

The Commonwealth of Virginia



Public-Private Transportation Act of 1995 (as Amended)

Implementation Manual and Guidelines

May 21, 2012

MEMORANDUM

Date: May 21, 2012

To: Commonwealth Transportation Public and Private Sector Stakeholders

From: Sean T. Connaughton
Secretary of Transportation
Commonwealth of Virginia 

Re: Public Private Transportation Act 1995 (PPTA) Implementation Manual and Guidelines - Update

The Office of the Secretary of Transportation is committed to delivering much needed transportation infrastructure improvements in the Commonwealth of Virginia across all modes in a safe, efficient, and cost effective manner. During the McDonnell administration, the Public-Private Transportation Act of 1995 (PPTA) has been an important tool for delivering significant transportation improvements by leveraging relationships with the private sector. In June 2011, the administration created Virginia's Office of Transportation Public-Private Partnerships (OTP3) to be directly responsible for developing and implementing a statewide program for transportation project delivery via the PPTA.

The OTP3 is guided by the PPTA Implementation Manual and Guidelines (Implementation Manual) in the development of solicited and unsolicited PPTA projects across all transportation modes. The original Implementation Manual was updated in 2001, 2005, 2008, and 2010. The current update in May 2012 was completed at the request of the OTP3 Director, Tony Kinn, to reflect primarily editorial changes associated with the creation of the OTP3 as well as clarification of definitions and process.

We look forward to continuing to work in partnership with our public and private sector stakeholders to address the commonwealth's transportation needs.

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1. INTRODUCTION

The [Public-Private Transportation Act of 1995](#), as amended (PPTA) is the legislative framework enabling the Commonwealth of Virginia (Commonwealth), local governments, and certain other public entities as defined in the PPTA, to enter into agreements authorizing private entities to develop and/or operate Qualifying Transportation Facilities. This chapter describes the purpose and organization of the PPTA Implementation Manual and Guidelines, summarizes the commonwealth's objectives for the PPTA Program, presents the PPTA Project Delivery Framework within which the policies and procedures of the PPTA Program will be followed, presents the commercial and legal framework within which the PPTA Program operates, and addresses the funding mechanism for the OTP3 of Transportation Public-Private Partnerships (OTP3).

Defined terms capitalized in this document are available in the [PPTA Guidance - Definitions](#).

1.1 PURPOSE OF THE IMPLEMENTATION MANUAL

In March 2010, the [Secretary of Transportation](#) conducted a programmatic review of the commonwealth's PPTA program. The review identified several opportunities for program improvement, including revising the existing PPTA Implementation Guidelines. This PPTA Implementation Manual and Guidelines (Implementation Manual) replaces the earlier PPTA Implementation Guidelines (dated December 10, 2010) and shall constitute the guidelines required by the PPTA as set forth in § 56-560 of the Code of Virginia.

The Implementation Manual provides guidance regarding PPTA project development and implementation for both Solicited PPTA projects and Unsolicited Proposals across all modes of transportation, including multimodal and intermodal projects. The Implementation Manual outlines PPTA processes that are intended to be consistent, transparent, and stable, while encouraging private sector innovation and investment to address the transportation needs of the commonwealth. The Secretary of Transportation adopts this Implementation Manual for use by the commonwealth's transportation agencies, including the [Department of Transportation](#), the [Virginia Port Authority](#), the [Department of Rail and Public Transportation](#), the [Department of Aviation](#), the [Virginia Commercial Space Flight Authority](#), and the [Department of Motor Vehicles](#) (each referred to generally herein as the "Agency" and considered the Responsible Public Entity, as such term is defined in the PPTA), as well as private entities that are interested in submitting Proposals for PPTA projects. The guidelines and processes included in this Implementation Manual may be used by other Responsible Public Entities, including local governments and transportation authorities, if adopted in accordance with the applicable laws and regulations of the authority having jurisdiction over the project.

The Secretary of Transportation recognizes that each PPTA project is unique and that certain elements set forth in this Implementation Manual may not apply in all circumstances or may be subject to change in certain circumstances. Therefore, the Agency Administrator retains the flexibility to modify the procurement and implementation processes set forth herein to address the specific needs of a particular PPTA project as necessary. Any failure by the Secretary of Transportation, the OTP3, or the Agency Administrator to follow the processes set forth in this Implementation Manual shall not give recourse to any individual or entity for such failure. The Implementation Manual may be periodically revised or updated in order to meet the mission of the Secretary of Transportation and the objectives of the PPTA Program. Revisions can be made at the direction of the OTP3 Director, in consultation with the PPTA Steering Committee, and as approved by the Secretary of Transportation.

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

1.2 PPTA PROGRAM OBJECTIVES

The PPTA Project Delivery Framework reflects the objectives of the PPTA Program. To ensure that PPTA projects are consistent with the commonwealth's transportation goals of improving safety and security; reducing congestion; system maintenance and preservation; mobility, connectivity, and accessibility; environmental stewardship; economic vitality; and coordination of transportation and land use and program delivery, the Secretary of Transportation has established the following objectives for the PPTA Program:

- Facilitate timely delivery of PPTA projects, within established laws and regulations;
- Develop multimodal and intermodal solutions that are consistent with state, regional and local transportation policies, plans and programs;
- Encourage competition for innovation and private sector investment to create Value-for-Money for the commonwealth;
- Promote transparency and accountability, coupled with informed and timely decision making;
- Establish reliable and uniform processes and procedures to encourage private sector investment;
- Seek efficiencies by standardizing processes;
- Foster efficient management of commonwealth financial and organizational resources;
- Achieve lifecycle cost efficiencies through appropriate risk transfer; and
- Promote economic growth and job creation.

1.3 ORGANIZATION OF THE IMPLEMENTATION MANUAL

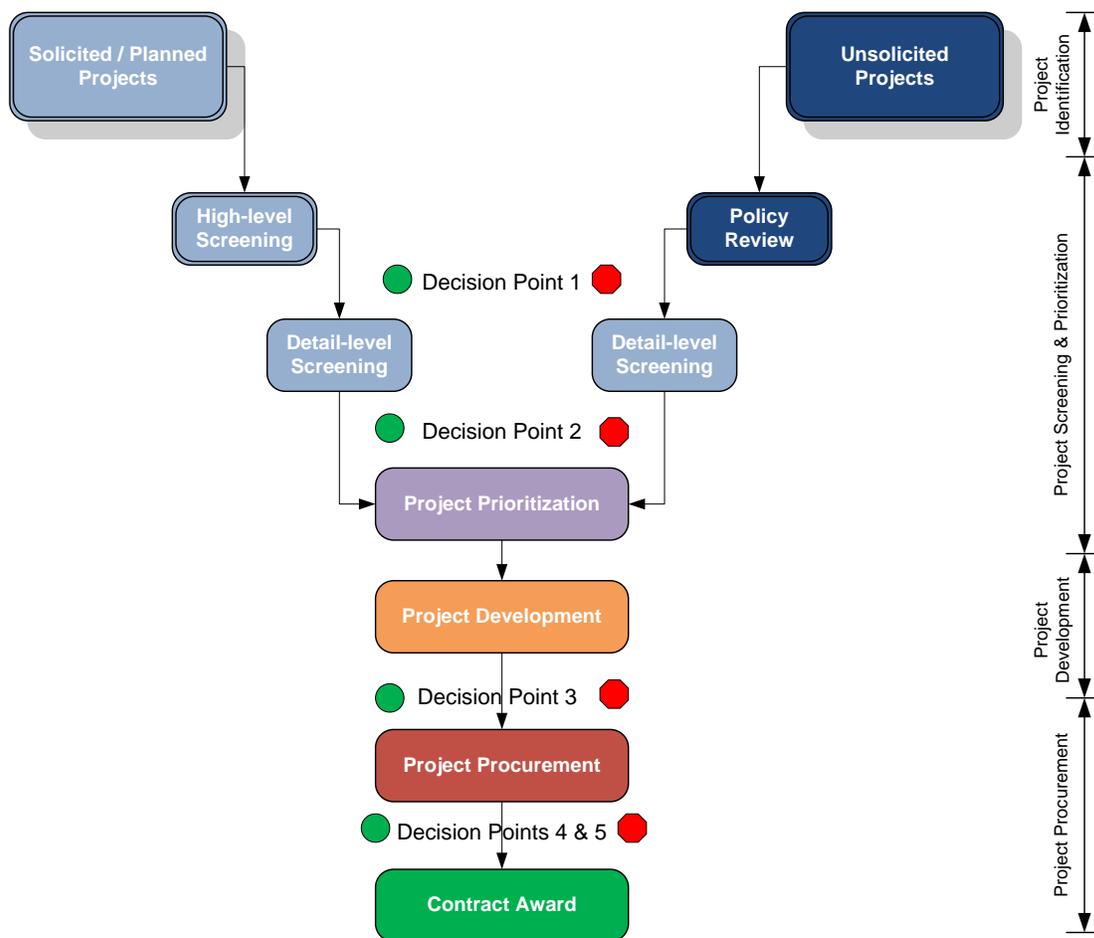
This Implementation Manual is organized into the following chapters that specifically address the roles and responsibilities of the OTP3 and each element of the PPTA Project Delivery Framework. These chapters include: 2. [Organizational Structure and Reporting](#), 3. [Project Identification](#), 4. [Project Screening](#), 5. [Project Development](#), 6. [Project Procurement](#), and 7. [Timelines and Milestones](#). Supporting information is provided in [Appendices A through H](#) as well as [PPTA Guidance - Definitions](#).

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

1.4 PPTA PROJECT DELIVERY FRAMEWORK

The PPTA Project Delivery Framework (PPTA Framework) is intended to streamline and standardize the PPTA process in order to enhance the delivery of transportation infrastructure projects within the commonwealth. It was developed to capture the processes and decision points inherent in a PPTA project development lifecycle for both Solicited Projects (i.e., projects initiated by the commonwealth) and Unsolicited Proposals, namely, project identification, project screening, project prioritization, project development, project procurement, and contract management.

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



1.5 LEGAL FRAMEWORK – PPTA OF 1995 (AS AMENDED)

The [Public-Private Transportation Act of 1995](#) (§§ 56-556 to 575 of the Code of Virginia), as amended, is intended, among other things, to encourage investment in the commonwealth by private entities in order to facilitate the development and/or operation of Qualifying Transportation Facilities.

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

A Responsible Public Entity may solicit Proposals from private entities for the development and/or operation of transportation facilities. Alternatively, any private entity seeking authorization to develop and/or operate a Qualifying Transportation Facility may submit an Unsolicited Proposal to the Responsible Public Entity as described in more detail in Chapter 3 [Project Identification](#).

Furthermore, the PPTA requires that the Responsible Public Entity develop guidelines that establish the process for the acceptance and review of both Solicited Projects and Unsolicited Proposals from a private entity. The PPTA requires that the guidelines establish a specific schedule for review of a Proposal by the Responsible Public Entity, a process for alteration of that schedule by the Responsible Public Entity if it deems that changes are necessary because of the scope or complexity of Proposals it receives and the type and amount of information that is necessary for adequate review of Proposals in each stage of review. For Qualifying Transportation Facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the Qualifying Transportation Facility in accordance with the PPTA, the OTP3 will coordinate a prioritized documentation, review, and selection process.

1.5.1. CONTRACTUAL FRAMEWORK

Pursuant to the PPTA, a Comprehensive Agreement between the private entity and the Responsible Public Entity governs the delivery and operation of the Qualifying Transportation Facility. Pursuant to §56-566 of the Code of Virginia, the Comprehensive Agreement establishes the duties of the private entity and may contain such other terms and conditions that the Responsible Public Entity determines serve the public purpose of the PPTA. The Comprehensive Agreement requires, as appropriate, that the private entity provide for certain performance and payment security, project insurance and reimbursement to the Responsible Public Entity for its services. In addition, the Comprehensive Agreement provides for, as appropriate, the establishment of user fees in respect of the project, contributions of public funding to the project, terms of distribution of earnings of the private entity, certain rights of review, inspection and audit in favor of the Responsible Public Entity and provisions concerning notice of default and cure rights for the benefit of other private entities, such as lenders, that are providing financing for the Qualifying Transportation Facility. The Comprehensive Agreement may also contain such other lawful terms and conditions to which the private entity and the Responsible Public Entity mutually agree.

The Agency recognizes that the development of commercial terms is a fluid, bi-lateral process governed by considerations of public policy and market terms. While maintaining flexibility in structuring Comprehensive Agreements, the Agency will generally seek to follow and benefit from national and international precedents, including prior PPTA projects. 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.

Guidance: [Appendix C](#) summarizes an approach to developing commercial terms based on the principles adopted by the commonwealth for entering into Comprehensive Agreements with private entities to develop and/or operate Qualifying Transportation Facilities.

1.5.2. CONFLICTS OF INTEREST AND OTHER CONSIDERATIONS

The Office of the Secretary of Transportation realizes that conflicts of interest may be encountered during PPTA project delivery. The Secretary of Transportation intends for each agency to assume a proactive stance with regard to actual, potential or perceived conflicts. To assure transparency, accountability, and objectivity, any Proposal submitted to the OTP3 pursuant to the PPTA will follow the state and federal laws, regulations and guidelines regarding potential organizational conflicts of interest. Such requirement will extend to external advisors, consultants and staff. Examples of such federal laws, regulations and guidelines are [23 CFR § 636.116](#), [23 CFR § 771](#), [48 CFR § 9.5](#), the [Committee on Foreign Investment in the United States](#) (CFIUS) processes, and § [2.2-4373](#) of the Code of Virginia.

To protect the integrity, fairness and competitive spirit of the procurement process for PPTA projects, each Proposer is required to agree to limit all communications within the Executive Branch regarding their Proposals, including all advocacy efforts, to the individuals or entities designated by the OTP3 Director and coordinate any such communications through the OTP3. Any requirements and restrictions related to communications will be specified in the procurement documents for a particular PPTA project.

The OTP3 Director, in consultation with the Office of the Attorney General, the Agency Administrator and other state, local and federal agencies, as appropriate, will determine on a case-by-case basis whether organizational conflicts of interest exist and what actions may be appropriate to avoid or mitigate any actual, potential or perceived conflict.

1.5.3. VIRGINIA FREEDOM OF INFORMATION ACT

All Proposals submitted by private entities to the OTP3 pursuant to the PPTA become the property of the OTP3 and are subject to disclosure pursuant to the [Virginia Freedom of Information Act](#) (§ 2.2-3700 et seq. of the Code of Virginia; VFOIA). Private entities either proposing projects or responding to solicitation requests issued by the OTP3 or a Responsible Public Entity are advised to familiarize themselves with the VFOIA provisions to ensure that they are taking the necessary steps to protect documents identified as confidential or proprietary from disclosure pursuant to the VFOIA.

The OTP3 Director, in consultation with the Office of the Attorney General, the Agency Administrator and other state, local and federal agencies, as appropriate, will determine whether the requested materials are exempt from disclosure under applicable law and, if appropriate, the scope of such protection. In the event that the OTP3 elects to disclose the requested materials, it will provide the Proposer notice of its intent to disclose. In no event shall the commonwealth, the Secretary of Transportation, the OTP3 Director or the Agency Administrator be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted to the OTP3 pursuant to the PPTA and guidelines included in this Implementation Manual.

In order to assert that any material submitted by a private entity should be deemed confidential and proprietary information, a private entity may wish to consider the following options prior to submitting their Proposal:

1. Submit a written request to the OTP3 Director identifying the data or other materials for which protection from disclosure is sought and the reasons why such protection is necessary;

2. Upon request by the OTP3 Director, make oral presentation to the OTP3 and legal counsel;
3. Receive written notification from the OTP3 Director accepting or rejecting a confidentiality request; and
4. Conduct similar processes with Affected Jurisdictions.

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

Sections [2.2-3705.6](#) and [56-573.1:1](#) of the Code of Virginia outlines the application of the VFOIA to the PPTA process:

- Once a Comprehensive Agreement has been entered into and the process of negotiating all phases or aspects of the Comprehensive Agreement is complete, the OTP3, in coordination with the Agency Administrator, will make procurement records available in accordance with § [2.2-4342](#) of the Code of Virginia;
- Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements or trade secrets that may be provided by the private entity as evidence of its qualifications; and
- Certain confidential and proprietary information, and related records, may remain confidential if the financial interests of the commonwealth, the Agency or the private entity would be adversely affected.

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

1.5.4. APPLICABILITY OF LAWS

The Virginia Public Procurement Act (§ [2.2-4300 et seq.](#) of the Code of Virginia; VPPA) does not apply to the PPTA, except to the extent specified in § [56-573.1](#) of the Code of Virginia. Additionally, in soliciting or reviewing project Proposals under the PPTA, the commonwealth's transportation agencies and offices, including the OTP3, shall comply with applicable federal, state and local laws. Likewise, in submitting Proposals and in developing or operating Qualifying Transportation Facilities pursuant to the PPTA, private entities shall comply with applicable federal, state and local laws. Such laws may include, but not necessarily be limited to, requirements for workers' compensation insurance coverage, compliance with prompt payment, compliance with ethics in public contracting and compliance with environmental laws, workplace safety laws, and state or local laws governing contractor or trade licensing, codes and permit requirements.

1.5.5. PLEDGE OF CONFIDENTIALITY

Each member of the OTP3 and the Agency 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 OTP3 will institute proper safeguards concerning Proposal security for each PPTA project, including where materials will be stored, who can have access to them and under what circumstances. Anyone

assisting in the evaluation of the Proposals will be required to execute confidentiality/non-disclosure and conflict of interest agreements that provide for the confidential treatment of evaluation and procurement materials and require disclosure of potential or actual conflicts of interest with Proposers. These agreements may be executed at the commencement of procurement as well as during the Proposal evaluation period.

1.6 FUNDING FOR PPTA PROJECT DEVELOPMENT

Generally, the OTP3 will fund the work to advance candidate Solicited Projects to the end of the Project Screening and Prioritization phase. Once a decision is made to deliver a Solicited Project within the OTP3 and the project advances into the Project Development phase, the relevant Agency will then be responsible for identifying and securing the funding necessary to support the project administration, project management, project development (i.e., preliminary engineering and studies) and procurement phase activities, as well as any public funding contribution a given project may require. The OTP3 Director will coordinate with the Agency Administrator to ensure that the Agency identifies and plans for funding needs in a timely manner to allow Qualifying Transportation Facilities to move efficiently through the PPTA Project Delivery Framework.

1.7 PUBLIC PARTICIPATION IN TRANSPORTATION PLANNING AND PROJECT DEVELOPMENT PROCESS

Opportunities exist for public involvement at many different times during planning, identification, development, procurement, and implementation of transportation projects. Each Agency will have specific public involvement guidance related to their sector of transportation. Below are is a general description of opportunities for involvement in roadway and rail/transit projects.

The general public, elected officials, localities, and regional planning organizations, such as Planning District Commissions (PDC's) and Metropolitan Planning Organizations (MPO's), have numerous opportunities during the traditional planning process to influence the identification of transportation needs and recommendations for improvements. The development of long-range transportation system plans provides initial opportunities for public and interagency input, including review and comment on draft transportation plans. Typical plans include, but are not limited to: local government comprehensive plans, PDC rural long range plans, MPO constrained long range plans, VTrans and the Virginia Surface Transportation Plan.

Following the identification of needs and potential transportation solutions, the development of programming documents provides yet another set of opportunities to shape recommendations for transportation improvements. The programming process identifies which improvement projects shall advance. Examples that offer opportunities for public input include local government Capital Improvement Programs (CIP's), the Commonwealth Transportation Board's Six-Year Improvement Program and MPO Transportation Improvement Programs (TIP's).

For Solicited Projects, the relevant Agency initiates and completes an environmental document in accordance with the National Environmental Policy Act (NEPA), if required, prior to inviting Proposals for projects. At this point, the purpose and need for the project is well established, alternative design concepts and scopes are analyzed, and operational features are identified. The concepts and analyses are submitted to the public and various other stakeholders for review and comment, and, ultimately, a preferred alternative is selected and a determination such as a Categorical Exclusion (CE), Finding of No Significant Impact (FONSI), or Record of Decision (ROD) is issued by the appropriate lead federal agency. As part of the public review and comment process, information meetings and public hearings are typically

held in public locations, giving stakeholders reasonable opportunity to influence a project’s development. Following the NEPA process, the OTP3, working in collaboration with the Agency, will make a decision as to whether a project should advance as a PPTA project.

Additional opportunities for public involvement and comment specific to the PPTA Framework also exist at the following key milestones:

| Key Project Milestones | Public Notice / Involvement / Opportunities |
|---|---|
| 1. Development of PPTA Projects Priority List | Notification of General Assembly members by OTP3 Director; MPO’s; Agency Administrators; public input solicited; posting on OTP3 website ; press releases. |
| 2. Project Development | CTB Location approval, CTB proposed Business Terms; public meetings; public input solicited on proposed Business Terms; posting on OTP3 website ; press releases. |
| 3. Request for Qualifications | Notification of General Assembly members by OTP3 Director; MPO’s; Agency Administrators; posting on OTP3 website ; press releases. |
| 4. Request for Proposals | Notification of General Assembly members by OTP3 Director; MPO’s; Agency Administrators; posting of draft RFP and Final RFP, CTB Final Major Business Terms on OTP3 website ; press releases. |
| 5. Selection of Preferred Proposer | Press release and posting of selection on OTP3 website . |
| 6. Execution of Agreement | Press release and posting of executed Agreement on OTP3 website . |

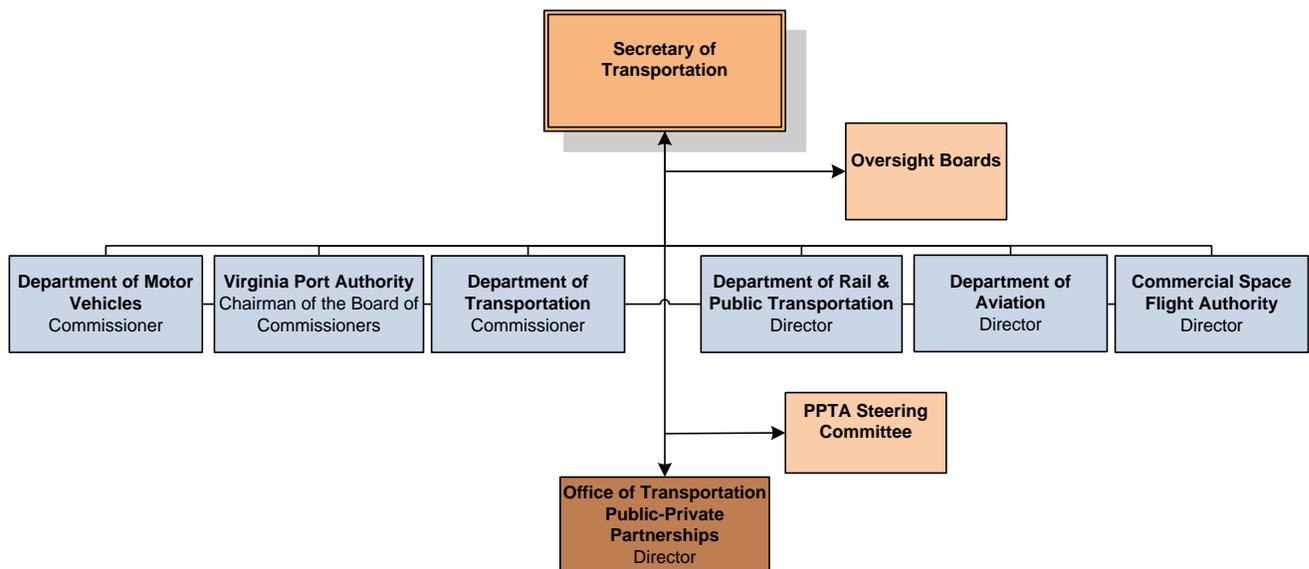
In summary, each of the preceding phases allows an opportunity for the public, localities, and regional planning organizations to influence a project’s identification, selection and specific features. The phases are prerequisites for the development of any major public transportation project, as well as for a prospective Solicited Project or Unsolicited Proposal to successfully enter into the PPTA project procurement stage.

2. ORGANIZATIONAL STRUCTURE AND REPORTING

The OTP3 is responsible for developing, implementing, and administering PPTA projects across all modes of transportation to address the commonwealth's transportation needs in accordance with the processes and procedures in this Implementation Manual. The primary objective of the OTP3 is to accomplish the timely delivery of PPTA projects that address priority transportation needs. The OTP3 will serve as the champion to bring PPTA projects to fruition, be the primary point of contact for PPTA projects serving all modes of transportation and a resource to public sector agencies, private entities and other stakeholders working to advance PPTA projects. This chapter briefly describes the OTP3's organizational structure, reporting relationships, roles and responsibilities.

2.1 ORGANIZATIONAL STRUCTURE

The multimodal OTP3 works directly with the Secretary of Transportation. For administrative ease, they are supported by the Virginia Agency of Transportation. The organizational structure provides the flexibility to leverage resources and expertise across all modes of transportation, including multimodal and intermodal solutions.



The OTP3 and its Director report to the Secretary of Transportation with regard to policy implementation. The OTP3 will work directly with the respective Agency Administrator for each PPTA project that corresponds within that particular mode, for example, for an aviation-related PPTA project, the OTP3 Director will work with the Director of Aviation.

The organizational structure allows for flexibility in leveraging resources and expertise from other disciplines, such as planning, right-of-way acquisition, environmental and utilities, among others, within the relevant Agency at various stages of the project identification, screening and prioritization, development, procurement, construction and maintenance phases.

2.2 OTP3 DIRECTOR

The OTP3 Director is responsible for overseeing all aspects of the PPTA Program, from identifying, screening and prioritizing candidate PPTA projects to timely development, procurement and contract management. This includes PPTA Program outreach and stakeholder coordination and reporting all program and project activities to the Commonwealth Transportation Commissioner and the Secretary of Transportation.

Additionally, the OTP3 Director is responsible for working collaboratively with other public agencies and the industry regarding the PPTA Program and PPTA projects, complying with applicable statutes, regulations, and policies, as well as ensuring that external stakeholders, such as impacted transportation modes, local stakeholders, the [Federal Highway Administration](#) (FHWA), the [Federal Transit Administration](#) (FTA), the [Federal Aviation Administration](#) (FAA), the [Federal Railroad Administration](#) (FRA), the [Federal Maritime Commission](#) (FMC) and the [Office of the Attorney General](#) (OAG) are adequately represented during the various stages of project identification, screening, development, procurement and implementation processes, as and when appropriate. The OTP3 Director, in consultation with the Agency Administrator and appropriate executive-level staff, is empowered to represent the commonwealth in the development of commercial terms in discussion with private entities.

The OTP3 Director, supported by a multidisciplinary program staff, is responsible for delivering key functions, including PPTA project screening, developing and delivering PPTA projects across all modes and contract management for existing PPTA projects. The OTP3 Director will work closely with the Public Relations Officer of the Commonwealth's transportation agencies and local jurisdictions, as appropriate, to facilitate public understanding and support for PPTA projects. Additionally, the OTP3 Director will collaborate with private entities, the commonwealth's transportation agencies, Metropolitan Planning Organizations and other groups for developing appropriate communication strategies for the PPTA Program.

PPTA Project Screening

The OTP3 leads the PPTA project screening effort. The project screening function includes coordination with the relevant Agency's planning division, evaluation of short- and long-term transportation plans and applying detailed screening criteria to a specific project or group of candidate PPTA projects. Additionally, the project screening function culminates in making a recommendation to the PPTA Steering Committee about whether to move forward with a particular project utilizing the PPTA delivery method. Refer to Chapter 4 (Project Screening and Prioritization) for more detailed information.

Developing PPTA Projects

The second key function of the OTP3 is PPTA project development. The OTP3 Director appoints a Project Manager for each project selected for development through the PPTA Program. The Project Manager serves under the direction of the OTP3 Director. The Project Manager will be a person with strong commercial expertise and public policy and infrastructure industry knowledge. Working closely with other disciplines within the Agency, the Project Manager has overall responsibility for addressing the needs of a specific PPTA project, including overseeing its development, procurement, contract execution and reaching financial close. Any member of PPTA team may serve as the Project Manager at the discretion of the OTP3 Director.

The Project Manager is responsible for leveraging the appropriate financial, commercial, procurement and technical expertise required for developing a specific PPTA project. The Project Manager ensures that

appropriate coordination with other agencies and stakeholders occurs throughout the project development lifecycle. Because more than one PPTA project may be considered for procurement at a given time, there may be more than one Project Manager under the direction of the OTP3 Director, each assigned to a specific PPTA project.

PPTA Contract Management

The third key function of the OTP3 is contract management. Once a Comprehensive Agreement is executed and financial close has occurred, the OTP3 will assist with contract management and serve as a resource for the District or Agency for any commercial issues that may arise during the construction and/or operations and maintenance phases of the project. The OTP3's role also includes certain contract compliance responsibilities such as reviewing the periodic updates to the financial model, evaluating revenue sharing provisions, monitoring refinancing activities, reviewing the audited financial statements for the project and other activities as defined in the applicable Comprehensive Agreement.

2.3 PPTA STEERING COMMITTEE

The PPTA Steering Committee (PPTA Steering Committee) is comprised of the Commissioner of Highways, the Chief Deputy Commissioner of Highways, the Deputy Secretary of Transportation, the OTP3 Director, the Chief Engineer of the Virginia Department of Transportation, the Chief Financial Officer of the Virginia Department of Transportation, the Chief of Planning and Programming of the Virginia Department of Transportation, and one representative each from the Virginia Port Authority, the Department of Rail and Public Transportation, the Department of Aviation, Virginia Commercial Space Flight Authority, and the Department of Motor Vehicles. The PPTA Steering Committee is chaired by the Commonwealth Transportation Commissioner. The PPTA Steering Committee will meet on an as needed basis and will be briefed by the OTP3 Director.

The PPTA Steering Committee has the following primary functions:

1. Based on the results of the OTP3's screening analysis the PPTA Steering Committee will determine which projects will move forward as a PPTA and in which priority (short, medium or long-term priorities);
2. Provide a policy recommendation to the Secretary of Transportation as to whether an Unsolicited Proposal will move forward as a PPTA based on the policy review performed by the OTP3, and comments received from Affected Jurisdictions and/or the general public;
3. Review the recommendation of the OTP3 for evaluation of the Statements of Qualification and/or Proposals associated with a particular PPTA project to determine which Respondents should advance to the Request for Proposals stage or whether to proceed with a conditional award to the Preferred Proposer; and
4. Provide high-level policy and procurement guidance to the OTP3 on an as-needed basis.

The PPTA Steering Committee may consult with resident experts and external advisors on an as-needed basis with respect to technical, financial or legal aspects of a candidate PPTA project or Proposal.

2.4 COMMONWEALTH TRANSPORTATION COMMISSIONER

The Commissioner of Highways serves as the Chairman of the PPTA Steering Committee and provides oversight, guidance, and direction with respect to activities of the PPTA Steering Committee. Additionally the Commissioner has the legal authority to make decisions on commercial and contractual issues related to the PPTA projects within the Virginia Department of Transportation. Decisions on commercial and contractual issues on PPTA projects related to other Agencies are the legal responsibility of the respective Agency Administrator.

2.5 OVERSIGHT BOARDS

PPTA projects across multiple modes will rely on direction from various oversight boards. The Commonwealth Transportation Board (CTB) serves as the oversight board for the Virginia Department of Transportation and the Department of Rail and Public Transportation. The Virginia Aviation Board (VAB) serves as the oversight board for the Department of Aviation and the Virginia Port Authority Board of Commissioners (VPAB) serves as the oversight board for the Virginia Port Authority. The Commercial Space Flight Authority Board of Directors serves as the oversight board for the Virginia Commercial Space Flight Authority.

The OTP3 Director will work collaboratively with the Agency Administrator to keep the respective oversight board informed regarding the status of the PPTA project and major milestones.

3. PROJECT IDENTIFICATION



Project identification is the first phase of the PPTA Framework. As mentioned in [Chapter 2](#) Organizational Structure and Reporting, the OTP3 and the Agency's relevant planning divisions are responsible for managing the project identification process.

There are two primary sources from which transportation projects can be identified for consideration as PPTA candidate projects:

- **Solicited Projects:**

The planning staffs across all transportation agencies, offices and Metropolitan Planning Organizations are encouraged to identify projects for PPTA consideration. Planning staffs should review the High-Level Screening Criteria discussed in [Chapter 4](#) Project Screening and Prioritization as they consider suitable PPTA candidate projects.

- **Unsolicited Proposals:**

Unsolicited Proposals submitted by private entities will be considered as unsolicited projects.

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

3.1 SOLICITED PROJECTS

Comprehensive transportation planning is carried out at the state, regional, local and municipal levels throughout the year by the Commonwealth's transportation agencies and offices that have the legal authority to develop and/or operate Qualifying Transportation Facilities. Examples of sources for candidate PPTA projects may include the various planning documents and entities listed below:

| Guidance: Potential Sources of Solicited Candidate PPTA Projects |
|--|
| PPTA Priority of the Governor – priority transportation projects critical to safeguarding the Commonwealth's long-term economic competitiveness, environment, safety and security and improving mobility and overall quality of life for Virginians. |
| Six-Year Improvement Program (SYIP) – a program managed by the Commonwealth Transportation Board for allocating funding for rail, public transportation, commuter assistance, bicycle, pedestrian, interstate and primary highway transportation projects in future years. |
| Legislative Mandate – any legislation passed by the General Assembly requiring the OTP3 to consider improvements to a transportation facility under the PPTA Program. |
| Virginia Multimodal Long-Range Transportation Plan (VTrans2035) – provides an overall framework and facilitates development of policy for identifying and integrating transportation needs, allowing the Commonwealth's investments to be prioritized based on defined Commonwealth transportation goals. |

| Guidance: Potential Sources of Solicited Candidate PPTA Projects |
|--|
| Virginia Surface Transportation Plan – provides information for potential long-term transportation project development and investment based on the goals identified in Virginia’s statewide multimodal transportation policy plan. |
| Virginia Port Authority Master Plan – focuses on the capital projects and investments needed to develop and maintain terminal capacity in order to continue to generate and increase economic benefits for Virginia. |
| Six-Year Airport Capital Improvement Plan – identifies and prioritizes planning and engineering projects that focus on airport facility development over a six-year period and provides cost estimates, anticipated sources of funding and justifications for project implementation. |
| Statewide Transportation Improvement Program (STIP) – a short-range fiscal planning document that represents the first three years of the twenty-year Long Range Transportation Plan. The STIP includes safety projects, transportation enhancement, aviation projects, rail projects, bicycle and pedestrian projects and public transit projects. |
| Metropolitan Planning Organization Long-Range Transportation Plan – identifies a capital investment strategy to meet existing and future regional transportation needs over the next twenty years in an efficient and effective manner. |

The Agency’s and the Commonwealth’s transportation agencies that are interested in submitting candidate projects for PPTA consideration should select projects that meet PPTA suitability criteria as outlined in [Chapter 4](#) Project Screening and Prioritization.

The OTP3 will maintain a portfolio of current candidate PPTA projects and periodically perform high-level screening, as described further below, to determine their feasibility.

3.1.1 PPTA CANDIDATE PROJECT FORM

To assist in determining a project’s suitability for delivery under the PPTA, the Agencies that have identified candidate projects should submit a completed [PPTA Candidate Project Form](#) to the OTP3 for each candidate project. This form can be submitted at any time pursuant to the process outlined in this Implementation Manual. Information requested in the Candidate Project Form allows the OTP3 to perform a high-level screening assessment to determine whether the candidate project should advance to the detail-level screening process. Agencies are encouraged to provide relevant supporting information/documentation for the candidate project to allow the OTP3 to conduct the high-level screening and evaluation in a timely manner.

3.2 UNSOLICITED PROPOSALS

The PPTA permits Responsible Public Entities to receive and evaluate Unsolicited Proposals from private entities to develop and/or operate Qualifying Transportation Facilities under their jurisdiction. Private entities may submit Unsolicited Proposals for all transportation modes to the OTP3 at any time, pursuant to the PPTA and this Implementation Manual. All Unsolicited Proposals should be submitted to the attention of the OTP3 Director at the following address:

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

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

3.2.1 PROPOSAL REVIEW FEE

Private entities interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee of \$50,000 at the time of submitting the Unsolicited Proposal to the OTP3. The Proposal Review Fee shall be submitted in the form of a cashier's check made payable to the Treasurer of Virginia. Proposers submitting multiple Proposals for unrelated Qualifying Transportation Facilities will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission. The fee will partially offset the cost of processing, reviewing and evaluating the Unsolicited Proposal.

3.3 KEY ACTION ITEMS

| Project Identification Activity | Responsible Entity |
|---|---|
| Submit PPTA Candidate Project Form | Agencies and Commonwealth's Transportation Agencies |
| Submit Unsolicited Proposal | Private Entity |
| Review candidate Solicited Projects and Unsolicited Proposals | OTP3 |

4. PROJECT SCREENING AND PRIORITIZATION



The project screening phase within the PPTA Framework is designed to assist the OTP3 in determining the suitability of delivering projects under the PPTA. The PPTA project screening methodology is a means of systematically and consistently applying evaluation criteria to Solicited Projects and Unsolicited Proposals submitted as candidates for PPTA consideration.

Project screening is organized into two phases:

1. Solicited Projects will go through high-level project screening and Unsolicited Proposals will go through a policy review; and
2. Those Solicited Projects and Unsolicited Proposals that make it through step 1 will go through detail-level screening.

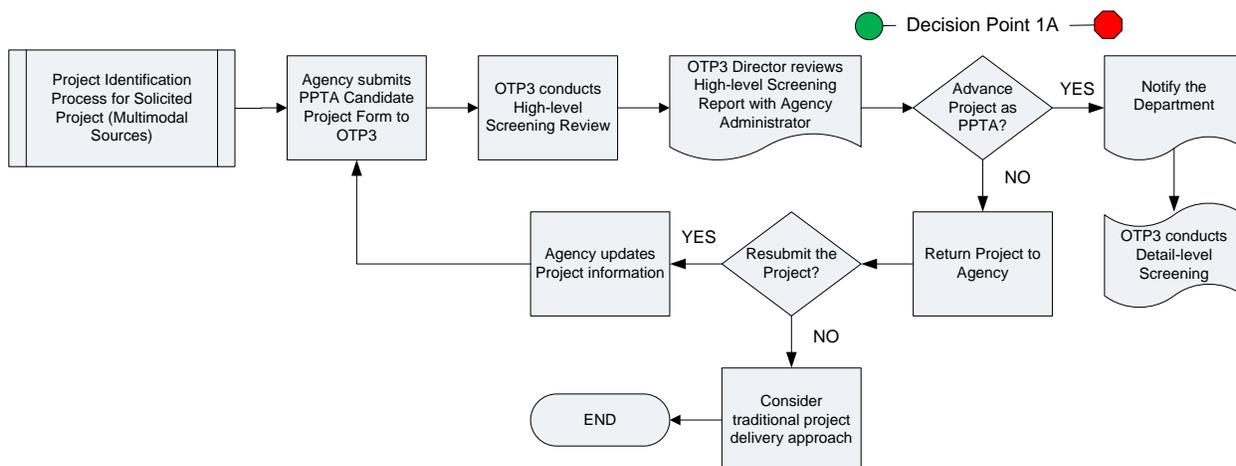
4.1 HIGH-LEVEL PROJECT SCREENING/POLICY REVIEW

The high-level project screening and policy review represents the first phase of the two-step screening process for Solicited Projects and Unsolicited Proposals. The steps outlined below are designed to help the OTP3 evaluate candidate PPTA projects.

4.1.1 SOLICITED PROJECTS - HIGH LEVEL SCREENING

On a periodic basis, the OTP3 will commence the high-level screening of Solicited Projects submitted as candidates for PPTA delivery by the Agencies and the Commonwealth's transportation agencies.

The following diagram presents the steps to be taken during the high-level screening review:



The OTP3 will review information provided in the [PPTA Candidate Project Form](#) and any supplemental information submitted for each candidate project against the high-level screening criteria to determine the feasibility of delivering a proposed project via the PPTA delivery method.

The table below provides guidance for the high-level screening criteria intended to assess whether a project is a potential candidate PPTA project. The OTP3 reserves the right to revise the guidance on screening criteria as and when the Commonwealth's transportation goals or policies change.

| 4.1 Guidance: High-Level Project Screening Criteria | |
|--|--|
| Project Complexity | Is the project sufficiently complex in terms of technical and/or financial requirements to effectively leverage private sector innovation and expertise? |
| Accelerating Project Development | If the required public funding is not currently available for the project, could using a PPTA delivery method accelerate project delivery? |
| Transportation Priorities | Is the project consistent with the overall transportation objectives and missions of the Commonwealth and the Agency? Is the project consistent with priorities identified by the appropriate transportation plans and programs, such as SYIP, STIP, and MPO plans and programs? Does the project adequately address transportation needs? |
| Project Efficiencies | Would the PPTA delivery method help foster efficiencies through the most appropriate transfer of risk over the project lifecycle? Is there an opportunity to bundle projects? |
| Ability to Transfer Risk | Would the PPTA delivery method help transfer project risks and potential future responsibilities to the private sector on a long-term basis? |
| Funding Requirement | Does the project have the revenue generation potential to partially offset the public funding requirement if necessary? Could a public agency pay for the project over time, such as through an availability payment, as opposed to paying for the entire cost upfront? |
| Ability to Raise Capital | Would delivering the project under the PPTA help free up capital from other sources for transportation priorities within the Commonwealth? Is the project consistent with federal requirements and potential agreements for federal funding and/or approval, including federal financial constraint requirements for PPTA projects? |

The OTP3 will rely on these high-level screening criteria to initially assess the suitability of candidate projects for PPTA delivery and to determine which projects should advance to a detail-level screening. The OTP3, in consultation with the Agency Administrator, may amend these high-level screening criteria to address unique aspects of each candidate project, such as mode of transportation, Greenfield vs. Brownfield project characteristics, and revenue vs. non-revenue risk profile.

Decision Point 1A

Within 10 calendar days of completing the high-level review, the OTP3 will submit a recommendation to the OTP3 Director as to whether a given candidate project should advance to the detail-level project screening process. The OTP3 Director, in consultation with the Agency Administrator, will then make the final determination.

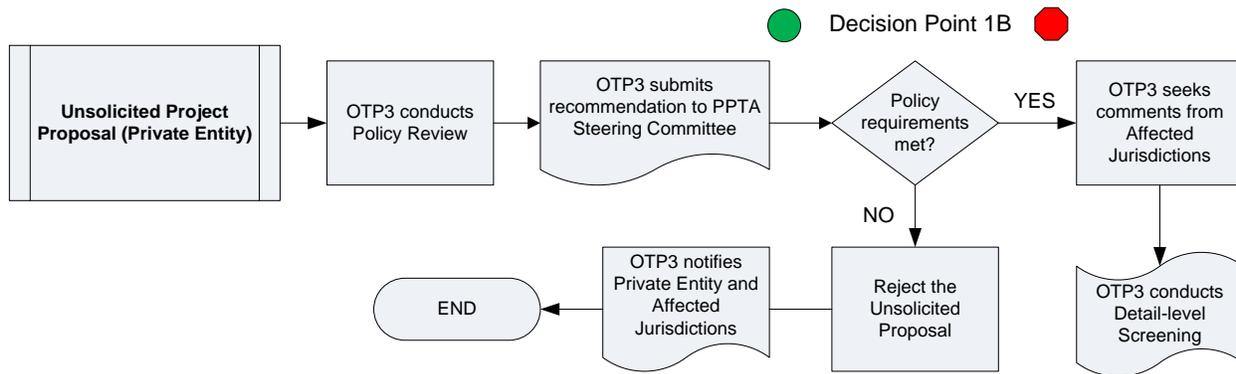
If the candidate project is not selected for detail-level screening, the Agency may resubmit a similar project at a later date, so long as the project characteristics have changed or more information is available to demonstrate that the project more closely satisfies the high-level screening criteria.

4.1.2 UNSOLICITED PROPOSALS: POLICY REVIEW

Private entities may submit Unsolicited Proposals to the OTP3 at any time pursuant to this Implementation Manual. Private entities should note the updated requirements with respect to submission of Unsolicited Proposals are described in [Chapter 3](#) Project Identification and [Appendix D](#).

Within 30 calendar days of receiving an Unsolicited Proposal from a private entity, the OTP3 will perform a policy review and brief evaluation of concept and benefits to ensure that the Proposal is in accordance with the Code of Virginia and this Implementation Manual, and that the Proposal is consistent with the Commonwealth’s transportation policy goals.

The following diagram presents the steps to be taken during the policy review process:



The OTP3 will conduct the policy review pursuant to the PPTA and the guidance outlined in this Implementation Manual, including the criteria listed below:

| Guidance: Policy Review Criteria |
|---|
| <ul style="list-style-type: none"> ▪ The project conforms to the Commonwealth’s transportation goals and the policy objectives of the Administration |
| <ul style="list-style-type: none"> ▪ The project satisfies a public need for timely development and/or operation of a transportation facility |
| <ul style="list-style-type: none"> ▪ The project addresses a demonstrated need as identified in a state, regional, and/or local transportation plan |
| <ul style="list-style-type: none"> ▪ The project interfaces with existing and planned transportation systems |

| Guidance: Policy Review Criteria |
|---|
| <ul style="list-style-type: none"> ▪ The project is at a sufficient level of development that a procurement process can be run that includes an element of price competition |
| <ul style="list-style-type: none"> ▪ The project would make the transportation facility available to the public in a more efficient and/or less costly fashion as compared to the traditional procurement method |
| <ul style="list-style-type: none"> ▪ The project is consistent with federal requirements and potential agreements for federal funding and/or approval, including federal financial constraint requirements for PPTA projects |
| <ul style="list-style-type: none"> ▪ The project is not currently on the list of proposed Solicited Projects. |

Within 10 calendar days of completing the policy review, the OTP3 will submit a [Policy Review form](#) containing recommendation to the PPTA Steering Committee as to whether the Unsolicited Proposal meets the policy requirements and is compliant with applicable laws and this Implementation Manual.

Decision Point 1B

The PPTA Steering Committee, in consultation with the Office of the Secretary and the Agency Administrator, will then make the final determination as to whether the Unsolicited Proposal should advance to the detail-level screening review. If the PPTA Steering Committee determines that the Unsolicited Proposal does not meet the requirements of the PPTA and policy review criteria, or if the Unsolicited Proposal pertains to a project for which the OTP3 or the Agency plans to issue a Request for Qualifications, the OTP3 will return the Unsolicited Proposal to the private entity that submitted it.

The Unsolicited Proposal will advance to a detail-level screening review if it passes the policy review. At such time, the OTP3 Director will send a written request for comments to each Affected Jurisdiction identified in the Unsolicited Proposal. The private entity submitting the Unsolicited Proposal will coordinate with the OTP3 Director prior to furnishing a copy of its Proposal to each Affected Jurisdiction. The Affected Jurisdictions will have 60 calendar days from the date of notification from the OTP3 Director to submit any comments in writing regarding the proposed project to the OTP3.

4.2 DETAIL-LEVEL PROJECT SCREENING PROCESS

The detail-level project screening process shall consider the desirability and feasibility of the candidate PPTA project. The detail-level project screening criteria form the basis upon which the OTP3 determines the feasibility of delivering transportation projects utilizing the PPTA delivery method. The OTP3 intends to evaluate Solicited Projects and Unsolicited Proposals against the same criteria wherever possible; however, due to differences in project characteristics across transportation modes, it may be necessary to add or remove certain screening criteria depending on the project.

| |
|---|
| Guidance: The specific detail-level project screening criteria can be found in Appendix E of this Implementation Manual. |
|---|

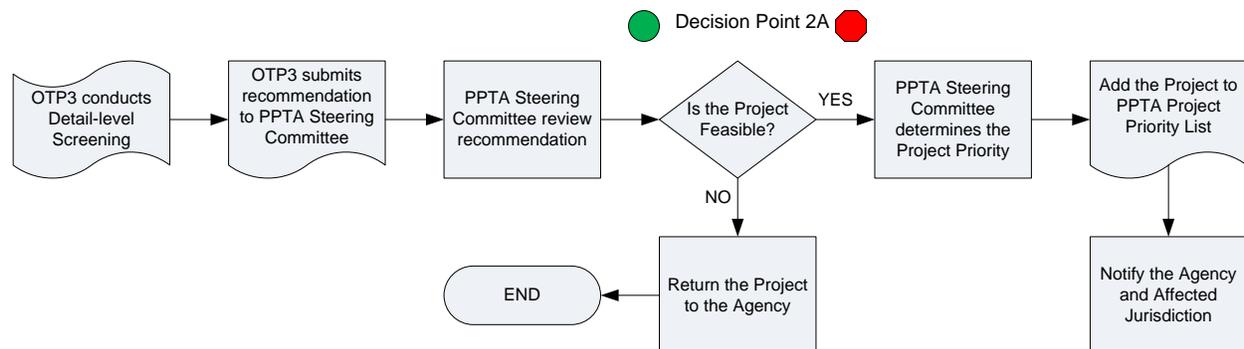
The steps to be taken for both Solicited Projects and Unsolicited Proposals through the detail-level screening phase are summarized in the discussion below.

4.2.1 SOLICITED PROJECTS

At least once every two years, the OTP3 will conduct a detail-level screening review for Solicited candidate projects that have successfully passed through the high-level screening phase. The OTP3 will apply

appropriate detail-level project screening criteria to Solicited Projects to assess their feasibility as PPTA projects, examine in greater detail the current status of each project under review and identify potential risk elements. The OTP3 will capture the output of the detail-level screening review and summarize the results in a [Detail-level Screening Report](#) for each project evaluated.

The following diagram presents the steps to be taken during the detail-level screening process for Solicited Projects:



Within 15 calendar days of completing the detail-level screening review, the OTP3 will submit its findings and recommendations on the [Detail-level Screening Report](#) to the PPTA Steering Committee for review and consideration. Within 15 calendar days of issuing the Detail-level Screening Report, the OTP3 Director will convene a meeting of the PPTA Steering Committee to review and discuss the Report. The PPTA Steering Committee will make the final determination on the project's feasibility and whether it warrants continued investment as a PPTA project based upon how well it conforms to appropriate evaluation criteria (as further described in [Appendix F](#)), the Commonwealth's transportation goals and PPTA Program objectives.

Decision Point 2A

Based on the review of the information presented in the [Detail-level Screening Report](#), the PPTA Steering Committee can either approve the candidate PPTA project in the manner recommended by the Report or it can reject the project. If the PPTA Steering Committee rejects the project, it is returned to the Agency that submitted it and may be re-submitted for consideration as a PPTA project at a later date or implemented through traditional planning and procurement.

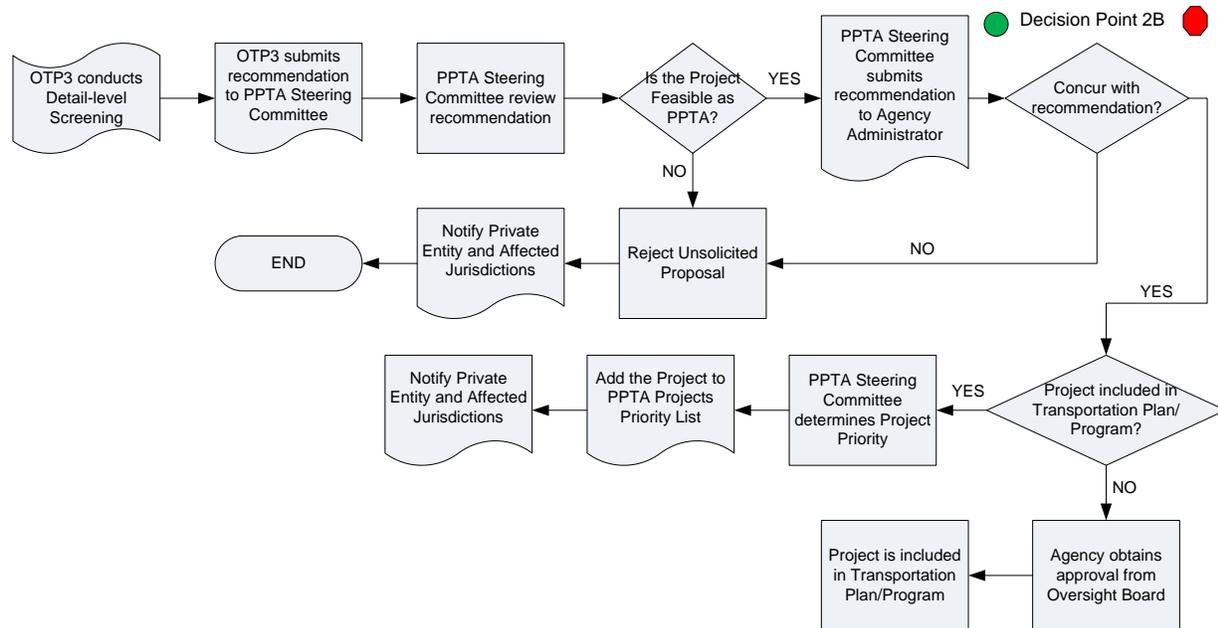
4.2.2 UNSOLICITED PROPOSALS

Within 15 calendar days of the OTP3 Director's decision to advance an Unsolicited Proposal to a detail-level screening review, the OTP3 will initiate the detail-level screening. The OTP3 will apply the appropriate detail-level project screening criteria based on the guidance listed in [Appendix E](#), as well as other screening criteria that may be relevant to the proposed project.

Within 15 calendar days of completing the detail-level screening review, the OTP3 will submit its findings and recommendations on the [Detail-level Screening Report](#), as well as any written comments received from the Affected Jurisdictions regarding the proposed project, to the PPTA Steering Committee for review and consideration.

Within 15 calendar days of issuing the [Detail-level Screening Report](#), the OTP3 Director will convene a meeting of the PPTA Steering Committee to review and discuss the recommendations and comments from the Affected Jurisdictions. Based on the review of the [Detail-level Screening Report](#) and comments from the Affected Jurisdictions, the PPTA Steering Committee, in coordination with the OTP3 Director, will make a recommendation to the Agency Administrator as to whether an Unsolicited Proposal should be advanced for procurement through the PPTA or returned to the private entity that submitted it.

The following diagram presents the steps to be taken during the detail-screening process for Unsolicited Proposals:



Decision Point 2B

Within 15 calendar days of receiving a recommendation, the Agency Administrator, in consultation with the Agency’s Oversight Board, will determine whether to concur with the PPTA Steering Committee’s recommendation or request additional review.

Upon receiving concurrence from the Agency Administrator for the Unsolicited Proposal, the OTP3 will notify the private entity and each Affected Jurisdiction identified in the Proposal of the decision to advance the Unsolicited Proposal for a competitive procurement process. Additionally, if the project proposed by an Unsolicited Proposal was not originally in the Agency’s or the Commonwealth’s transportation agency’s approved transportation plan or program such as the Surface Transportation Plan or Six-Year Improvement Program for the Virginia Agency of Transportation, the OTP3 will work with the relevant Agency to seek approval from the appropriate Oversight Board to add the candidate project to the Agency’s transportation plan or program. Additionally, if the project is located in a metropolitan area, coordination with the Metropolitan Planning Organization could be required to ensure that the project is reflected in the financial plan that accompanies the Metropolitan Planning Organization’s long-range transportation plan and Transportation Improvement Plan.

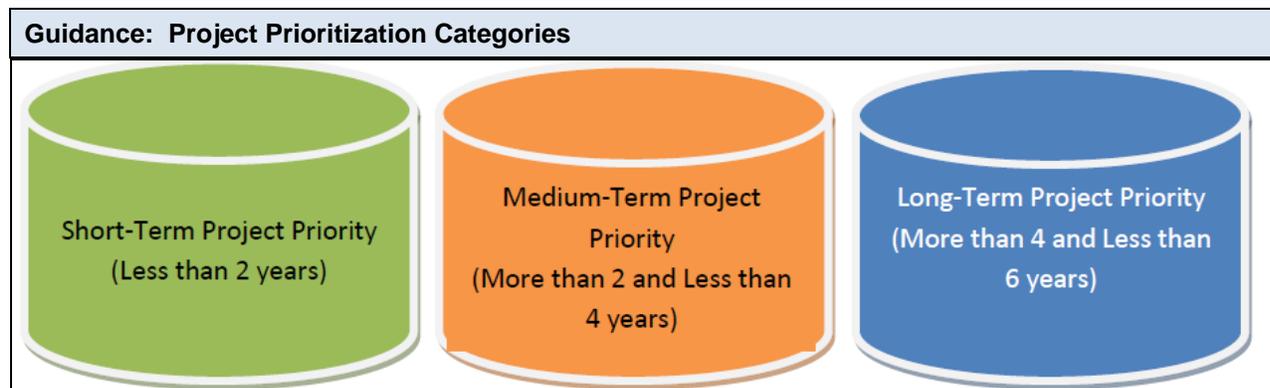
4.3 PROJECT PRIORITIZATION PROCESS

For projects that are accepted to move through the PPTA Framework, the PPTA Steering Committee is responsible for categorizing candidate PPTA projects into short-term, medium-term and long-term priorities.

The PPTA Steering Committee may use the following guidance to help determine the suitable category for each PPTA candidate project:

| Guidance: Project Prioritization Criteria | |
|--|--|
| ▪ Commonwealth policy, priorities and objectives | ▪ OTP3 recommendations |
| ▪ Public funding requirement | ▪ Availability of human resources |
| ▪ Market timing | ▪ Current level of project development |

The goal will be to reach commercial and financial close within the timeframes set forth below for each respective priority category.



This approach to project prioritization is a way for the PPTA Steering Committee to help the OTP3 manage a robust long-term pipeline of PPTA projects while meeting the commonwealth’s most immediate transportation goals. Upon completion of the prioritization process, the OTP3 will issue a prioritized list of candidate PPTA projects (PPTA Projects Priority List) on the [OTP3 website](#); public comment will be accepted for 15 business days. The OTP3 Director will provide the PPTA Projects Priority List to elected officials, MPO’s, and Agency Administrators.

The OTP3 recognizes that it may be necessary to revise the priority list, as the detail-level screening process for Solicited Projects takes place at least every two years and the priorities of the Administration and the Agencies change over time. As such, the OTP3 will monitor and update the priority list as necessary. The OTP3 should ensure that future candidate projects are analyzed for consideration in the PPTA Program. The OTP3 Director is responsible for maintaining regular dialogue with the private sector and monitoring market conditions, as these factors can directly impact a project’s priority.

4.4 KEY ACTION ITEMS

| Project Screening Activity for Solicited Projects | Responsible Entity |
|--|-------------------------|
| Conduct a high-level screening of Solicited Projects | OTP3 |
| Determine initial feasibility of Solicited Projects | OTP3 Director |
| Conduct a detail-level screening of Solicited Projects | OTP3 |
| Determine feasibility of Solicited Projects under PPTA | OTP3 |
| Submit the findings and recommendation to the PPTA Steering Committee | OTP3 |
| Accept, reject and prioritize PPTA projects | PPTA Steering Committee |
| Notify the relevant Agency and Affected Jurisdictions | OTP3 Director |

| Project Screening Activity for Unsolicited Proposals | Responsible Entity |
|--|-------------------------|
| Conduct a policy review of Unsolicited Proposals | OTP3 |
| Determine compliance with applicable laws and policy requirements | PPTA Steering Committee |
| Obtain comments from Affected Jurisdictions | OTP3 |
| Conduct a detail-level screening of Unsolicited Proposals | OTP3 |
| Submit the findings and recommendation to the PPTA Steering Committee | OTP3 |
| Review the findings, recommendation and comments | PPTA Steering Committee |
| Submit a recommendation to the Agency Administrator for Unsolicited Proposal | PPTA Steering Committee |
| Review the recommendation for the Unsolicited Proposal | Agency Administrator |
| Ensure that the project is included in the appropriate transportation plan/program | OTP3 |
| Determine procurement priorities for PPTA projects | PPTA Steering Committee |
| Notify Project Sponsors and Affected Jurisdictions | OTP3 Director |

5. PROJECT DEVELOPMENT



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

5.1 PROJECT DEVELOPMENT PROCESS

The OTP3 will advance the project to the development phase in accordance with the procurement priority assigned to it by the PPTA Steering Committee. The OTP3 Director appoints a Project Manager for each project selected for development under the PPTA Program. The Project Manager is responsible for getting the project ready for procurement with assistance from relevant disciplines within the Agency and external advisors as necessary. The Project Manager assembles and manages resources required to administer the specific PPTA project through the development and procurement phases.

The OTP3 Director is responsible for maintaining appropriate coordination with other agencies and stakeholders through the project development lifecycle and providing project information, such as budget, scope, and schedule, to the Agency Administrator, as appropriate.

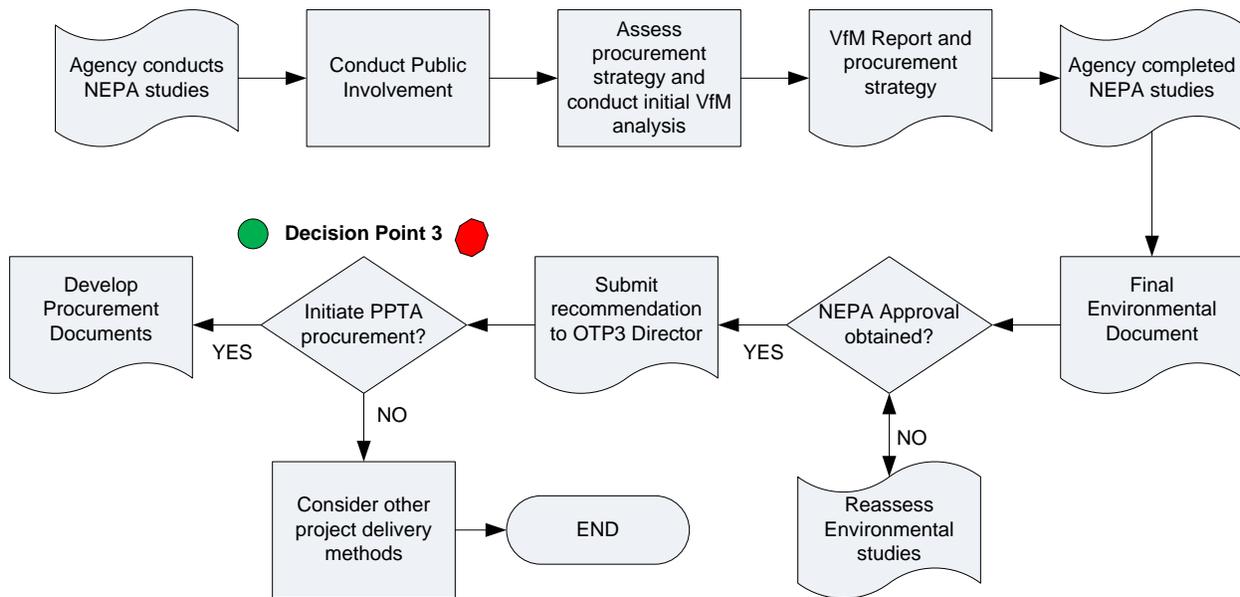
Guidance: During the project development phase, a number of key tasks could take place to prepare the project for procurement depending on the characteristics of the project. These include, but are not limited to:

- Further defining project scope, design concept and phasing schedule
- Analyzing compliance with environmental and transportation planning requirements
- Analyzing technical feasibility and operations and maintenance evaluations
- Refining project cost, revenue estimates and lifecycle costing
- Submitting funding and grant applications as required
- Performing outreach, coordinating public involvement and garnering stakeholder support
- Defining an approach to risk allocation and management (see [PPTA Risk Analysis Guide](#))
- Performing a value-for-money analysis (see [PPTA Value-for-Money Guide](#))
- Determining the optimal procurement method

For those PPTA projects for which a federal action may be required, the OTP3 will ensure that decisions relating to mode, location, user fees, capacity, etc. are made after adequate consideration of potential alternatives to address needs and assess impacts of the project. The OTP3, in coordination with the Agency Administrator and other state, local and federal agencies, as appropriate, may modify the project scope to meet the commonwealth's transportation goals and the priorities of the Administration.

Once the project development work has reached a sufficient level to support an initial Value-for-Money assessment, the OTP3 will perform an initial [Value-for-Money analysis](#) to provide information, both quantitative and qualitative, regarding the relative value of PPTA delivery versus the most likely method of delivering the project.

The following diagram presents the steps during the project development process for PPTA projects:



5.2 VALUE-FOR-MONEY ANALYSIS (VfM) – PART I

As part of the project development phase, the OTP3 will conduct a [Value-for-Money analysis](#) (VfM) to determine whether a project provides benefits to its users and to the commonwealth when delivered through the PPTA process. This analysis tests the value of a project delivered through the PPTA in comparison to the most likely alternative delivery method. This information is a useful decision-making tool for the OTP3 and the PPTA Steering Committee as to whether it is worth continuing to invest in a project as a PPTA project. The procurement of a PPTA project represents Value-for-Money when, relative to the most likely alternative delivery method, it delivers a better combination of lifecycle costs and quality to meet the objectives of the project and the commonwealth.

The initial VfM analysis will also support the PPTA Steering Committee’s decision regarding the optimal procurement method. The OTP3 will update this initial VfM study with inputs that accompany the submission of Proposals by private entities during the competitive procurement process to ensure that the project continues to provide VfM throughout the procurement process.



VfM will be taken into consideration by the PPTA Steering Committee when it is evaluating private sector proposals at the RFP stage of the bid process, as further discussed in [Chapter 6](#) Project Procurement. The appropriate VfM methodology will vary across modes and payment

mechanisms (e.g., the analysis for privately-tolled concessions will differ from that for availability payment transactions in which the Agency retains some or all revenue risk). However, the VfM analysis should be applied to all PPTA projects in the project development phase to ensure that the PPTA delivery method continues to offer the Best Value as the preferred delivery method. It is important to note that VfM will only be achieved when there is an appropriate allocation of project risks between the public and private sectors.

5.3 KEY ACTION ITEMS

| Project Development Activity | Responsible Entity |
|---|--|
| Perform project development activities (e.g., geotech, survey, environmental, preliminary engineering, risk analysis, etc.) | The Agency with assistance from the OTP3 |
| Conduct initial Value-for-Money analysis | OTP3 |
| Notify Project Sponsors and Affected Jurisdictions | OTP3 Director |
| Manage and coordinate the Project Development Process | OTP3 |

6. PROJECT PROCUREMENT

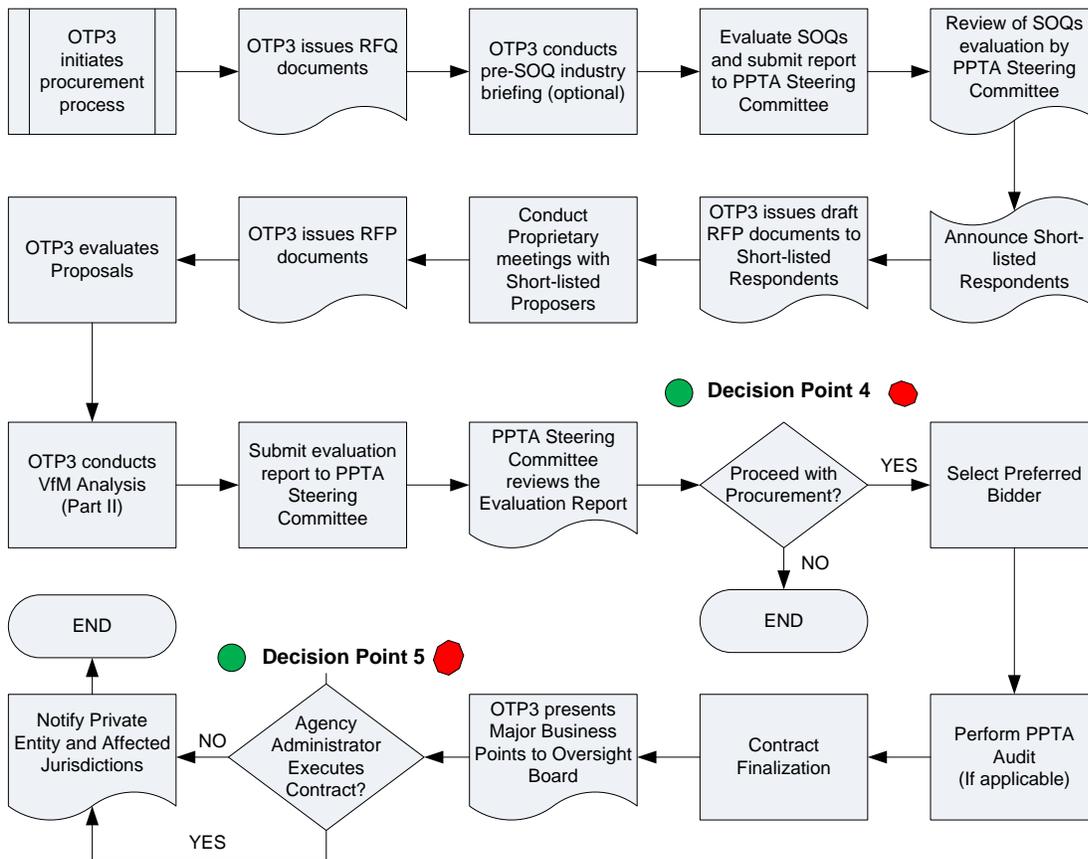


This chapter describes the two-stage, competitive procurement process and provides guidance on related activities for all projects that have been selected for procurement under the OTP3. The OTP3 is responsible for managing the procurement process for all PPTA projects.

6.1 TWO-STAGE PPTA PROCUREMENT PROCESS

The PPTA procurement process consists of (1) issuing a Request for Qualifications (RFQ) and (2) issuing a Request for Proposals (RFP). The OTP3 serves as the primary point of contact for PPTA procurements, in consultation with the Office of the Attorney General (OAG), and ensures that the process is administered in accordance with applicable law. The OTP3 Director is responsible for managing a consistent, transparent and well-defined procurement process.

The following diagram presents the two-stage PPTA procurement process:



It is important to note that, for a majority of PPTA projects, a two-step procurement process is anticipated; however, the OTP3 reserves the right to accelerate the procurement process and/or merge the RFQ and the RFP stages for a particular PPTA project if it determines that doing so is in the best interest of the procurement process.

6.2 REQUEST FOR QUALIFICATIONS

The OTP3 launches the first stage of the PPTA procurement process by issuing the RFQ. The primary objective of the RFQ is to define a pool of qualified, potential Proposers for a project.

6.2.1 STATEMENT OF QUALIFICATIONS (SOQ) EVALUATION METHODOLOGY

The RFQ documents will specify the evaluation criteria and the relative weight given to such criteria so that Respondents will know how their submissions will be evaluated. The OTP3 is responsible for reviewing, scoring, and ranking all responsive SOQs. Upon completion of the SOQ evaluation process, the OTP3 will make a recommendation to the PPTA Steering Committee as to which Respondents should advance to the RFP stage. Scoring of qualifications and any ranking of the SOQs will not be carried over to the evaluation of the final RFP responses.

6.2.2 SHORT-LISTING OF QUALIFIED RESPONDENTS

The PPTA Steering Committee will approve, modify, or reject the recommendation submitted by the OTP3. Respondents that are approved by the PPTA Steering Committee will advance to the RFP stage. If there are no qualified Respondents for a particular project, the OTP3 Director may decide to cancel the procurement or re-procure the project at a later date.

The OTP3, in coordination with the Agency, will notify all Respondents in writing whether they have been short-listed to proceed to the RFP stage. Additionally, the OTP3 will inform other state and federal agencies, local governments, members of the General Assembly, MPO's, and other stakeholders as necessary. Electronic copies of the public information included in the SOQs submitted by short-listed Respondents will be posted on the OTP3 website within 10 working days of acceptance by the OTP3.

The OTP3 will notify each Affected Jurisdiction in writing and furnish a copy of the SOQ for all Respondents that have been short-listed to advance to the RFP stage. The Affected Jurisdictions will have 60 calendar days from the date of such notification to submit any comments regarding the proposed project in writing to the OTP3.

6.2.3 INTERIM AGREEMENT

The PPTA (§ [56-566.1. of the Code of Virginia](#)) allows a Responsible Public Entity to enter into an Interim Agreement with multiple private entities if the Responsible Public Entity determines in writing that it is in the public interest to do so. The processes outlined in this Implementation Manual envision that the OTP3 will follow the two-stage procurement process for the PPTA projects; however, in certain circumstances, the Agency Administrator, in consultation with the OTP3 Director, may enter into an Interim Agreement with the private entities proposing the development and/or operation of a Qualifying Transportation Facility or Facilities prior to or in connection with the negotiation of the Comprehensive Agreement for those PPTA projects that were selected for procurement through competitive sealed bidding or competitive negotiation as defined in § [2.2-4301](#) and subsection B of § 2.2-4301 of the Code of Virginia.

Guidance: Further detail about the issuance of RFQ documents and requirements for SOQs can be found in [Appendix F](#) of this Implementation Manual.

6.3 REQUEST FOR PROPOSALS

Upon receiving the determination of short-listed Proposers from the PPTA Steering Committee and comments from the Affected Jurisdictions, the OTP3 can begin the RFP process. The RFP process creates competition among a small list of qualified Proposers to create value for the commonwealth.

The OTP3 may choose to issue the RFP documents in draft format to short-listed Proposers and hold proprietary one-on-one meetings to solicit feedback on the proposed RFP and draft Comprehensive Agreement. Once consideration has been given to the Proposer feedback, the OTP3 will issue the final RFP documents to short-listed Proposers. The OTP3 and other appropriate personnel will evaluate responses to the RFP from short-listed Proposers based on suitable criteria. The OTP3 reserves the right to run a Best and Final Offer (BAFO) process with the short-listed Proposers.

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

6.4 VALUE-FOR-MONEY (VFM) – PART II

Prior to recommending the selection of the Preferred Proposer to the PPTA Steering Committee, the OTP3 will perform a final [VfM analysis](#), taking into account any additional project information that has become available since the initial VfM analysis (as described in Section 5.1) was performed. This updated VfM analysis will compare the Agency's updated Public Sector Comparator (PSC) and the Preferred Proposer's Proposal and will be taken into account in the PPTA Steering Committee evaluation. This updated VfM analysis will ensure that the award of the project as a PPTA provides Value-for-Money to the commonwealth.

6.5 BASIS FOR AWARD AND SELECTION OF PREFERRED PROPOSER

Decision Point 4

The PPTA Steering Committee takes into account the recommendation of the OTP3, the evaluation criteria, and the VFM analysis in making a conditional award of the contract. The awarded Preferred Proposer will have the first chance to finalize the contract with the OTP3, in coordination with the Agency. The OTP3 will inform the Preferred Proposer that it has been selected and initiate the finalization of the terms of the Comprehensive Agreement. The OTP3, in coordination with the Agency, will notify all other Proposers in writing regarding the PPTA Steering Committee's decision to conditionally award the project to the Preferred Proposer. The OTP3 will also notify appropriate members of the General Assembly, MPO's, and other stakeholders.

6.6 PPTA AUDIT REQUIREMENTS

[Section 56-560.E](#) of the Code of Virginia requires that, for any PPTA project with an estimated construction cost of over \$50 million, the Responsible Public Entity shall require the private entity to pay the costs of an independent audit of any and all traffic and cost estimates associated with the private entity's Proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be

exposed (including improvements to other transportation facilities that may be needed as a result of the Proposal, failure by the private entity to reimburse the Responsible Public Entity for services provided and potential risk and liability in the event the private entity defaults on the Comprehensive Agreement or on bonds issued for the project).

To the extent required, the OTP3 will appoint an independent consultant to conduct this audit prior to the final contract award to the Preferred Proposer. Additionally, the OTP3 will disclose all information from such a review within 30 calendar days of completing an independent audit.

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

6.7 CONTRACT FINALIZATION AND AWARD

Prior to developing or operating a Qualifying Transportation Facility, the successful Proposer must enter into a Comprehensive Agreement with the Agency. The Agency Administrator has the statutory authority to enter into the Comprehensive Agreement, as applicable, pursuant to the PPTA.

The OTP3 and the Agency will initiate this process by issuing a list of open issues and matters for the parties to resolve during the contract finalization period and an anticipated timeline for completion. Final authorization to develop and/or operate any Qualifying Transportation Facility is contingent upon the successful finalization and execution of the Comprehensive Agreement between the Preferred Proposer and the Agency Administrator. If, at any point in the contract finalization phase, the OTP3 determines that the Preferred Proposer will not provide the commonwealth with the Best Value, the OTP3 may suspend or terminate the procurement or choose to finalize a contract with the next highest ranking Proposer. This process may continue until the OTP3 reaches an agreement or decides to terminate the procurement. Pursuant to § [56-573.1:1.B](#) of the Code of Virginia, 30 calendar days prior to entering into a Comprehensive Agreement with the Preferred Proposer, the OTP3 will issue a public notice to provide an opportunity for public comment. The public comment period may include a public hearing at the sole discretion of the OTP3.

Decision Point 5

Prior to signing the Comprehensive Agreement, as applicable, the Agency Administrator, in association with the OTP3 Director, will present the major business points of the applicable agreement to the relevant Oversight Board and the Secretary of Transportation for review. The ability to sign the Comprehensive Agreement rests with the Agency Administrator. Once the Comprehensive Agreement is executed, the contract is awarded to the successful Proposer.

6.8 POST-FINANCIAL CLOSE

If financial close is not simultaneous with commercial close, the project shall proceed to financial close upon the signing of the Comprehensive Agreement. Upon reaching financial close, the Agency is responsible for coordinating the implementation of the PPTA project (e.g. if the contract is with the Virginia Agency of Transportation, the contract will be administered by the responsible District Office). The OTP3 will continue to serve as a resource to the Agency and the private entity for any commercial or contract management issues that may arise during the project development, design, construction, finance, and operations or maintenance phases.

6.9 KEY ACTION ITEMS

| Project Procurement Activity | Responsible Entity |
|---|--------------------------------------|
| Develop procurement documents | OTP3 with assistance from the Agency |
| Issue the Request for Qualifications | OTP3 with assistance from the Agency |
| Evaluate responses and short-list qualified Respondents | OTP3 and the PPTA Steering Committee |
| Issue the Request for Proposals | OTP3 with the Agency |
| Evaluate the Proposals | OTP3 |
| Conduct the VfM analysis | OTP3 |
| Issue Public Notice | OTP3 |
| Select a Preferred Proposer | OTP3 and the PPTA Steering Committee |
| Conduct PPTA Audit | OTP3 |
| Finalize the Contract | OTP3 with assistance from the Agency |
| Award the Contract | Agency Administrator |

7. TIMELINES AND MILESTONES

The commonwealth is committed to managing a consistent, transparent and streamlined PPTA Program that meets the broader multi-modal transportation objectives of the commonwealth. This chapter outlines the target timelines and key milestones that are fundamental to the success of the PPTA Framework. The OTP3 will work toward delivering PPTA projects in a timely and efficient manner. However, the OTP3 may revise these timelines for some PPTA projects depending on the complexity of the PPTA project, transportation mode, volume of projects and project readiness in terms of state and federal environmental approvals, right-of-way acquisition, project funding, the need for further information, or other unanticipated circumstances.

7.1 PROJECT IDENTIFICATION

The project identification phase consists of the submission of [candidate PPTA projects](#) across all transportation modes. As noted in [Chapter 3](#) Project Identification, there are two primary sources from which projects can be submitted to the OTP3: (a) Solicited Projects and (b) Unsolicited Proposals.

The Agencies, MPO's, and PDC's may submit candidate projects to the OTP3 at any time. Private entities that are interested in submitting Unsolicited Proposals to develop and/or operate Qualifying Transportation Facilities may submit their Proposals to the OTP3 on an ongoing basis.

Suggested Timeline: Not Applicable.

7.2 PROJECT SCREENING

The project screening phase begins with the [high-level screening](#) for Solicited Projects and a [policy review](#) for Unsolicited Proposals and concludes with the prioritization of PPTA projects by the PPTA Steering Committee.

7.2.1 SOLICITED PROJECTS

For Solicited Projects submitted by the Agencies, MPO's, and PDC's, the OTP3 will perform the high-level screening process twice during the fiscal year if there are candidate projects to screen – i.e., 60 calendar days prior to the end of the 2nd quarter and 4th quarter of each fiscal year – to determine whether these candidate projects should advance to the detail-level screening phase. Once initiated, the OTP3 will have 60 calendar days to complete the high-level screening review for all candidate projects.

At least once every two years, the OTP3 will conduct a [detail-level screening review](#) for all short-listed projects. Once initiated, the OTP3 will target 90 calendar days to complete the detail-level screening review for selected candidate projects, depending on the availability of data. Additionally, within 15 calendar days of concluding the detail-level screening review, the OTP3 will send copies of the Detail-level Screening Report and corresponding recommendation to the PPTA Steering Committee for review and consideration. Within 15 calendar days of issuing the Detail-level Project Screening Report to the PPTA Steering Committee, the OTP3 Director will convene a meeting of the PPTA Steering Committee to review and discuss the recommendations.

Suggested Timeline: 180 calendar days.

7.2.2 UNSOLICITED PROPOSALS

Within 90 calendar days of the receipt of an Unsolicited Proposal from a private entity, the OTP3 will conclude the [Policy Review Report](#) and submit a recommendation to the PPTA Steering Committee as to whether the Unsolicited Proposal should advance to the detail-level screening review or be returned to the private entity. The PPTA Steering Committee will have 15 calendar days from receiving a recommendation to either concur with the recommendation or request additional review.

Within 15 calendar days of the PPTA Steering Committee's decision to advance the Unsolicited Proposal for further review, the OTP3 will initiate a detail-level screening review and request written comments from each Affected Jurisdiction identified in the Proposal. The OTP3 will have 75 calendar days to complete and submit the [Detail-level Screening Report](#), corresponding recommendation and comments received from Affected Jurisdictions to the PPTA Steering Committee for review and consideration.

Within 15 calendar days of issuing the Detail-level Screening Report to the PPTA Steering Committee, the OTP3 Director will convene a meeting of the PPTA Steering Committee to finalize its recommendation. The PPTA Steering Committee will submit its recommendation to the Agency Administrator as to whether an Unsolicited Proposal should be advanced for procurement through the PPTA. The Agency Administrator will have 15 calendar days to concur with the recommendation or to request additional review of the Unsolicited Proposal.

Suggested Timeline: 225 calendar days.

7.3 PRIORITIZATION OF PPTA PROJECTS

Project prioritization begins when the PPTA Steering Committee receives the [Detail-level Screening Reports](#) and corresponding recommendations and ends when the PPTA Steering Committee determines each project's short-term, medium-term or long-term priority. Within 15 calendar days of receiving concurrence from the Agency Administrator for an Unsolicited Proposal or issuing the Detail-level Screening Reports and corresponding recommendations for Solicited PPTA projects, the OTP3 Director will convene a meeting of the PPTA Steering Committee. The PPTA Steering Committee will have 15 calendar days to advance a project as a PPTA project or reject the project and return it to the Agency or private entity that submitted it.

Suggested Timeline: 30 calendar days.

7.4 PROJECT DEVELOPMENT

The project development phase begins once a project has been approved and prioritized by the PPTA Steering Committee and ends when the project is ready to move into the procurement phase. Depending upon the project's readiness in terms of state and federal environmental approvals, stakeholder support, project funding, commercial structure in terms of payment mechanism, allocation of project risks, delivery method and the status of procurement documents, the timing of the project development phase could vary greatly. As a result, no timeline is given for this section.

7.5 PROJECT PROCUREMENT

The project procurement phase for a given project begins with issuance of the RFQ documents and ends with either award of the contract to the Preferred Proposer or with a decision to cancel the procurement.

The table below presents the timelines associated with target milestones for a two-stage PPTA procurement process. The suggested procurement timelines will vary on a case-by-case basis depending on the mode of transportation and the scale and complexity of the project. The proposed project timelines will be outlined within the RFQ documents.

| Procurement Phase | Suggested Timelines for Key Milestones |
|---|--|
| Issue the RFQ documents | N/A – Initiation of the project procurement phase |
| Receive the Statements of Qualifications (SOQ) | 60 to 90 days from issuance of the RFQ |
| Evaluate SOQs and announce short-listed Proposers | 60 to 90 days from receipt of the SOQs |
| Issue the final RFP documents | 60 to 120 days from announcement of the short-listed Proposers |
| Receive the Proposals | 120 to 180 days from issuance of the RFP |
| Select the Preferred Proposer | 60 to 90 days from receipt of the Proposals |
| Conduct PPTA Audit | 30 days from selection of a Preferred Proposer |
| Finalize and Award the Contract | 30 days from completion of the PPTA audit |

7.6 PROJECT IMPLEMENTATION

The project implementation phase for a given project begins with financial close and ends when all elements of the project, as identified in the contract, have been successfully implemented.

Upon reaching financial close, the Agency is responsible for coordinating the implementation of the PPTA project (e.g. if the contract is with the Virginia Agency of Transportation, the contract will be administered by the responsible District Office). The OTP3 will continue to serve as a resource to the Agency and the private entity for any commercial or contract management issues that may arise during the project development, design, construction, finance, and operations or maintenance phases.

Suggested Timeline: As defined in the contract.

APPENDICES

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[Appendix B](#) – PPTA Project Delivery Framework Flowchart

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APPENDIX A

RIGHTS AND DISCLAIMERS

RIGHTS RESERVED

The OTP3, in coordination with each Agency reserves all rights available by law in processing PPTA Proposals, including, without limitation, the sole and unfettered right to:

- 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;
- Reject any and all Proposals at any time;
- Terminate evaluation of any and all Proposals at any time;

- 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;
- Negotiate with a Proposer without being bound by any provision in the Proposal;
- Request or obtain additional information about any Proposals;
- Waive minor errors, omissions or irregularities in a response to an RFQ or RFP;
- Issue addenda to, and/or cancel, any RFQ or RFP;
- Revise, supplement or withdraw all or any part of the guidelines included in this Implementation Manual;
- Decline to return any and all fees required to be paid by private entities as part of the evaluation process for Unsolicited Proposals;
- Request clarifications to Unsolicited Proposals; and
- 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.

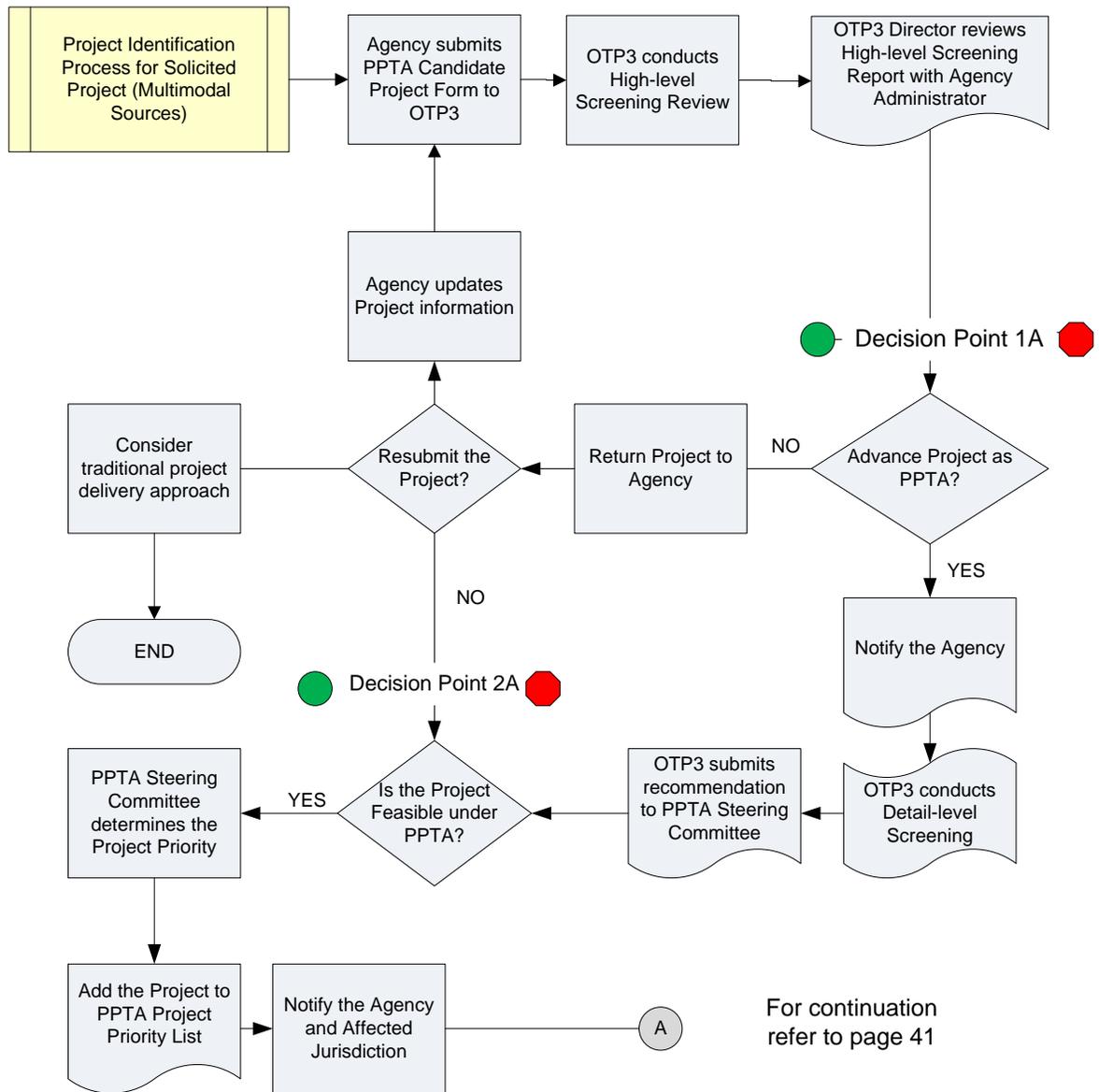
DISCLAIMERS AND CONDITIONS FOR SUBMISSIONS UNDER THE PPTA

- 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;
- Respondents and Proposers must submit questions concerning the PPTA process in writing to the OTP3 Director, who will coordinate a response in writing; Proposers may not rely on oral responses to inquiries; and
- The commonwealth, the Secretary of Transportation, the OTP3 Director or the Agency Administrator shall not be liable to a Respondent or Proposer for the disclosure of all or a portion of a response to RFQ or a Proposal submitted pursuant to this Implementation Manual.

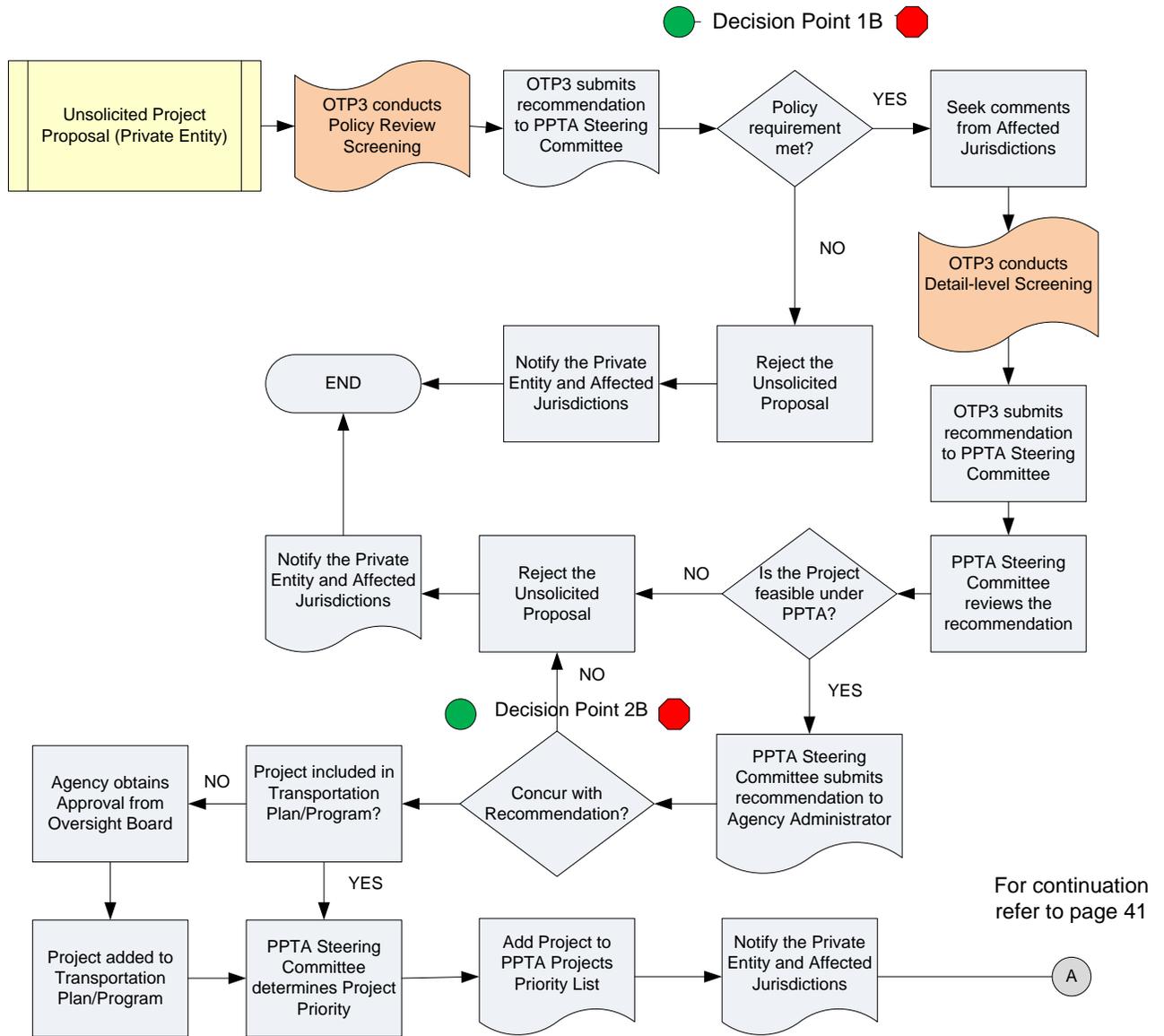
APPENDIX B

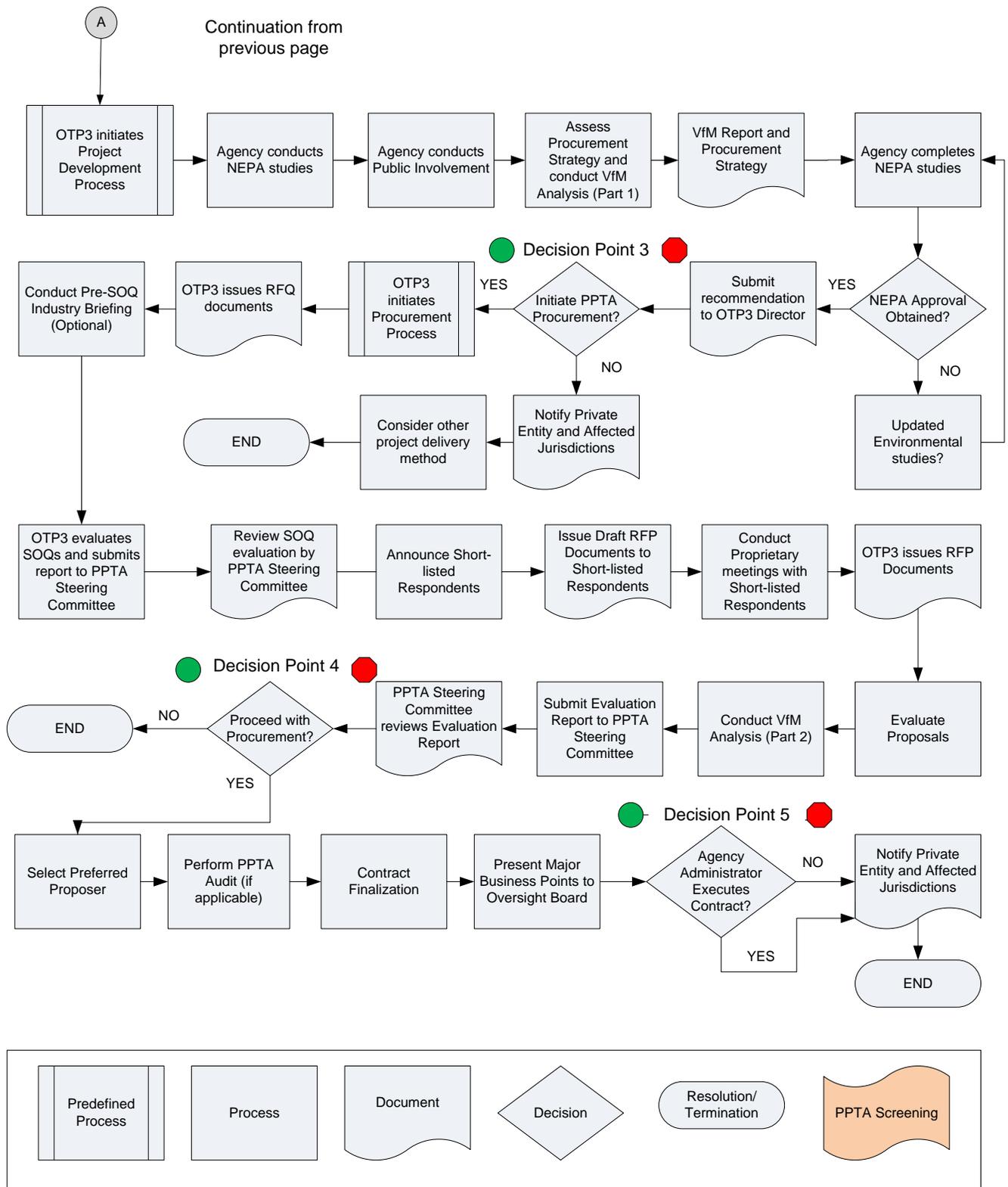
PPTA PROJECT DELIVERY FRAMEWORK FLOWCHART

PPTA Framework for Solicited Projects



PPTA Framework for Unsolicited Projects





APPENDIX C

GUIDANCE ON APPROACH TO COMMERCIAL TERMS

Appendix C presents the OTP3's approach to developing commercial terms that will form the basis for Interim Agreements and Comprehensive Agreements governing PPTA projects. In developing commercial terms, the OTP3 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 PPTA Program and (ii) preserving the OTP3's flexibility across modes and projects to negotiate fair, market-based transactions that reflect the best interests of the commonwealth. The principles reflected herein guide the OTP3. While each PPTA project is different and will have its own unique challenges, the guiding principles identified below remain constant and the OTP3 intends to apply these principles during the process of developing commercial terms for PPTA projects across modes and methods of project delivery.

GUIDING PRINCIPLES

Certain fundamental principles guide the OTP3 and influence the commonwealth's position on the development of commercial terms for PPTA projects. The OTP3's approach to developing commercial terms is based on promoting and advancing these principles. The OTP3's guiding principles for developing commercial terms are as follows:

- **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 PPTA Framework in order to generate and preserve confidence of key stakeholders in the PPTA Program;
- **Maximize Competition** through consistent communication with the private sector, managing an efficient project selection process and administering a uniform and transparent procurement process;
- **Execute PPTA 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 solve problems on a programmatic and project-specific basis;
- **Advocate Reasonable and Fair Commercial Terms** to ensure marketability of PPTA projects by adopting market-based risk allocations that are appropriate for the complexity and scope of a specific PPTA project;
- **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 PPTA projects effectively and successfully to promote confidence in the OTP3 and realize long term investment in the commonwealth.

The OTP3 intends to apply these guiding principles and values to each PPTA project through the processes utilized to develop commercial terms as outlined below; however, due to the uniqueness of each PPTA 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 PPTA project.

DEVELOPMENT OF COMMERCIAL TERMS

During the pre-solicitation stage of the PPTA procurement process, the OTP3, in conjunction with the Agency, may conduct project-specific industry workshops in order to measure the private sector's interest in the proposed PPTA project and to gauge the potential scope of the project risks, allocation of those risks and related commercial terms. The OTP3 and the Agency 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 PPTA project and advance the consideration of potential commercial terms for the project.

Prior to the issuance of the final RFP documents for a particular PPTA project, the OTP3 will maintain open lines of communication within the parameters and restrictions set forth in the procurement documents with short-listed Proposers. The OTP3 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 OTP3 expects that 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 changes 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 OTP3 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 OTP3, in conjunction with the Agency and external legal, financial and technical advisors, will, in most circumstances, be primarily responsible for drafting, issuing and managing the PPTA 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 OTP3, the Agency and external advisors will be guided by the PPTA principles and consider the following factors:

- The transportation mode and asset classification;
- Whether the project is a Greenfield construction or Brownfield monetization;
- The proposed financial structure;

- The commercial terms and risk allocations reflected in past PPTA projects in the commonwealth, parties that are best able to manage each risk and recent transactions of similar complexity and scope in other jurisdictions;
- Current economic and financial conditions; and
- Political and cultural issues.

For certain terms, the OTP3 will develop standard contractual language to address matters that will be part of any transaction, regardless of the nature of the PPTA project or the Agency involved.

The OTP3, 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 OTP3 will consider developing an outreach program 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 PPTA Program.

The OTP3 views its approach to developing commercial terms as a dynamic process that will evolve over time in an effort to continually reflect the best practices of using public-private partnerships to develop transportation infrastructure in the commonwealth.

APPENDIX D

GUIDANCE FOR UNSOLICITED PROPOSAL PREPARATION

The PPTA permits private entities to submit Unsolicited Proposals to develop and/or operate Qualifying Transportation Facilities at any time, pursuant to the PPTA and this Implementation Manual. 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 OTP3.

PROPOSAL PREPARATION

Private entities submitting an Unsolicited Proposal should ensure that the Proposal includes a comprehensive project description and provides enough information about the proposed project for the OTP3 to determine whether the Proposal satisfies the review and evaluation criteria as set out in §§ 56-558 and 56-560 of the Code of Virginia. Private entities should also provide sufficient information to facilitate a [high-level policy review](#) as detailed in Section 4.1 of this Implementation Manual and a detail-level screening as described in [Appendix F](#). In addition, the financial plan for the project must contain enough detail so that an analysis could be performed to determine whether the proposed project is financially feasible. The financial plan shall disclose the full extent of any forecasted public financing and/or funding commitments that are required to enable the proposed project.

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

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

The OTP3 may require private entities submitting an Unsolicited Proposal to give one or more oral presentations of their Proposal to the OTP3, the Agency and/or the public. Such presentations will provide opportunities to educate the Agency and the public and/or to clarify aspects of the Proposal. All pages of the Proposal should be numbered. Each copy of the Proposal should be placed in a three-ring binder and contained in a single volume where practical.

PROPOSAL SUBMISSION

Private entities submitting Unsolicited Proposals are required to deliver ten (10) hard copies and one (1) electronic copy in Portable Document Format (PDF) to the OTP3. Proposals must be sealed in mailing envelopes or packages bearing the Proposer's name, address and the words "Public-Private Transportation Act Proposal" clearly written on the outside. The cover page must include the title of the

Proposal, the name and address of the proposing entity, the person authorized to act on behalf of the Proposer and his or her email address and telephone and facsimile numbers.

All Unsolicited Proposals should be submitted to the attention of the OTP3 Director at the following address:

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

Private entities interested in submitting an Unsolicited Proposal are required to pay a non-refundable, non-negotiable Proposal Review Fee as specified in Section 3.2.1 of this Implementation Manual at the time of submitting the Unsolicited Proposal to the OTP3. The Proposal Review Fee shall be submitted in the form of a cashier's check made payable to the Treasurer of Virginia. Proposers submitting multiple Proposals for unrelated Qualifying Transportation Facilities will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission.

Upon receipt, the OTP3 will notify the commonwealth's transportation agencies, any appropriate federal agency, and other stakeholders that the Unsolicited Proposal has been submitted for a given transportation project and that the OTP3 will initiate a review within 30 calendar days to determine if the Proposal meets all legal and policy requirements for further evaluation, as set out in §§ 56-558 and 56-560 of the Code of Virginia and this Implementation Manual.

The private entity submitting an Unsolicited Proposal to the OTP3 pursuant to § 56-560 of the Code of Virginia shall coordinate with the OTP3 Director prior to furnishing a copy of its Proposal to Affected Jurisdictions identified in the Proposal.

If an Unsolicited Proposal is submitted during a period when the OTP3 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 OTP3 at its sole discretion, then the private entity will be notified by the OTP3 so that the Proposal may be resubmitted at a later date.

APPENDIX E

GUIDANCE ON DETAIL-LEVEL PROJECT SCREENING CRITERIA

Those Solicited Projects that have passed through the high-level screening process and those Unsolicited Proposals that have passed through the high-level policy review are eligible for [detail-level screening](#). The detail-level project screening criteria form the basis upon which the OTP3 evaluates the feasibility of delivering transportation projects across all transportation modes using the PPTA project delivery method. The screening criteria reflect the commonwealth's transportation goals and policy priorities of the Administration for delivering transportation projects in a timely and cost-effective manner.

The detail-level screening criteria are described in more detail to provide the private sector with a guide for defining what information the OTP3 will evaluate as they make their recommendation to the PPTA Steering Committee as to whether to invest in advancing the project under the OTP3.

In the detail-level project screening phase, the OTP3 will evaluate projects on the basis of two primary review categories: (1) desirability of the project and (2) feasibility of the project. The table below provides some guidance to the public and private sectors as to how to interpret the criteria:

| Detail-Level Screening Criteria – Desirability of the Project | |
|--|--|
| Public Need | <ul style="list-style-type: none"> ▪ Does the project address the needs outlined in the local, regional and State transportation plans, such as congestion relief, safety, new capacity and preservation of existing assets? ▪ Does the project support improving safety, reducing congestion, increasing capacity, providing accessibility, improving pedestrian biking facilities and/or enhancing economic efficiency? |
| Public Benefits | <ul style="list-style-type: none"> ▪ Are there anticipated transportation benefits to the community, the region and/or the commonwealth? ▪ Is the project expected to help achieve performance, safety, mobility or transportation demand management goals? ▪ Is the project expected to improve connections among existing and planned transportation modes? ▪ Are there potential project benefits to the affected communities' transportation system? ▪ Are there anticipated enhancements to adjacent transportation facilities or other modes? |
| Economic Development | <ul style="list-style-type: none"> ▪ Will the project enhance the commonwealth's economic development efforts? ▪ Is the project helpful to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives? |

| Detail-Level Screening Criteria – Desirability of the Project | |
|--|--|
| Market Demand for PPTA Delivery | <ul style="list-style-type: none"> ▪ This measure is only applicable to Solicited Projects; Unsolicited Proposals do not need to address this issue, as private entities are demonstrating market demand through the submission of their Proposal. |
| Stakeholder Support | <ul style="list-style-type: none"> ▪ Public and Business Community Support – What is the extent of support or opposition for the project? Does the proposed project demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? ▪ Public Involvement Strategy – What strategies are proposed to involve local, state and/or federal officials in developing this project? ▪ Regional Transportation Plan and Programs – Has the project received approval in applicable local and/or regional plans and programs? ▪ Federal Requirements – Is the project consistent with federal transportation agency programs or grants (FHWA, FTA, MARAD, FAA, FRA, etc.)? |
| Legislative Considerations | <ul style="list-style-type: none"> ▪ Are there any legislative considerations that need to be taken into account, such as tolling, user charges or use of public funds? |

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

| Detail-Level Screening Criteria – Feasibility of the Project | |
|---|--|
| | <ul style="list-style-type: none"> ▪ Federal, State, and Local Permits and Approvals – Does the project identify the required permits and regulatory approvals and a reasonable plan and schedule for obtaining them? ▪ Rights of Way – Does the project set forth the method by which all property interests required for the transportation facility will be secured and by whom? ▪ Utilities – Does the project set forth the method by which utility relocations will be identified and managed? ▪ Maintenance – Does the project include a schedule and plan to maintain this facility? |
| System Interface and Compatibility | <ul style="list-style-type: none"> ▪ Land Use Impacts – Is the project compatible with local land use and comprehensive plans? ▪ System Interface – Does the project provide continuity with existing and planned state and local facilities and existing and planned multi-modal facilities? |
| Financial Feasibility | <ul style="list-style-type: none"> ▪ Are there public funds required and, if so, are the commonwealth's financial responsibilities clearly stated? ▪ Is the preliminary financial plan feasible in that the sources of funding and financing can reasonably be expected to be obtained? |
| Legal/Legislative Feasibility | <ul style="list-style-type: none"> ▪ Is legislation needed to complete the project? |
| Project Risks | <ul style="list-style-type: none"> ▪ Are there any particular risks unique to the project that have not been outlined above that could impair project viability? ▪ Are there any project risks proposed to be transferred to the Agency that are likely to be unacceptable? |
| Concession Term | <ul style="list-style-type: none"> ▪ Does the project include a reasonable term of concession for proposed operation and maintenance? ▪ Is the proposed term consistent with market demand, providing a Best Value solution for the commonwealth? ▪ Is the proposed term optimal for a whole- life approach? |
| End of Term Arrangement | <ul style="list-style-type: none"> ▪ Does the project include a process for long-term performance management, inventory and hand back provisions? |

APPENDIX F

GUIDANCE FOR THE RFQ PROCESS

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

ISSUANCE OF RFQ DOCUMENTS

The OTP3, in consultation with the Agency Administrator and other state and federal agencies, as appropriate, is responsible for the development and issuance of the RFQ documents. The OTP3 will issue a public notice on the PPTA Program 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/or the [OTP3 website](#). The OTP3 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 OTP3 website.

At any time during the procurement process, the need to issue one or more Addenda to the procurement documents may arise following interaction with the industry or in the event the underlying conditions of a particular project change or more information becomes available. Private entities are encouraged to check the eVA system and the OTP3 website frequently and before submitting their responses.

SUBMISSION OF SOQS

In response to the issuance of an RFQ, private entities that are interested in the project will be required to submit an SOQ. SOQs should be prepared in accordance with the timelines and requirements of the RFQ document. For those Unsolicited Proposals that have been accepted by the OTP3 for a competitive procurement, the individual or private entity that submitted the original Unsolicited Proposal will be required to submit an SOQ with other prospective Respondents to an RFQ if the individual or private entity remains interested in developing the project.

As a part of the SOQ, Respondents may be required to provide information related to the structure of the respondent team, the qualification and experience of the Respondent, individual team members and key personnel with developing, designing, constructing, financing, operating and/or maintaining projects comparable to the project. The specific nature of experience, key personnel and background sought will depend on the specific project as well as the project delivery structure used. Additionally, the RFQ may require submittal of certain financial information from the Respondent and its affiliates. The intent of financial qualification submittal requirements is to determine whether the private entity submitting a response has sufficient financial capacity to assume the responsibilities and obligations required to deliver the project on schedule. The OTP3 may require the submission of financial statements (including audited financial statements), letters of support from providers of payment and performance security and/or

disclosure of material changes in the Respondent's financial position during a specified period of time or reporting period identified in the RFQ.

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

APPENDIX G

GUIDANCE FOR THE RFP PROCESS

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

Upon receiving the determination of Short-listed Proposers from the PPTA Steering Committee, the OTP3 may begin the RFP process. The purpose of the RFP process is to create competition among a short-list of the most qualified Proposers to create value for the commonwealth.

The OTP3 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 the Proposer feedback, the OTP3 will issue final RFP documents to short-listed Proposers. The OTP3 will evaluate responses to the RFP from Short-listed Proposers based on appropriate criteria. The OTP3 reserves the right to run a BAFO process with some or all of the Short-listed Proposers.

CONTENTS OF RFP DOCUMENTS

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

- Technical requirements for the design, construction, environmental commitments, operations and maintenance components of the project;
- The scope of the services to be provided;
- The Agency'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 may 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 Implementation Manual.

Additionally, the extent and type of information requested may vary depending upon the complexity of the PPTA project; however, the information and supporting documents provided should be sufficient to allow the OTP3 and the Agency to determine the most suitable Proposer for delivering the PPTA project.

TECHNICAL PROPOSAL

The OTP3 may require the Proposer to provide a Technical Proposal regarding the project's scope of work and technical requirements as the OTP3 and the Agency 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 PPTA project. If the RFP and project scope requires the Proposer to finance any part of the project, the RFP will require that the Financial Proposal include a financial plan and financial model. Depending upon the nature of the project, the project delivery method and current market conditions, the requirements for the contents and level of detail of the financial plan could be substantially different. The RFP documents will include the financial plan requirements. The OTP3 may require the Financial Proposal to be fully or partially binding and subject to only limited condition. Additionally, the Financial Proposal may also require that the Proposer update the financial qualification information provided with the SOQ.

The OTP3 will seek, where possible and financially feasible, Proposals that minimize the use of public funds as well as the creation of state-supported debt. If a Proposal including public or private debt is submitted, then the RFP will require that the Proposal identify the amount of public funds required and a plan for complying with any requirements associated with using public funds.

PROPOSAL EVALUATION CRITERIA

The evaluation methodology for Proposals will depend largely on the nature of the project, the scope of work and details set forth in the RFP documents. The OTP3 is encouraged to use Best Value as the basis for award. However, the OTP3 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 OTP3 to be in the best interests of the project and the commonwealth.

The evaluation mechanism during the RFP stage will be similar in many respects to the RFQ stage. The specific criteria and methodology for evaluating Proposals will be included in the RFP documents of the specific PPTA procurement and will vary depending on the scope and complexity of a project, transportation mode and project delivery approach. The RFP evaluation criteria allow the OTP3, the Agency, and the commonwealth to clearly communicate the project objectives and priorities of the Agency to the private sector.

Upon receipt of Proposals, the OTP3 will commence the evaluation and selection process. The OTP3, in coordination with the Agency, may hold interviews, ask written questions of the Proposers, seek written clarifications and conduct discussions on the Proposals during the evaluation and selection process.

After evaluation of the Proposals, the OTP3, in consultation with the Agency, 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 OTP3. Upon receipt of the Proposal revisions or BAFOs, the Proposal evaluation process will be repeated by the OTP3. It is important to note that BAFOs are not mandatory and may not be useful or appropriate for a given project. If BAFO is to be used, it will be specifically stated in the RFP.

APPENDIX H

GUIDANCE FOR THE PPTA AUDIT REQUIREMENTS

GENERAL AUDIT SCOPE

1. Audit of the traffic and cost estimates provided by the private entity named as the Preferred Proposer in its Proposal to the 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 OTP3 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 Agency. 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 OTP3 will engage the consultant, commission and pay for the audit. The Preferred Proposer will reimburse the OTP3 for the cost of the audit. The payment due date will be as determined by the OTP3, but in no event later than financial close.

AUDITOR SELECTION

The OTP3 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 OTP3 or the Preferred Proposer; and
3. The consultant shall not have otherwise performed services or have other relationships with either the OTP3 or the Preferred Proposer (or the Preferred Proposer's affiliates) that, in the OTP3's judgment, may affect the objectivity of the consultant.