not proceed with the development and/or operation of the transportation facility through other means of procurement available to VDOT / DRPT.

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

#### **4.7 RISK ASSESSMENT (CONTINUED)**

During the project procurement phase, the VDOT P3 Office will conduct a risk workshop/s to again update the Risk Register (Section 2.2.2.2) and the Risk Management Plan (Section 3.3). The Risk Register and the Risk Management Plan are also updated to reflect new project information, mitigations that have been carried out, and market factors.

#### **4.8 PPTA AUDIT REQUIREMENTS**

For P3 projects with estimated Construction Costs over \$50 million dollars, Va. Code § 33.2-1803(F) requires the Preferred Proposer to pay for an independent audit of any and all traffic and cost estimates associated with the Preferred Proposer's Proposal, and a review of all public costs and potential liabilities to which taxpayers could be exposed. This includes improvements to other transportation facilities that may be needed as a result of the Proposal, failure by the Preferred Proposer to reimburse the VDOT / DRPT for

services provided, and potential risk and liability in the event the Preferred Proposer defaults on the Comprehensive Agreement or on bonds issued for the project. The VDOT P3 Office will appoint an independent consultant to conduct this audit prior to the final contract award to the Preferred Proposer. Additionally, the VDOT P3 Office will disclose all information from such a review within 30 calendar days of completion of the audit by posting it on the VDOT P3 Office website. See Appendix J for further information.

#### **4.9 CERTIFICATION TO GOVERNOR AND GENERAL ASSEMBLY**

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

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

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

During the briefing, the CEO will seek the CTB's endorsement of the Certification to Governor and General Assembly indicating support of the CEO's execution of a Comprehensive Agreement. The briefing documentation and CTB's endorsement of the Certification to Governor and General Assembly are posted on the VDOT P3 Office website for public awareness five calendar days prior to/after the CTB meeting.

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

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

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

During contract finalization, no changes to the major business terms in the draft Comprehensive Agreement will be permitted. The final authorization to develop and/or operate any P3 project is contingent upon the successful finalization and execution of the Comprehensive Agreement between the Preferred Proposer and the CEO.

Once the negotiation phase for the development of a CA is complete and a decision to award has been made, VDOT / DRPT shall post the major business points of the CA including the projected use of any public funds on the DGS' central electronic procurement website, and outline how the public can submit commentes on those major business points.

#### 4.11.1 Risk Assessment (Final)

During contract finalization, the Risk Register and Risk Management Plan are again updated with information from the selection of the Preferred Proposer. The current Risk Register and Risk Management Plan are certified to by the VDOT P3 Office Director and endorsed by the CEO for use during the project implementation phase.

#### 4.12 REPORT TO PPTA STEERING COMMITTEE

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

#### 4.13 PROCUREMENT FOR UNSOLICITED PROPOSALS

Following the PPTA Steering Committee's concurrence with the Public Sector Analysis and Competition (Section 3.5), VDOT / DRPT may decide to accept the Unsolicited Proposal and initiate procurement. Within 10 days from the acceptance of the Unsolicited Proposal, the VDOT P3 Office will post the Unsolicited Proposal on the DGS central procurement website and the VDOT P3 Office website.

A notice will also be posted (i) providing for a period of 120 days for the submission of competing proposals, (ii) including specific information regarding the proposed nature, timing, and scope of the facility subject of the Unsolicited Proposal; and (iii) outlining the opportunities that will be provided for public comments during the review process.

At the end of the 120-day period for submission of competing proposals, VDOT / DRPT shall conduct an evaluation and proceed in accordance with the procedures in Sections 4.2.2 to 4.12 above.

#### 4.14 KEY ACTION ITEMS

Table 5

Project Procurement Activity	Responsibility	Targeted Timeframe
<b><i>Solicited Projects</i></b>		
Issue Draft RFQ	VDOT P3 Office	Prior to issuance of RFQ
Post Draft RFQ on VDOT P3 Office for public comment	VDOT P3 Office	Prior to issuance of RFQ
Issue RFQ	VDOT P3 Office	After approval by PPTA Steering Committee of initiation of procurement
Receive SOQs	VDOT P3 Office	Between 30 and 60 calendar days after release of RFQ
<b><i>Unsolicited Proposals</i></b>		
Post the Unsolicited Proposal	VDOT P3 Office	10 days from acceptance of Unsolicited Proposal

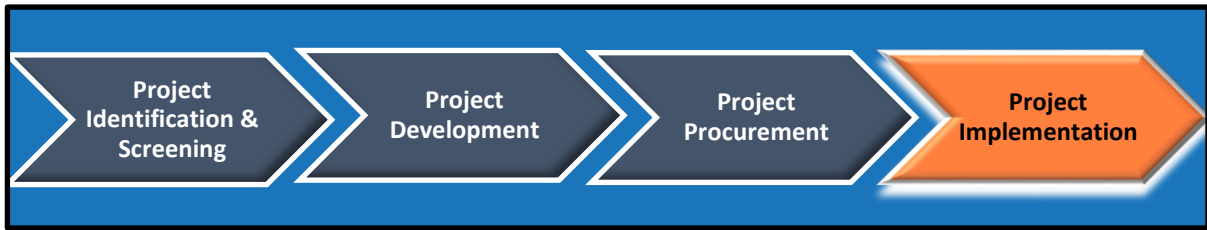


Issue notice for submission of competing proposals	VDOT P3 Office	As appropriate
Receive competing proposals	VDOT P3 Office	120 days from issuance of notice
<b><i>Solicited Projects/Unsolicited Proposals</i></b>		
Evaluate SOQs/competing proposals and qualify Proposers.	VDOT / DRPT	Completion targeted for 60 calendar days after receipt of SOQs
Agency qualifies Proposers	CEO	Within 10 business days of completion of evaluation of SOQs/competing proposals
Notification of Qualified Proposers Posting of Qualified Proposers	VDOT P3 Office	Within 10 business days of CEO's qualification of Proposers
Require submission of Conceptual Financial Proposals by Qualified Proposers	VDOT P3 Office	Upon notification to Qualified Proposers that Conceptual Financial Proposals are required
Receive Conceptual Financial Proposals	VDOT P3 Office	Between 60 and 90 calendar days from notification of Qualified Proposers that Conceptual Financial Proposals are required
Evaluate Conceptual Financial Proposals	VDOT P3 Office	10 business days from receipt of Conceptual Financial Proposals
Update Public Sector Analysis and Competition based on information in Conceptual Financial Proposals	VDOT P3 Office	As appropriate
Agency selects preferred project delivery model. Qualified Proposers are short-listed.	CEO	10 business days from end of evaluation of the Conceptual Financial Proposals
CTB briefing on the Short-List, the results of the evaluation of the SOQs and Conceptual Financial Proposals, and the selection of the preferred project delivery model.	VDOT / DRPT	After the CEO's selection of the preferred project delivery model
PPTA Steering Committee briefing on the Short-List, the results of the evaluation of the SOQs and Conceptual Financial Proposals, and the	VDOT / DRPT	After briefing of the CTB



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

## 5. PROJECT IMPLEMENTATION



### 5.1 POST-COMMERCIAL CLOSE

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

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

### 5.2 POST-FINANCIAL CLOSE

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

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

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

### 5.3 KEY ACTION ITEMS

Table 6

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

<b>Project Implementation Activity</b>	<b>Responsibility</b>	<b>Targeted Timeframe</b>
Document Control database	VDOT P3 Office/VDOT District	Begin during Project Procurement & continued until Project Completion
Performance Monitoring	VDOT P3 Office/ VDOT District	As stipulated in CA
Conduct a review of whether the Preferred Proposer is meeting the terms of the Comprehensive Agreement	VDOT P3 Office/ VDOT District	Not later than 3 years after the date of completion of the project.
Provide a publicly available summary of the total level of Federal assistance in the project	VDOT P3 Office/ VDOT District	As appropriate

## APPENDICES

**Appendix A** – Rights and Disclaimers

**Appendix B** – P3 Definitions

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

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**Appendix K** – Confidentiality and Security of Information

## **APPENDIX A**

### **Rights and Disclaimers**

#### **RIGHTS RESERVED**

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

#### **DISCLAIMERS AND CONDITIONS FOR SUBMISSIONS UNDER THE PPTA**

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

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

## APPENDIX B

# P3 DEFINITIONS

Provided below are terms used in this Manual and Guidelines.

- **Addenda or Addendum** means supplemental additions, deletions, and modifications to the provisions of the solicitation documents issued by the VDOT P3 Office or a Responsible Public Entity.
- **Affected Locality** means any county, city or town in which all or a portion of a Qualifying Transportation Facility is located and any other Responsible Public Entity directly affected by the Qualifying Transportation Facility.
- **Agency** means VDOT or DRPT.
- **Apparent Best Value Proposal** means the Proposal offering the Best Value.
- **BAFO** means Best and Final Offer. A BAFO is submitted by Proposers in response to a Request for Proposal revisions issued by VDOT / DRPT. After evaluation of responses to a final RFP, VDOT / DRPT reserves the right to request that Proposers submit Proposal revisions (also known as a BAFO). Typically, only those Proposers who have provided responsive proposals to the final RFP and/or fall within a competitive range will be permitted to submit BAFOs.
- **Best Value** means the most overall public benefits as determined through an evaluation of the amount of the concession payment, the amount of public contribution, and other appropriate considerations in proposals received from Proposers. 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.
- **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.
- **CEO** means the Commissioner of Highways for VDOT and the Director of DRPT for DRPT.
- **Certification to Governor and General Assembly** is a document where the CEO certifies that the P3 delivery method is being conducted in a manner that is consistent with the intent of the FOPI submitted prior to the project procurement phase.
- **Comprehensive Agreement (CA)** means the Comprehensive Agreement between the Proposer and the VDOT / DRPT, required by § 33.2-1808 of the Code of Virginia.

- **Conceptual Financial Proposal** means, a submission by Qualified Proposers, in a procurement where multiple project delivery models are being considered. The submission may include information on a preliminary financial model, sources and use of funds, and indicative pricing relating to the specific project delivery model for which the Qualified Proposer has been qualified.
- **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.
- **CTB** means the Commonwealth Transportation Board.
- **Develop or Development** means to plan, design, finance, lease, acquire, install, construct or expand.
- **Final RFP** means the final request for proposals issued by VDOT / DRPT during the procurement of a P3 project.
- **Finding of Public Interest (FOPI)** means a document signed by the CEO and the Secretary of Transportation, and contains at a minimum the information provided in Va. Code § 33.2-1803.1.
- **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.
- **Greenfield Project** means the development of a new transportation facility.
- **Interim Agreement** means an agreement, including a memorandum of understanding or binding preliminary agreement, between the Proposer and the Responsible Public Entity that provides for the completion of studies and any other activities to advance the development and/or operation of a Qualifying Transportation Facility (as defined under the PPTA).
- **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.
- **Operate or Operation** means to finance, maintain, improve, equip, modify, repair, or operate a facility.
- **PDC** means Planning District Committee.
- **Policy Review** means a brief evaluation of an Unsolicited Proposal's concept and benefits to determine that it is in accordance with the Code of Virginia, and this Manual and Guidelines, and is consistent with the Commonwealth's transportation policy goals.



- **PPTA** means the Public-Private Transportation Act of 1995, as amended, which is a legislative process enabling Responsible Public Entities to enter into agreements authorizing Proposers to develop and/or operate Qualifying Transportation Facilities.
- **PPTA Steering Committee** means the committee established under Va. § 33.2-1803.2, whose members are stated in Section 1.4.1.
- **Preferred Proposer** means the Proposer whose proposal is selected as the Apparent Best Value Proposal by VDOT / DRPT in coordination with the VDOT P3 Office.
- **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.
- **Project Screening Report** is a document prepared at the conclusion of the project identification and screening phase that reflects the VDOT P3 Office's assessment of the Solicited Project based on qualitative and quantitative criteria.
- **Proposal** means and Unsolicited Proposal or the documents submitted by a Proposer in response to an RFP issued by the VDOT P3 Office.
- **Proposal Review Fee** means the non-refundable, non-negotiable fee to be remitted to the VDOT / DRPT with the submission of an Unsolicited Proposal.
- **Proposer** means a Private Entity submitting an Unsolicited Proposal, or a Proposal for a PPTA project in response to an RFP issued by the VDOT P3 Office.
- **Public-Private Partnership (P3)** means a project or service which is funded and operated through a partnership of government and one or more Proposers. In Virginia, the PPTA is the enabling legislation that enables P3 agreements related to transportation.
- **Public Sector Analysis and Competition** means the analysis undertaken by the VDOT P3 Office, in cooperation with the Secretary of Transportation and the Secretary of Finance, pursuant to Va. Code § 33.2-1803.1:1.
- **Public Sector Option** means the procurement option defined based on available public funding and financing options. The Public Sector Option will be used to set a maximum amount of public contribution to the proposed project.
- **Qualified Proposer** means, in a procurement with multiple delivery models, a Proposer who has submitted a responsive Statement of Qualifications, as determined by the CEO, after an evaluation by VDOT / DRP. A Qualified Proposer is invited to submit a Conceptual Financial Proposal.
- **Qualifying Transportation Facility** has the meaning ascribed to that term within the PPTA.
- **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. VDOT / DRPT may choose to issue a Draft RFP to solicit feedback prior to the issuance of the Final RFP.

- **Request for Qualifications (RFQ)** means the documents constituting the Request for Qualifications issued for a PPTA project by VDOT / DRPT in coordination with the VDOT P3 Office.
- **Respondent** means any Private Entity, company, firm, consortium or other legal entity that submits a response to a document issued by the VDOT / DRPT and VDOT P3 Office.
- **Responsible Public Entity** means a public entity, including local government and regional authority that has the power to develop and/or operate the Qualifying Transportation Facility in accordance with the PPTA.
- **Revenue Risk** means the risks associated with the realization of tolling revenues.
- **RFI** means a Request for Information which is issued, at the discretion of the CEO, to obtain additional information and comment from the private sector and other interested stakeholders. RFIs may include public briefings to discuss the project under consideration.
- **Risk Assessment** means the overall process of risk identification, risk analysis and risk evaluation, including risk response.
- **Risk Management Plan** is a detailed plan of action for the management of project risks, and should include recommended levels of contingency to maintain for a project in order to reflect its risk exposure.
- **Risk 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.
- **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.
- **Short-List** as used in a two-phase selection process, means the narrowing of the field of Proposers through ranking of the most highly qualified Proposers who have responded to an RFQ with the intent to advance to the RFP stage of the P3 procurement process. Only short-listed firms will be invited to submit a proposal in response to an RFP. In procurements where the submission of a Conceptual Financial Proposal is required, a Short-List is issued once the CEO has determined a preferred project delivery model.
- **Short-Listed Proposer** means a Proposer who has submitted a responsive Statement of Qualification and/or a Conceptual Financial Proposal, as determined by the CEO, after an evaluation by VDOT / DRPT. A Short-Listed Proposer advances to the RFP stage of procurement.
- **Solicited Project** means a project developed and procured by the VDOT / DRPT and VDOT P3 Office through the issuance of an RFQ or RFP to develop and/or operate a Qualifying Transportation Facility by the Private Entity in accordance with the PPTA.
- **Stakeholder(s)** means individuals and/or organizations who may affect, be affected by, or perceive themselves to be affected by a decision(s) associated with the project, its objectives and goals.

- **Statement of Qualifications (SOQ)** means the documents constituting the Statement of Qualifications and supporting information, including all clarifications thereto, submitted by Respondents in response to RFQs issued by the VDOT / DRPT in coordination with the VDOT P3 Office.
- **Transportation Infrastructure Finance and Innovation Act (TIFIA)** means the Federal program that provides credit assistance, in the form of loans, loan guarantees and standby lines of credit, for qualified large-scale, surface transportation, projects of regional and national significance.
- **Transportation Facility** means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances and other property needed to operate such facility. A commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a "transportation facility".
- **Unsolicited Proposal** means a Proposal to develop and/or operate a Qualifying Transportation Facility submitted by a Proposer not in response to an RFQ or RFP.
- **VDOT P3 Office** means the VDOT Office of Public-Private Partnerships, responsible for identifying, screening, developing, procuring, and implementing P3 projects.
- **VDOT P3 Office Director** means the highest ranking individual within the VDOT P3 Office responsible for overseeing all aspects of the P3 program.

## APPENDIX C

### Guidance on Approach to Commercial Terms

The PPTA provides flexibility in contracting to public and Private Entities for the provision of public services. A Comprehensive Agreement between the Private Entity and the agency governs the development and operation of the Qualifying Transportation Facility (Va. Code § 33.2-1808). The Comprehensive Agreement establishes the duties of the Private Entity and may contain commercial terms and conditions that the agency determines serve the public purpose of the PPTA. The development of commercial terms is a fluid, bi-lateral process governed by considerations of public policy and market conditions. In certain circumstances, the agency may elect to enter into an Interim Agreement with one or more Private Entities to pre-develop certain aspects of a particular project.

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

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

- **Protect the Public Interest** by being an effective steward of public resources and ensuring that the Commonwealth and its transportation agencies satisfy their statutory and legal duties to the public;
- **Deliver Transportation Solutions** to solve the Commonwealth's transportation challenges;
- **Promote Transparency and Efficiency** within the process in order to generate and preserve confidence of key stakeholders in the P3 program;
- **Maximize Competition** through constant, early communication with the private sector, and during development and procurement, managing an efficient project selection process and administering a uniform and transparent procurement process;
- **Execute P3 projects in a Timely and Efficient Manner** through decisive process management and efficient decision-making;
- **Encourage Creativity and Innovation** to generate meaningful participation by the private sector;
- **Collaborate, Cooperate and Communicate** with private partners within the process as well as federal and state agencies and other key stakeholders to identify shared goals, key concerns and criticisms and resolve issues and challenges on a programmatic and project-specific basis;
- **Advocate Reasonable and Fair Commercial Terms** to ensure marketability of P3 projects by adopting market-based risk allocations that are appropriate for the complexity and scope of a specific P3 project – and are in the best interest of the Commonwealth;

- **Standardize Terms, Procedures and Documents** as appropriate to enhance speed of project execution and establish common understanding of key commercial terms and uniform treatment of general matters while remaining flexible to address the unique elements of a project on a transaction-specific basis; and
- **Lead the Public-Private Partnership Community** by developing and preserving a reputation for managing P3 projects effectively and successfully to promote confidence in the P3 program and realize the benefits of a long term investment in the Commonwealth.

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

## **DEVELOPMENT OF COMMERCIAL TERMS**

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

Prior to the issuance of the Final RFP documents for a particular P3 project, the VDOT P3 Office will maintain open lines of communication within the parameters and restrictions set forth in the procurement documents with Short-Listed Proposers. The VDOT P3 Office will consider the input received from Short-Listed Proposers related to the project scope to ensure that the project and its corresponding commercial terms are financeable and consistent with prevailing market conditions.

The VDOT P3 Office expects the key commercial terms that will form the basis for an Interim Agreement or Comprehensive Agreement will be determined prior to issuance of the Final RFP documents. The contract finalization phase will provide an opportunity to make modifications necessary to react to events, such as changes in law, litigation, significant shifts in market conditions, new facts, and considerations raised by significant third party participants as appropriate. During the contract finalization phase, the VDOT P3 Office, in coordination with VDOT / DRPT will work with the Preferred Proposer to agree upon an ordered and efficient review and comment process to resolve any outstanding issues and/or refine the language of the documents in a manner which is timely, cost effective and reflects the importance of achieving commercial and financial closings.

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

During the process of drafting the primary commercial documents, the VDOT P3 Office, VDOT / DRPT, the OAG, and external advisors will be guided by the PPTA principles and consider the following factors:

1. The transportation mode and asset classification;

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

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

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

The VDOT P3 Office views its approach to developing commercial terms as a dynamic process that will evolve over time in an effort to continually reflect the best practices of using public-private partnerships to develop transportation infrastructure in the Commonwealth.

## APPENDIX D

### Guidance on Project Identification and Screening

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

**Table A**

Qualitative Project Screening Criteria – Desirability and Suitability of the Project		
I	Public Need	<ul style="list-style-type: none"> <li>▪ Is the project part of the Statewide Transportation Plan, regional, and other local plans/programs?</li> <li>▪ Is the project in Smart Scale?</li> <li>▪ Is the project consistent with the overall transportation objectives of VDOT / DRPT?</li> <li>▪ Does the project address the needs outlined in the above plans including safety and security, system maintenance and preservation, mobility, connectivity and accessibility, environmental stewardship, economic vitality, coordination of transportation and land use, and program delivery?</li> <li>▪ Does the project address other needs?</li> </ul>
II	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>▪ Are there potential project benefits to Affected Localities and their transportation system?</li> <li>▪ Are there anticipated enhancements to adjacent or existing transportation facilities?</li> <li>▪ Are there anticipated enhancements to planned transportation facilities?</li> </ul>
III	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>
IV	Market Demand for PPTA Delivery (Should this be deleted?)	<ul style="list-style-type: none"> <li>▪ If private sector feedback has been solicited, what is the level of interest that has been expressed? (This measure applies to Solicited Projects only. The submission of an Unsolicited Proposal demonstrates market demand.)</li> </ul>

<b>Qualitative Project Screening Criteria – Desirability and Suitability of the Project</b>		
V	Stakeholder Support	<ul style="list-style-type: none"> <li>▪ What is the extent of public support or opposition for/to the project?</li> <li>▪ What strategies are proposed during project development to involve Affected Localities and the general public? Affected public entities and concerned local, state and/or federal officials?</li> <li>▪ Does the project have a transit component? Has there been coordination between VDOT and DRPT?</li> </ul>
VI	Project Efficiencies (from a P3 project delivery process)	<ul style="list-style-type: none"> <li>▪ Is the project sufficiently complex (in terms of technical and/or financial requirements) to effectively leverage private sector innovation and expertise?</li> <li>▪ If the required public funding is not currently available, could using a P3 project delivery process accelerate project delivery?</li> <li>▪ Would delivering the project under the P3 delivery process free up funding to apply to other transportation priorities within the Commonwealth?</li> </ul>
VII	Legal Considerations	<ul style="list-style-type: none"> <li>▪ Does the PPTA provide statutory basis for the development procurement and operation of the project?</li> <li>▪ Is the project consistent with applicable state and federal statutes?</li> </ul>
VIII	Legislative Considerations	<ul style="list-style-type: none"> <li>▪ Is new legislation needed to complete the project?</li> <li>▪ Will the project require General Assembly approval for tolls, user fees, or public funds?</li> <li>▪ Are any other actions required from the General Assembly to complete the project?</li> </ul>

**Table B**

<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>		
I	<i>Technical Feasibility</i>	
1	Project Approach	<ul style="list-style-type: none"> <li>▪ Is there sufficient information to determine the following information?               <ol style="list-style-type: none"> <li>a. Scope of the project</li> <li>b. Location of the project</li> <li>c. All proposed interconnections with other transportation facilities</li> <li>d. Affected Localities</li> <li>e. Alternatives for further evaluation</li> </ol> </li> <li>▪ Does the project have any key constraints or assumptions?</li> </ul>
2	Proposed Project Schedule	<ul style="list-style-type: none"> <li>▪ Is the proposed schedule for project completion clearly outlined and feasible?</li> </ul>
3	Operation	<ul style="list-style-type: none"> <li>▪ Does the project include a plan to operate the facility?</li> </ul>
4	Maintenance	<ul style="list-style-type: none"> <li>▪ Does the project include a plan to maintain this facility?</li> </ul>



<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>		
5	Life Cycle Management	<ul style="list-style-type: none"> <li>▪ Does the project include a life cycle management plan? This may include a proposed term of concession for operation and maintenance, long-term performance management, inventory and hand back.</li> </ul>
6	Technology	<ul style="list-style-type: none"> <li>▪ Is the project based on proven technology?</li> </ul>
7	Design Standards	<ul style="list-style-type: none"> <li>▪ Does the conceptual design appear to be consistent with the appropriate state and federal standards?</li> </ul>
8	Environmental Standards	<ul style="list-style-type: none"> <li>▪ Is the proposed project consistent with applicable state and federal environmental statutes and regulations?</li> </ul>
9	Federal, State, and Local Permits and Approvals	<ul style="list-style-type: none"> <li>▪ Will the project require some level of federal involvement or oversight?</li> <li>▪ Have the required permits and regulatory approvals been identified?</li> <li>▪ Is there a reasonable plan and schedule for obtaining them?</li> </ul>
10	Rights of Way	<ul style="list-style-type: none"> <li>▪ Does the project set forth the method by which all property interests required for the transportation facility will be secured and by whom?</li> </ul>
11	Utilities	<ul style="list-style-type: none"> <li>▪ Does the project set forth the method by which utility relocations will be identified and managed?</li> </ul>
12	Land Use Impacts	<ul style="list-style-type: none"> <li>▪ Is the project compatible with local land use and comprehensive plans?</li> </ul>
13	System Interface	<ul style="list-style-type: none"> <li>▪ Does the project provide continuity with existing and planned state and local facilities?</li> </ul>
II	<i>Financial Feasibility</i>	
1	Funding sources	<ul style="list-style-type: none"> <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> <li>▪ Are there public funds required and, if so, are the Commonwealth's financial responsibilities clearly stated?</li> <li>▪ Does the project have the revenue generation potential to partially or completely offset the public funding requirement?</li> </ul>
2	Federal funding requirements	<ul style="list-style-type: none"> <li>▪ Is the project consistent with federal transportation agency programs or grants?</li> </ul>
III	<i>Public Sector Analysis and Competition</i>	

<b>Quantitative Project Screening Criteria – Feasibility of the Project</b>		
Va. Code § 33.2-1803.1.1(B)		<ul style="list-style-type: none"> <li>▪ What is the Public Sector Option?</li> <li>▪ What is the maximum amount of public contribution?</li> <li>▪ How can the risks of user-fee financing be mitigated? This information is based on assumptions on competing facilities, projected compensation for high usage of the facility by high-occupancy vehicles (HOV), or other considerations.</li> <li>▪ Will VDOT / DRPT maintain/operate the facility itself, or will these responsibilities be transferred to the private sector?</li> <li>▪ Will public contributions be required to cover costs not covered by financing obtained for the project?</li> <li>▪ Will funds to support non-user fee generating components of the project contribute to increased person throughput, reduction in congestion, improved safety and other expected benefits?</li> </ul>
III	<i>Risk Assessment</i>	
1	Risk Identification	<ul style="list-style-type: none"> <li>▪ Are there any particular risks unique to the project that have not been outlined above that could impair project viability?</li> </ul>
2	Risk Allocation	<ul style="list-style-type: none"> <li>▪ Would the P3 delivery process help transfer project risks and potential future responsibilities to the private sector on a long-term basis?</li> <li>▪ Are there any project risks proposed to be transferred to VDOT / DRPT that are likely to be unacceptable?</li> <li>▪ Would the P3 delivery process promote efficiencies through the most appropriate transfer of risk over the project lifecycle?</li> </ul>

## APPENDIX E

### Guidance for Unsolicited Proposal Preparation

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

#### PROPOSAL PREPARATION

Proposers submitting an Unsolicited Proposal should ensure that the Proposal includes a comprehensive project description and provides enough information about the proposed project for the VDOT P3 Office to determine whether the Proposal satisfies the review and evaluation criteria as set out in Va. Code § 33.2-1801 and § 33.2-1803 of the Code of Virginia. Proposers should also provide sufficient information to facilitate a Policy Review as detailed in Section 2.3.1 of this Manual and Guidelines and the Quantitative Project Screening Criteria as described in Appendix D. In addition, the financial plan for the project must contain enough detail so that an analysis could be performed to determine whether the proposed project is financially feasible. The financial plan shall disclose the full extent of any forecasted public financing and/or funding commitments that are required to enable the proposed project.

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

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

The VDOT P3 Office may require Proposers submitting an Unsolicited Proposal to give one or more oral presentations of their Proposal to the VDOT / DRPT and/or the public. Such presentations will provide opportunities to educate the VDOT / DRPT and the public and/or to clarify aspects of the Proposal. All pages of the Proposal should be numbered. Each copy of the Proposal should be placed in a three-ring binder and contained in a single volume where practical.

#### PROPOSAL SUBMISSION

Proposers submitting Unsolicited Proposals are required to deliver ten (10) hard copies and one (1) electronic copy in Portable Document Format (PDF). 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 Proposer, the person authorized to act on behalf of the Proposer and his or her email address and telephone and facsimile numbers.

All Unsolicited Proposals should be submitted to VDOT / DRPT CEO's, with a copy sent to the attention of the VDOT P3 Office Director at the address listed above for the P3 Office Point of Contact.

Upon receipt, the VDOT P3 Office will notify any appropriate federal agency, and other stakeholders that the Unsolicited Proposal has been submitted for a given transportation project and that the VDOT P3 Office will initiate a Policy Review within 90 calendar days to determine if the Proposal meets all legal and policy requirements for further evaluation, as set out in §§ 33.2-1801 and 33.2-1803 of the Code of Virginia and this 2017 Manual and Guidelines.

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

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

## APPENDIX F

### Guidance for the RFQ Process

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

#### ISSUANCE OF RFQ DOCUMENTS

The VDOT P3 Office, in consultation with the CEO, and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The VDOT P3 Office will issue a public notice on the VDOT P3 Office website and the state eVA system to announce the issuance of the RFQ documents. The eVA system is a web-based purchasing system used by state agencies to announce bid opportunities, invite bidders and receive quotes. The public notice may be issued by publication in a newspaper or newspapers of general circulation in the area in which the project is to be performed, so as to provide reasonable notice to the maximum number of Respondents that can be reasonably anticipated to submit responses to the RFQ.

The procurement documents, including any required forms, Addenda and other related information will be made available electronically on the eVA system and the VDOT P3 Office website. The VDOT P3 Office may arrange for a pre-Proposal conference or webinar, as deemed appropriate, to present and clarify information about the project and procurement process and respond to any questions that prospective Respondents may have about the RFQ. A notice for such event will be made known within the RFQ documents, on the eVA system and on the VDOT P3 Office website.

At any time during the procurement process, the need to issue one or more Addenda to the procurement documents may arise following interaction with the industry or in the event the underlying conditions of a particular project change or more information becomes available. Proposers are encouraged to check the eVA system and the VDOT P3 Office website frequently and before submitting their responses.

#### SUBMISSION OF SOQS

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

As a part of the SOQ, Respondents may be required to provide information related to the structure of the respondent team, the qualification and experience of the Respondent, individual team members and key personnel with developing, designing, constructing, financing, operating and/or maintaining projects comparable to the project. The specific nature of experience, key personnel and background sought will depend on the specific project as well as the project delivery model used. Respondent will also be required to identify a Responsible Charge Engineer who will accept full professional responsibility for engineering decisions relating to the final work product. Additionally, the RFQ may require submittal of certain financial information from the Respondent and its affiliates. The intent of financial qualification submittal requirements is to determine whether the Proposer submitting a response has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule. The VDOT P3 Office in coordination with the VDOT / DRPT may require the submission of

financial statements (including audited financial statements), letters of support from providers of payment and performance security and/or disclosure of material changes in the Respondent's financial position during a specified period of time or reporting period identified in the RFQ.

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

## APPENDIX G

### Guidance for the RFP Process

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

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

The VDOT / DRPT, in coordination with the VDOT P3 Office, may choose to issue the RFP documents in draft format to Short-Listed Proposers and hold one-on-one meetings in order to solicit feedback on the proposed RFP documents and draft Comprehensive Agreement. Once consideration has been given to feedback from the Short-Listed Proposers and other appropriate parties, the VDOT / DRPT, in coordination with the VDOT P3 Office, will issue Final RFP documents to Short-Listed Proposers.

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

#### CONTENTS OF RFP DOCUMENTS

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

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

#### PROPOSAL SUBMISSION

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

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

## **TECHNICAL PROPOSAL**

The VDOT P3 Office may require the Proposer to provide a Technical Proposal regarding the project's scope of work and technical requirements as the VDOT / DRPT deems appropriate. Such required information may include, without limitation, design elements and approach, construction approach, operations approach, maintenance approach, approach for maintenance of traffic during construction, project management approach, schedule, phasing, quality control and assurance approach, environmental requirements, communication and public involvement approach and other information as is appropriate for the project's implementation.

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

## **FINANCIAL PROPOSAL**

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

The VDOT P3 Office will seek Proposals that demonstrate the private sector can develop and/or operate the transportation facility with a public contribution amount less than the maximum public contribution. If a Proposal including public or private debt is submitted, then the RFP will require that the Proposal identify the amount of public funds required and a plan for complying with any requirements associated with using public funds.

## **PROPOSAL EVALUATION CRITERIA**

The evaluation methodology for Proposals will depend largely on the nature of the project, the scope of work and details set forth in the RFP documents. The VDOT P3 Office is encouraged to use Best Value as the basis for award. However, the VDOT P3 Office reserves the right to utilize other basis for award, including low bid, lowest lifecycle cost, highest concession payment, lowest public subsidy and any other basis that is appropriate and deemed by the VDOT P3 Office in coordination with the VDOT / DRPT to be in the best interests of the public.

The specific criteria and methodology for evaluating Proposals will be included in the RFP documents of the specific PPTA procurement and will vary depending on the scope and complexity of a project, transportation mode and project delivery model. The RFP evaluation criteria allow the VDOT P3 Office, the CEO, and the Commonwealth to clearly communicate the project objectives and priorities of the VDOT / DRPT to the private sector.



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

After evaluation of the Proposals, VDOT / DRPT, reserves the right to request that Proposers submit Proposal revisions (also known as a Best and Final Offer (BAFO)). Typically, only those Proposers that are responsive and/or which fall within a competitive range will be permitted to submit BAFOs. The request for Proposal revisions or BAFOs is intended to provide Proposers an opportunity to revise their Proposals (both the Technical Proposal and Financial Proposal) in light of the BAFO request issued by the VDOT P3 Office. Upon receipt of the Proposal revisions or BAFOs, the Proposal evaluation process will be repeated by the VDOT P3 Office. It is important to note that BAFOs are not mandatory and may not be useful or appropriate for a given project. If BAFO is to be used, it will be specifically stated in the RFP.

## APPENDIX H

# Guidance for the PPTA Audit Requirements

### GENERAL AUDIT SCOPE

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

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

### AUDIT TIMING

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

### AUDIT PAYMENT

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

### AUDITOR SELECTION

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

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

## APPENDIX I

## Summary of Changes to PPTA Legislation

Bill	Date Approved by Governor	Summary
SB 856  Chapter 647, Virginia Acts of Assembly (1995 session)	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  Chapter 286,	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>

Virginia Acts of Assembly (2001 session)		
SB 674  Chapter 570, Virginia Acts of Assembly (2002 session)	April 2002	<ul style="list-style-type: none"> <li>– Defined “asset management,” “competitive sealed bidding,” and “construction” and provides limitations on how certain VDOT maintenance contracts are to be procured</li> <li>– Provides that under certain conditions maintenance and asset management services are not subject to the VPPA</li> </ul>
HB 1373  Chapter 593, Virginia Acts of Assembly (2002 session)	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  Chapter 289, Virginia Acts of Assembly (2003 session)	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  Chapter 968, Virginia	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> </ul>

Acts of Assembly (2003 session)		<ul style="list-style-type: none"> <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 it qualifications</li> </ul>
SB 1108  Chapter 562, Virginia Acts of Assembly (2005 session)	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  Chapter 562, Virginia Acts of Assembly (2005 session)	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  Chapter 001, Virginia Acts of Assembly (2006 session)	March 2006	<ul style="list-style-type: none"> <li>- During periods when the financial interest or bargaining position of the public or Private Entity could be adversely affected memorandum, staff evaluations, or other records are excluded from public disclosure</li> <li>- An independent review panel may meet in closed session to review confidential information</li> <li>- All procurement records of an interim or comprehensive agreement entered into by an RPE become public upon completion of all bargaining of the agreement under the PPTA or PPEA</li> <li>- Allowed procurement records under PPTA to be withheld, even after a comprehensive agreement has been signed, if the process of bargaining of other interim agreements related to the qualifying transportation facility or all phases or aspects of the comprehensive agreement are not complete</li> <li>- Provisions expired on July 1, 2007</li> </ul>
SB 666  Chapter 922, Virginia Acts of Assembly	April 2006	<ul style="list-style-type: none"> <li>- Authorized "concessions" agreements under the PPTA</li> <li>- Defined "concession" and described the rights and requirements of the Private Entity as relates to the impacted jurisdiction's comprehensive plan</li> <li>- Defined how concessions are to be taxed, gave direction on how concession payments are to be fiscally administered and provided guidance on allocations by the Commonwealth Transportation Board (CTB)</li> </ul>

(2006 session)		<ul style="list-style-type: none"> <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  Chapter 936, Virginia Acts of Assembly (2006 session)	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 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  Chapter 374, Virginia Acts of Assembly (2007 session)	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</li> </ul>

Chapter 296, Virginia Acts of Assembly (2008 session)		<p>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</p> <ul style="list-style-type: none"> <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  Chapter 602, Virginia Acts of Assembly (2008 session)	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  Chapter 602, Virginia Acts of Assembly (2008 session)	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  Chapter 732, Virginia Acts of Assembly (2010 session)	April 2010	<ul style="list-style-type: none"> <li>- Neither the Governor, his political action committee, nor any pertinent Secretaries shall knowingly solicit or accept a contribution, gift, or other item with a value greater than \$50 from any bidder, Offerors, or Private Entity who has submitted a bid or proposal pursuant to the VPPA, the PPTA, or the PPEA during the bidding period</li> <li>- Restrictions only apply if the stated or expected value of the contract is \$5 million or more and do not apply to contracts awarded as the result of competitive sealed bidding</li> <li>- No bidder, offeror, or Private Entity who has submitted a bid or proposal under such acts shall offer or promise to make a gift to the</li> </ul>

		<p>Governor, his political action committee, or any of his pertinent Secretaries</p> <ul style="list-style-type: none"> <li>– Any violation shall be a civil penalty of \$500 or up to two times the amount of the contribution or gift</li> </ul>
<p>HB 1658</p> <p>Chapter 589, Virginia Acts of Assembly (2011 session)</p>	<p>March 2011</p>	<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>
<p>HB 1592</p> <p>Chapter 332, Virginia Acts of Assembly (2011 session)</p>	<p>March 2011</p>	<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>
<p>HB 2448</p> <p>Chapter 624, Virginia Acts of Assembly (2011 session)</p>	<p>March 2011</p>	<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>
<p>SB 977</p> <p>Chapter 622, Virginia Acts of Assembly (2013 session)</p>	<p>March 2013</p>	<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>
<p>HB 2276</p>	<p>April 2013</p>	<ul style="list-style-type: none"> <li>– Prevents the Commonwealth and the Virginia Port Authority from accepting any unsolicited proposal under the Public-Private</li> </ul>



Chapter 762, Virginia Acts of Assembly (2013 session)		<p>Transportation Act regarding the ownership or operation of any seaport or port facility.</p> <ul style="list-style-type: none"> <li>– This bill is identical to SB 1305</li> </ul>
HB 1886  Chapter 612, Virginia Acts of Assembly (2015 session)	2015	<ul style="list-style-type: none"> <li>– Establishes the requirements for a finding of public interest and requires such a finding prior to an initiation of procurement.</li> <li>– Establishes the Transportation Public-Private Partnership Advisory Committee to determine by a majority vote whether a VDOT or Department of Rail and Public Transportation project meets the finding of public interest and to report such determination to the General Assembly.</li> <li>– Certification of the finding prior to the execution of a comprehensive agreement and requires the public-private partnership guidelines to incorporate the finding.</li> <li>– Requires VDOT to establish (i) a process for identifying high-risk projects and (ii) procurement processes and guidelines for such projects to ensure that the public interest is protected.</li> </ul>
HB 2244/SB 1322  Chapter 539, Virginia Acts of Assembly (2017 session)	2017	<ul style="list-style-type: none"> <li>– Changes to the Transportation Public-Private Partnership Advisory Committee to the Transportation Public-Private Partnership Steering Committee and provides that a Deputy Secretary of Transportation serves as chairperson.</li> <li>– Responsible public entity may grant approval for the development/operation of a transportation facility by private entity if that entity can develop/operate the transportation facility for less cost than VDOT / DRPT.</li> <li>– Requires the CEO of VDOT / DRPT to certify in writing to the Governor and the General Assembly that there has been no material change since the finding of public interest and that the public contribution requested by the Private Entity does not exceed the maximum public contribution.</li> <li>– Clarifies that the Finding of Public Interest by the Steering Committee shall be made after receipt of responses to the request for qualifications and prior to the issuance of the first draft request for proposals.</li> <li>– Requires VDOT / DRPT to ensure competition through the procurement process and develop a public sector analysis of the cost for the VDOT / DRPT to develop a public sector analysis of the cost to VDOT / DRPT to develop/operate the transportation facility.</li> <li>– VDOT / DRPT and the Steering Committee to review the public sector analysis prior to the initiation of any procurement.</li> </ul>

APPENDIX J

PPTA STATUTORY REQUIREMENTS & TIME CONSTRAINTS FOR VDOT

No.	Requirement	Relevant Statute(s)	Time Constraint	Manual & Guidelines References
1	Public Sector Analysis and Competition	Va. Code §33.2-1803.1:1	Must precede the first Steering Committee meeting	See Section 2.2.2.1 Public Sector Analysis and Competition, Section 3.2 Public Sector Analysis and Competition (Continued); Section 4.2.5 Public Sector Analysis and Competition; Short-listing of Qualified RFQ Proposers; Section 4.5 Public Sector Analysis and Competition (Final)
2	Finding of public interest ("FOPI") by CEO & concurrence of Secretary	Va. Code §33.2-1803(B)(2)  Va. Code §33.2-1803.1	Must precede issuance of RFP  Must also precede Voting Meeting of the Steering Committee	See Section 3.4 Finding of Public Interest

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

6	Post SOQs (for Solicited Projects) and Conceptual Proposals (for Unsolicited Proposals) to DGS website	Va. Code §33.2-1820(A)	Timing not clear for Solicited Proposals but would likely be 10 days from evaluation of responses to RFQ  Within 10 working days after acceptance of Unsolicited Proposal.	For Solicited Projects, see Section 4.2.3 Qualification of Proposers  For Unsolicited Proposals, see Section 4.13 Procurement for Unsolicited Proposals
7	Second Steering Committee meeting to vote on whether public interest is served and whether to proceed with procurement (“Voting Meeting”)	Va. Code §33.2-1803.2(C)	After responses to RFQ are received but before draft RFP is issued	See Section 4.2.7 Presentation to the CTB and to the PPTA Steering Committee
8	Steering Committee meeting to determine “best interest of public”	Va. Code §33.2-1803(B)(1)	Must precede issuance of RFP. Considered the same as the Voting Meeting. An affirmative vote at the Voting Meeting (described in No. 7 above) is considered a “best interest” determination.	See Section 4.2.7 Presentation to the CTB and to the PPTA Steering Committee
9	Post draft Comprehensive Agreement for public comment	Va. Code §33.2-1820(B)	30 days prior to issuance of Final RFP	See Section 4.3.1 Draft RFP

10	Post major business terms on DGS website, outline how public can submit comments, present major business points to CTB	Va. Code §33.2-1820(C)	Once decision to award has been made	See Section 4.11 Contract Finalization and Award
11	CEO written certification to Governor and General Assembly that FOPI still valid	Va. Code §33.2-1803(D)	Must precede execution of the Comprehensive Agreement	See Section 4.9 Certification of Finding of Public Interest
12	VDOT / DRPT approval of a qualifying transportation facility upon determination that is in "best interest of public"	Va. Code §33.2-1803(C)	Timing is not specified but logically should precede contract finalization and award	See Section 4.6 Basis for Award & Selection of Preferred Proposer
13	Audit of proposal's traffic and cost estimates	Va. Code §33.2-1803(F)	Timing not specified but logically should precede execution of Comprehensive Agreement	See Section 4.8 PPTA Audit Requirement
14	Third Steering Committee meeting ("Agreement Briefing Meeting")	Va. Code §1803.2(F)	Within 60 days of execution of a Comprehensive Agreement	See Section 4.12 Report to PPTA Steering Committee

## APPENDIX K

# CONFIDENTIALITY AND SECURITY OF INFORMATION

All Proposals submitted by Private Entities to the VDOT / DRPT pursuant to the PPTA become the property of the Commonwealth and are subject to disclosure pursuant to the Virginia Freedom of Information Act (Va. Code §§ 2.2-3700 *et seq.*) (VFOIA).

Private Entities submitting Unsolicited Proposals or responding to solicitation requests issued by VDOT / DRPT 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.

VDOT / DRPT, 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 agency elects to disclose the requested materials, the agency will provide the Proposer notice of its intent to disclose.

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

To assert that any material submitted by a Private Entity should be deemed confidential and proprietary information, a Private Entity must make a written request to the P3 Office:

1. Invoking the claimed VFOIA exclusion upon submission of the data or other materials for which protection from disclosure is sought;
2. Identifying with specificity the data or other materials for which protection is sought; and;
3. Stating the reasons why protection is necessary.

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.

Va. Code §§ 2.2-3705.6 and 33.2-1820 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, VDOT / DRPT will make procurement records available in accordance VFOIA. However, trade secrets and financial information of the Private Entity may be excluded from the disclosed procurement record if such exception is properly invoked by the Private Entity at the time the relevant records are delivered to VDOT / DRPT.

Where interpretation of these statutes is required, the policy goals of transparency and accountability in this Manual and Guidelines shall prevail.

### **Pledge of Confidentiality**

Each member of VDOT / DRPT 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 agency of such information or other materials, information and data provided to the agency by a Proposer is strictly prohibited.

The VDOT P3 Office will institute proper safeguards concerning Proposal security for each P3 project, including where materials will be stored, who can have access to them and under what circumstances. Anyone assisting in the evaluation of the Proposals will be required to execute confidentiality/non-disclosure that provide for the confidential treatment of evaluation and procurement materials. These agreements may be executed at the commencement of procurement as well as during the Proposal evaluation period.

