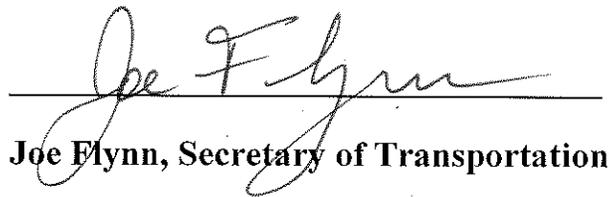
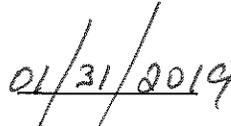


**VERMONT AGENCY OF TRANSPORTATION
PUBLIC PRIVATE PARTNERSHIP
PROGRAM GUIDELINES**


Joe Flynn, Secretary of Transportation



Date

Table of Contents

	Page
1. <u>Introduction</u>	
1.1. <i>Statutory Authority</i>	5
1.2. <i>Purpose</i>	5
1.3 <i>Transparency</i>	5
2. <u>Definitions</u>	5
3. <u>P3 Program Guidelines</u>	8
3.1. <i>Purpose</i>	8
3.2 <i>Deviations</i>	8
4. <u>P3 Process Framework</u>	8
5. <u>Ethics</u>	9
5.1. <i>Definitions</i>	9
5.2 <i>Prohibitions</i>	10
6. <u>P3 Process Roles and Responsibilities</u>	10
6.1. <i>Secretary of Transportation</i>	10
6.2. <i>P3 Committee</i>	11
6.2.1. <i>Composition</i>	11
6.2.2. <i>Duties</i>	11
6.2.3. <i>Meetings</i>	11
6.3 <i>P3 Initiatives Team</i>	12

6.3.1. Composition.....	12
6.3.2. Duties.....	12
6.4. <i>Technical Review Teams</i>	13
6.4.1. Composition.....	13
6.4.2. Duties.....	13
6.5. <i>Project Development Teams</i>	13
6.5.1. Composition.....	13
6.5.2. Duties.....	13
6.6. <i>Procurement Team</i>	13
6.6.1. Composition.....	13
6.6.2. Duties.....	14
7. <u>Project Proposals</u>	14
7.1. <i>Preliminary Discussions</i>	14
7.2. <i>Formal Project Proposal Required Contents</i>	15
7.3. <i>Ownership of Project Proposals</i>	17
7.4 <i>Disclosure of Project Proposal Contents</i>	17
8. <u>Project Proposal Screening Process</u>	17
8.1. <i>Compliance Review</i>	17
8.2 <i>Policy Level Screening</i>	18
8.2.1. Policy Level Screening Factors.....	18

8.2.2. Policy Level Screening Decision.....	18
8.3. <i>Technical Level Screening</i>	18
8.3.1. Technical Level Screening Factors.....	19
8.3.2. Technical Level Report and Recommendation.....	19
9. <u>Final Decision on Project Proposals</u>	19
10. <u>Legislative Approval</u>	20
10.1. <i>Legislative Approval Request Process</i>	20
11. <u>Project Development Process</u>	20
11.1. <i>Project Development Team</i>	21
11.2. <i>Delivery Mechanisms</i>	21
12. <u>Procurement Process</u>	22
12.1. <i>Process Elements</i>	22
12.2. <i>Evaluation Criteria</i>	22
13. <u>P3 Agreements</u>	23
14. <u>Reporting</u>	24
Appendix A- P3 Process Flow Chart.....	25

1. Introduction

1.1. Statutory Authority. Act 158 of 2018 amended, as codified in 19 V.S.A Chapter 26, §§ 2611-2615, (hereinafter “enabling legislation”) established a five-year pilot program, which will expire on July 1, 2023, authorizing the Vermont Agency of Transportation (hereinafter “VTrans”) to enter into Public-Private Partnership (hereinafter “P3”) agreements, as defined below. During the period of the P3 Pilot, VTrans and the Legislature may consider proposed P3 Projects and enter into P3 Agreements with private entities. P3 Agreements lawfully entered into prior to the expiration of the pilot shall continue in effect after termination of the authority.

1.2. Purpose. The P3 pilot is intended to permit private entities to establish a mutually beneficial relationship with the State of Vermont in developing alternative mechanisms for the delivery, maintenance, operation, and/or financing of projects related to transportation infrastructure. The goal of the pilot is to engage the public to identify opportunities for innovative arrangements with the private sector that may benefit the public, increase efficiency, quality, and cost savings in the procurement and management of State transportation systems and assets.

1.3. Transparency. All records in the possession of VTrans related to the P3 Program that qualify as “public records” under the Vermont Public Records Act, 1 V.S.A. § 315 *et seq.*, are subject to public disclosure unless a record, or a portion of the record, falls within an exemption in the statute. Until a P3 Agreement is awarded, and fully executed, VTrans considers P3 proposals and related documents to fall within the listed categories at 1 V.S.A. § 317 c (15), “records relating specifically to negotiation of contracts, including collective bargaining agreements with public employees.”

2. Definitions

- *Public-Private Partnership (P3).* An alternative project delivery mechanism that may be used by VTrans to permit private sector participation in a project, including its financing, development, operation, management, ownership, or maintenance. Not included in this definition are projects procured using established VTrans contracting methods such as Design-Build and Construction Manager-General Contractor, unless they include additional alternative mechanisms described in Section 11.2.

- *Partner and Partnership.* Under this P3 alternative project delivery mechanism and notwithstanding 11 V.S.A., Chapter 22 or the common law, “partnership” shall refer solely to a “public-private partnership” and “partner” shall refer to the state of Vermont or to the private entity participant or participants in a P3 Agreement.
- *P3 Committee.* The Committee established by the Secretary of Transportation to screen and approve or disapprove P3 Project Proposals.
- *P3 Agreement.* A contract or other agreement entered into under processes established in the P3 Guidelines between VTrans and a private entity to undertake a project as a public-private partnership and that sets forth rights and obligations of VTrans and the private entity in that partnership.
- *Project.* The capital development of a facility
- *P3 Project.* A project undertaken in accordance with the procedures and authority set forth in the P3 Guidelines and the enabling legislation.
- *Facility.* Transportation infrastructure, in any mode, that is, or if developed would be, within the jurisdiction of VTrans or eligible for federal-aid funding managed through VTrans.
- *Project Proposal.* A formal document submitted to the P3 Implementation Team in accordance with the terms and conditions set forth in the P3 Guidelines and the enabling legislation proposing a potential P3 Project. Project proposals can come from both internal and external sources and may be solicited or unsolicited.
 - *External Project Proposal.* A Project Proposal submitted by a private entity.
 - *Internal Project Proposal.* A Project Proposal developed by VTrans.
- *Project Proposer.* An entity that submits a Project Proposal for screening by the P3 Committee and, as required, the General Assembly.

- *Project Idea.* An informal presentation to the P3 Implementation Team of a potential P3 Project that does not conform to requirements of the P3 Guidelines for a Project Proposal.
- *Contract Proposal.* Documents submitted to VTrans Contract Administration in response to an RFP for an approved P3 Project, which is a conditional offer that after review specified in the P3 Guidelines may lead to a P3 Agreement.
- *Contract Proposer.* A private entity that submits a Contract Proposal in response to an RFP for an approved P3 Project.
- *Request for Information (RFI).* A communication from VTrans to the public soliciting input or information required by VTrans related to potential or approved P3 Project.
- *Request for Proposals (RFP).* A communication from VTrans to the public soliciting a Contract or a Project Proposal related to an approved P3 Project.
- *Request for Qualifications (RFQ).* A communication from VTrans to the public related to an approved P3 Project soliciting interested private entities to submit qualifications. RFQs will be used in a two-phased procurement process to develop a list of private entities that will be permitted to submit Contract Proposals in response to an RFP.
- *Responsive Contract Proposal.* A Contract Proposal that conforms in all material aspects to the requirements and criteria in an RFP.
- *Statement of Qualifications.* The documents submitted by a private entity in response to an RFQ issued for a P3 project.
- *Qualifying Project Proposal.* A Project Proposal that conforms in all material aspects to the requirements and meets the criteria set forth in Section 7.2.
- *Unsolicited Proposal.* A Project Proposal submitted by a private entity for a P3 Project for screening by the P3 committee that is not in response to a request for Project Proposals from VTrans.

- *Best Value Analysis.* A method of evaluating P3 Proposals using the qualitative and quantitative best value factors, combined with an evaluation of the projected financial results on a year-by-year nominal basis, and/or a present value basis, as appropriate, to determine whether a P3 Proposal represents the best value to the state as compared to traditional procurement methods.
- *Design-Build Contracting.* A method of procurement and project delivery, permitted by 19 V.S.A. § 2601, *et seq*, whereby a single entity is contractually responsible to perform design and construction services on a project.

3. P3 Program Guidelines (“P3 Guidelines”)

3.1. Purpose. The purpose of the P3 Guidelines is to comply with the requirements of the enabling legislation and provide a clear, consistent, efficient, and transparent process for administering the P3 program.

3.2. Deviations. Each P3 Project is unique and all elements set forth in the P3 guidelines will not apply in all circumstances, therefore, tailored approaches to assessing and implementing P3 Projects will be required for P3 Projects to be successful. VTrans intends to retain flexibility to modify or deviate from the P3 Guidelines at its sole discretion in the interests of the State and the public. The P3 Guidelines may be subject to revision and updates, and the State, its employees and agents will not be liable for any damages sustained by any party based on the modification or failure to modify the P3 Guidelines. Likewise, failure by the State, its employees and agents to follow these Guidelines creates no private right of action, and nothing in the Guidelines acts as a waiver of sovereign immunity.

4. P3 Process Framework. What follows is a brief outline of the P3 process, which is illustrated in the Process Diagram (Attachment A).

Project Identification

- P3 Project informal ideas and formal proposals may be submitted, either unsolicited or in response to a request by VTrans, by all sources including, but not limited to:
 - Private commercial and non-profit entities
 - The public
 - Other public entities

Project Idea/Proposal Screening and Evaluation

- All P3 Project ideas will be presented to the P3 Committee for informal feedback. Qualifying Project Proposals will be screened at up to three levels by:
 - The P3 Initiatives Team (compliance review); and if accepted,
 - The P3 Committee (policy level screening); and if accepted,
 - The Technical Review Team (technical level screening).

Project Proposal Approval

- P3 Projects passing screening must be finally approved or rejected by the P3 Committee and, if required by the enabling legislation, the General Assembly.

Project Development

- Approved projects will be sent to the Project Development Team, which will prepare the project for delivery and procurement.

Project Procurement

- P3 Projects that have been sufficiently developed will move to the Procurement Team for full and open competition, where a private entity will be selected to complete the project under a P3 Agreement.

5. Ethics. The following provisions are intended to ensure transparent, ethical practices in the P3 process. These rules do not supplant other ethics requirements that may apply to persons participating in various capacities for the State of Vermont related to the P3 program, for example State Employee Personnel Policies, Executive Order 19-17, and Act 79 of 2017.

5.1. Definitions

- *Appearance of a Conflict of Interest.* The impression that a reasonable person might have, after full disclosure of the facts, that a person's judgment might be significantly influenced by outside interests, even though there may be no actual Conflict of Interest.
- *Conflict of Interest.* A significant financial interest of a person or such an interest, known to the person, of a member of his or her immediate family or household, or of a business associate, in the outcome of a

matter related to his or her duties related to the P3 program. "Conflict of Interest" does not include any interest that (i) is no greater than that of other persons generally affected by the outcome of a matter (such as a policyholder in an insurance company or a depositor in a bank), or (ii) has been disclosed to the Secretary of Transportation and found not to be significant.

- *Person.* Any individual acting in any capacity on behalf of the State of Vermont related to the P3 Program.

5.2. Prohibitions

5.2.1. A person shall not take any action in any matter in which he or she has either a Conflict of Interest or the appearance of a Conflict of Interest, unless and until it is disclosed to, and resolved to the satisfaction of, the Secretary of Transportation.

5.2.2. A person shall not take any official action that materially advances the interest of any Private Entity with which the person is actively seeking/negotiating employment, or a Private Entity with which the person serves as an officer or board member.

5.2.3. A person shall not solicit or receive any payment, gift or favor from any private entity whose interests may be materially advanced by the person's official actions related to the P3 Program.

5.2.4. A person shall not disclose to any Private Entity any non-public, confidential or privileged information obtained while conducting activities related to the P3 Program.

6. P3 Process Roles and Responsibilities

6.1. *Secretary of Transportation.* The Secretary of Transportation (hereinafter the "Secretary") has overall responsibility for the operation of the P3 Pilot in accordance with enabling legislation, other State laws, Federal law, and the P3 Guidelines. The Secretary serves as the Chair of the P3 Committee and determines its composition, which may vary based upon projects under consideration.

6.2. P3 Committee. The P3 Committee is the body that decides whether a P3 Project Proposal will be pursued by VTrans.

6.2.1. Composition. The P3 Committee is chaired by the Secretary of Transportation or designee, and is made up, at a minimum, of the following:

- Secretary of the Agency of Commerce and Community Development or designee
- VTrans Chief Engineer
- VTrans Director of Finance and Administration
- VTrans Director of Policy, Planning and Intermodal Development (PPAID)
- Commissioner of the Department of Motor Vehicles

The Committee may, on an *ad hoc* basis, include or consult with other State agencies and experts.

6.2.2. Duties

- Approve the P3 Guidelines and subsequent revisions.
- Conduct Policy Level screening of Project Proposals, determining whether they will proceed to Technical Level screening, or be rejected.
- Provide informal feedback for P3 informal ideas.
- Determine whether Project Proposals that have passed Policy Level screening should proceed to the Project Development and Procurement phases or be rejected, seeking Legislative approval where necessary.
- Approve and submit an annual report on P3 activities on or before January 15, to the Vermont legislature, House and Senate Committees on Transportation, 19 V.S.A §2615. See section 14 below.

6.2.3. Meetings. The P3 Committee must meet a minimum of once per year and may meet as often as necessary to perform its duties. Two thirds of members must meet in order to have a quorum, and a majority vote of the members making up a quorum at a meeting is necessary in order to take official action. P3 Committee records are subject to

disclosure under the Vermont Public Records Act, 1 V.S.A. § 315 *et seq.* The P3 Committee shall adopt its own rules of procedure.

6.3. P3 Initiatives Team. The P3 Initiatives Team (PIT) is the primary proponent of the P3 process and is responsible for administering all aspects of the P3 program in accordance with the enabling legislation and the P3 Guidelines.

6.3.1. Composition. The PIT is created by the P3 Committee. The PPAID Director, or designee will serve as the Team Lead for the PIT and will designate other staff members to assist the Team Lead. The PIT may also utilize agency employees from across VTrans, and with permission from the PPAID Director, utilize outside consultants, to carry out aspects of the P3 program, and to assist as subject matter experts, or members of Technical Review Teams, Project Development Teams, and Procurement Teams, as needed. Outside consultants will be required to sign non-disclosure agreements, be free of conflicts of interest or the appearance of conflicts of interest and may not submit P3 proposals or advise private entities that submit P3 proposals.

6.3.2. Duties. PIT duties include but are not limited to:

- Educate and assist the public and governmental stakeholders regarding the P3 Pilot.
- Conduct initial informal discussions with stakeholders and prospects regarding potential P3 Projects.
- Forward informal P3 ideas for informal consideration and feedback to the P3 Committee.
- Receive, vet, and coordinate the processing of formal Project Proposals.
- Advise the P3 Committee.
- Establish and assist Technical Review Teams to conduct Technical Level screening of all Project Proposals approved by the P3 Committee.
- Draft correspondence and conduct debriefings related to P3 Committee decisions.
- Coordinate with and assist the Procurement Team in issuing RFQs, or RFPs, public outreach, evaluating Contract Proposals and executing P3 Agreements.

- Coordinate with and assist P3 Project Managers throughout the life of the P3 Project.
- Manage internal and external communications and engage in liaison functions with all stakeholders at all phases of the P3 process, in conjunction with VTrans Public Relations as appropriate.
- Draft P3 Committee decisions and required documents for General Assembly review.
- Draft annual reports for the General Assembly on P3 projects to be submitted annually by the P3 Committee, and other reporting as required by the Secretary of Transportation.
- Provide related support to the P3 Committee as needed.

6.4. *Technical Review Teams.* Provide in-depth technical review of Project Proposals.

6.4.1. *Composition.* The PIT will identify subject matter experts for each project approved by the P3 Board to form Technical Review Teams. Team composition will vary with each Project Proposal but may include, for example, members of the PIT, modal experts, the Chief Financial Officer, the Chief of Contract Administration, other subject matter experts, and consultants.

6.4.2. *Duties.* Technical Review Teams will conduct Technical Level screening, which is more detailed and technically oriented than the Policy Level screening and includes a detailed best value analysis. After screening, the Team will produce a report and make recommendations to the P3 Committee to either accept and forward a Project Proposal to the Project Development and Procurement Phases, propose changes to the Project Proposal, or recommend the P3 Committee reject it.

6.5. *Project Development Teams.* Plan projects for implementation.

6.5.1. *Composition.* The VTrans Director responsible for the transportation mode which is the subject of a Project Proposal that has been approved for project development will assign a **Project Manager** to lead a Project Development Team.

6.5.2. *Duties.* Prepare the P3 Project for procurement and delivery.

6.6. Procurement Team. The VTrans Contract Administration Unit will lead all aspects of the procurement process, in accordance with State and applicable Federal requirements and guidelines.

6.6.1. Composition. In addition to VTrans Contract Administration personnel, members of the Project Development and Technical Review Teams, the PIT, other VTrans subject matter experts, and consultants may make up the team for specific P3 procurements.

6.6.2. Duties. Oversee the procurement process for P3 Projects, including but not limited to:

- Work with the project Development Team to define requirements and develop a procurement strategy.
- Draft and advertise RFQs and RFPs.
- Receive and review Contract Proposals for completeness and adherence to requirements.
- Establish the selection panel and oversee the evaluation and selection process.
- Conduct negotiations as required.
- Notify successful and unsuccessful proposers of award and conduct requested debriefings.
- Draft and coordinate signatures for the P3 Agreement.
- Carry out post-contract administration as required.

7. Project Proposals. Private entities may submit P3 ideas or Project Proposals to the PIT for consideration by the P3 Committee, whether or not Project Proposals have been solicited by VTrans. VTrans may also develop Project Proposals internally for screening by the P3 Committee.

7.1. Preliminary Discussions

- Any entity, internal or external, that wishes to present a P3 idea (informal) or is considering submitting a Project Proposal (formal) must as a first step request an in-person meeting with representatives of the PIT. The goal of this meeting is to exchange information and informally discuss whether the proposed project meets the basic P3 screening criteria and is likely to receive approval at Policy Level or Technical Level screening.

- Negative feedback during informal discussions from the PIT does not preclude submission of a formal Project Proposal, and positive feedback does not ensure a Project Proposal or P3 idea will result in an approved P3 Project.
- Informal discussions with the PIT are held in the context of maintaining a reasonable opportunity for other entities to submit competing Contract Proposals for consideration and therefore are in no way meant to indicate to the Proposer how to develop a concept that VTrans would find acceptable, or to negotiate.
- There is no required format for a P3 idea to be presented to the PIT for informal discussions, however, submitters are encouraged to provide as much detail as possible and consider the legislative mandate and the screening criteria set forth below.
- All P3 ideas and Project Proposals submitted to the PIT will be forwarded to the P3 Committee for informal consideration and feedback, however, only Qualifying Project Proposals will be formally screened in accordance with the process described below.

7.2. Formal Project Proposal Required Contents. In order for a Project Proposal to be screened by the P3 Committee, whether internal or external, solicited or unsolicited, it must meet the criteria established in the enabling statute and these Guidelines; must have the content and be in the format prescribed below; and contain sufficient information for informed screening and evaluation. Each Project Proposal shall consist of five (5) bound copies, plus an electronic copy, and be submitted to the VTrans Director of Policy, Planning and Intermodal Development, at the location indicated on the VTrans website: <https://vtrans.vermont.gov/>.

Each Project Proposal shall include the following:

- Executive Summary of the major elements of the proposal, not to exceed five (5) pages). *This document will be posted in its entirety to the VTrans website, and so should not contain information the Proposer considers proprietary.*
- Detailed Project Description not to exceed fifty (50) pages, including (as applicable), but not limited to:
 - The scope, location, project length, termini, rolling stock, capital equipment, etc., accompanied by graphics such as plan and maps.

- Right of way requirements and acquisition status.
 - Interconnections to other transportation facilities and improvements to those facilities which will be necessary if the project is developed.
 - A conceptual project design, if appropriate.
 - A statement regarding the project's consistency with the State Transportation Program.
 - All studies which have been conducted concerning or related to the project.
 - Information regarding environmental requirements, reviews and permits.
 - Information regarding the responsibilities of the State in connection with the project, including estimated State financial or other contributions.
- Detailed description of the benefits to the State and the manner in which the proposed P3 Project achieves State goals, not to exceed ten (10) pages. State goals include but are not limited to:
 - Serving the public interest
 - Enhancing the transportation infrastructure/system
 - Reducing State expenditures
 - Positively integrating with the current State Transportation Program, including impacts on current priorities
 - Maximizing Federal funds
 - Increasing efficiency
 - Accelerating project delivery
 - Limiting State risk
- Estimated Schedule. To include but not be limited to the anticipated date of:
 - Contract award
 - Design completion
 - Start of and end of construction
 - Start of operations
 - Anticipated major maintenance and reconstruction activities during the proposed life of the P3
 - Possible hinderances
- Operations and Maintenance Plan (as indicated) not to exceed twenty (20) pages, including but not limited to, a description of the management

structure and approach to maintaining and operating the facility over the lifetime of the project.

- Legal Basis. Describe how the project meets the requirements/fits the parameters of the P3 statute.
- A Financial Plan including but not limited to:
 - Estimated total cost to the State over the life of the project
 - Proposed funding, funding sources and cost sharing arrangements

7.3 Ownership of Project Proposals. All Project Proposals submitted will become the property of VTrans and may be used in the sole discretion of VTrans for any purpose consistent with the P3 Pilot goals, including, but not limited to the solicitation of P3 Project or Contract Proposals, or the internal development of a Project Proposal.

7.4. Disclosure of Project Proposal Contents. All Project Proposal contents are subject to the Vermont Public Records Act 1 V.S.A 315 *et seq.* Any sections the Proposer considers exempt from disclosure under that statute must be clearly marked, and the statutory exception referenced, along with the rationale for claiming the exemption. Such marking does not, however, guarantee the contents will not be disclosed.

8. Project Proposal Screening Process. The Project Proposal screening process is to assist the State in determining whether a proposed P3 Project is in the State's best interest and whether the P3 Framework is the best method of procurement. It is not intended to select a specific entity to enter into a P3 Agreement, which happens only after the P3 Committee (and/or the General Assembly) approves a project, at the procurement phase. The screening methodology described below is a means of systematically and consistently evaluating qualifying P3 Project Proposals. All costs incurred by the Proposer in preparing and submitting a Project Proposal, or any other costs incurred prior to and in accordance with a fully executed P3 Agreement, if any, are to be borne solely by the Proposer. There is no time limit for the PIT or P3 Committee to conduct and conclude the screening process.

8.1. Compliance Review

- All Project Proposals submitted to the PIT will be reviewed for compliance with statutory mandates and the requirements set in Section 7.2 above. If the PIT finds a Project Proposal is compliant, and is

therefore a Qualifying Project Proposal, the PIT will forward it to the P3 Committee for Policy Level screening.

- Non-compliant Project Proposals and informal P3 ideas will be forwarded to the P3 Committee for informal consideration and feedback only.
- The decision of the PIT is not appealable in any form or forum.

8.2. Policy Level Screening. The P3 Committee will conduct a policy-level screening of qualifying Project Proposals received from the PIT, to assess the potential benefits to the State, and whether the P3 approach is more favorable than conventional procurement. The P3 Committee, in its sole discretion, may also seek public comment prior to making a decision.

8.2.1. Policy Level Screening Factors. Screening factors may include but are not limited to:

- The benefits of the proposal to the State transportation system and the public.
- Consistency with and potential impacts on other projects currently prioritized in the most recently adopted Transportation Program.
- Reduction to State expenditures.
- The opportunity for the acceleration of project implementation/increased efficiency.
- Promotion of economic growth and innovation.
- The potential for increased revenue generation/revenue sharing/federal funding.
- Ability to allocate/share risks and balance risk and return.
- The extent to which it achieves statutory objectives.
- The recommendation of the PIT.
- Technical practicality.
- Financial practicality.
- Greater ability of the private sector to address project complexities.
- Federal approval (where applicable).
- Consistency with local and regional land use plans.
- Appropriateness of the proposed delivery mechanism.

8.2.2. Policy Level Screening Decision. The P3 Committee may, by a majority of voting members, approve a Project Proposal to move forward to Technical Level screening, or reject a Project Proposal, which will end further consideration of the Project Proposal in the P3 process. The

Committee will issue a written decision, describing the rationale for the decision, which is not appealable in any form or forum.

8.3. Technical Level Screening. Project Proposals approved by the P3 Committee will be sent for Technical Level screening by a Technical Review Team established by the PIT. Technical Level screening is a more comprehensive, qualitative and quantitative analysis of the factors reviewed by the P3 Committee, and additional factors needed to further define and evaluate the Project Proposal. The Technical Review Team may, at any time and in its sole discretion, request clarifications or additional information from the Proposer. All such communications must be in writing.

8.3.1. Technical Level Screening Factors. The factors will vary on a project-by-project basis, but may include an in-depth examination of the technical, legal and financial elements of Project Proposal, such as:

- Technical Feasibility
- Planning
- Engineering
- Environmental requirements
- Financial capability
- Best value analysis
- Federal oversight concurrence/approval
- Other related factors as determined by the PIT

8.3.2. Technical Level Report and Recommendation. Technical Review Team will issue a concise report on the results of the evaluation, including suggested changes to the proposed project, if any, and a recommendation to the P3 Committee as to whether the Project Proposal should be:

- Approved;
- Approved with changes; or
- Rejected, ending further consideration of the Project Proposal in the P3 Framework.

The Technical Review Team report and recommendation are not appealable in any form or forum.

9. Final Decision on Project Proposals The P3 Committee will consider the report and recommendation of the Technical Review Team, and:

- May seek public input on the Project Proposal.
- May approve the Project Proposal, with or without changes recommended by the Technical Review Team, if any.
- Must seek Legislative approval to enter into a P3 Agreement where required by the enabling legislation before moving an approved Project Proposal to the Project Development and Procurement phases.
- May disapprove the Project Proposal, ending further consideration in the P3 Framework.
- Must issue a concise final written decision, considering the criteria applied in the Policy and Technical Level screenings, and the Technical Review Team report and recommendation. The final decision is not appealable in any form or forum.

10. Legislative Approval Before VTrans may enter into a P3 Agreement it must receive legislative approval when:

- The project has not been approved in the most recently adopted Transportation Program; or
- The total estimated State funding over the lifetime of the project is more than \$2,000,000.00.

10.1. *Legislative Approval Request Process.* The Secretary of Transportation shall submit the following to the General Assembly:

- A description of the Project Proposal, including, at a minimum:
 - A summary of the project scope, and timeline;
 - The proposed rights and obligations of the State and private entity partner, including the level of involvement of all partners in any ongoing State financial responsibility for ongoing maintenance or ownership of the facility;
 - The nature and amount of State funding for the project and of any ongoing State financial responsibility for ongoing maintenance or operation costs; and
 - The impact of the project to the projects in the most recently approved Transportation Program.
- A statement detailing how the Project Proposal meets the criteria in the P3 Guidelines; and
- Proposed legislation to confer authority to VTrans to enter into a P3 Agreement with respect to the Project Proposal.
- Other information as requested.

11. Project Development Process Projects approved by the P3 Committee and, as required, the General Assembly, will proceed to the Project Development Phase. VTrans will follow its established project development and management procedures, including, where applicable, the VTrans Construction Manual, Design-Build, and Construction Manager-General Contractor Manuals, in developing P3 Projects. For aspects of a P3 Project outside of established procedures, the project management team will work with the PIT to ensure all relevant resources are engaged to develop the appropriate processes and mechanisms. Key tasks of this phase may include, but are not limited to:

- Further defining project scope, design concept, and phasing schedule.
- Analyzing compliance with Federal and State environmental and transportation planning requirements and verifying the projects scope and schedule is consistent with these requirements.
- Refining project costs and revenue estimates and lifecycle costing.
- Conducting a risk assessment of key project elements including environmental, scope and design elements, schedule, cost and revenue estimates.
- Defining and applying an approach to risk allocation and management.
- Coordinating with Federal oversight agencies, obtaining necessary approvals, and exceptions such as Federal Highway Administration’s Special Experimental Project 14 or 15 (“SEP 14 or 15”) as needed.
- Determining where a project may fall within existing priorities.

11.1. *The Project Development Team.* The Director of the transportation mode impacted by the P3 Project will assemble the Project Development Team and assign a **Project Manager** (PM) to get the project ready for procurement. The PIT will assist the team throughout the project development lifecycle. The PM and team should be carefully selected to ensure adequate resources may be given to the project.

11.2 *Delivery Mechanisms.* Under the P3 Framework, projects may be delivered utilizing a variety of mechanisms that are new to VTrans, or that add new elements to existing VTrans mechanisms. For example, VTrans has utilized Design-Build and Construction Manager-General Contractor processes, both of which in some states are considered P3 processes. In Vermont such mechanisms do not, by themselves, require P3 processes, but

when additional features are added may fall under the P3 requirements; for example:

- Design-Build-Operate
- Design-Build-Maintain
- Design-Build-Finance-Operate
- Design-Build-Operate-Maintain
- Design-Build-Finance-Operate-Maintain
- Operate-Maintain
- Any other innovative or non-traditional project delivery method or agreement or combination of methods or agreements that the PIT determines will address the transportation needs of the state and serve the public interest and are within the parameters of the P3 Pilot enabling legislation.

12. Procurement Process The Procurement Team will follow established VTrans procurement processes, subject to modification if VTrans, in its sole discretion, determines a certain procurement strategy will best suit the P3 Project. **VTrans may in its sole discretion, cancel, withdraw, postpone or extend a procurement at any time prior to the execution of a P3 Agreement without incurring any obligations, responsibilities, liabilities, fiscal or otherwise.**

12.1 *Process Elements.* P3 procurements will comply with all applicable State and Federal laws, regulations and policies, and at a minimum will include the following elements:

- Public advertisement of all approved P3 Projects to solicit Contract Proposals. This may be a one- or two- step process that involves the issuance of:
 - An RFP requesting Contract Proposals from private entities; or
 - An RFQ soliciting Statements of Qualifications (SOQ) which will be used to pre-qualify private entities making them eligible to later provide a Contract Proposal in response to an RFP.
- A requirement for bidbonds.
- Evaluation of Contract Proposals by a VTrans Contract Selection Committee.
- Discussion and/or negotiations.
- Execution of a written P3 Agreement.
- Debriefings with unsuccessful Proposers.

12.2 Evaluation Criteria. Contract proposals will be evaluated to determine which represents the best value to the State, based upon the criteria and weights set forth in the RFP, which at a minimum will include an evaluation of:

- Price/cost (unless prohibited by Federal law)
- The financial strength of the Proposer including but not limited to:
 - The proposed financing plan for the project, including the source and description of proposed funding to carry out all phases of the project. The plan should detail, if relevant, private entity equity, capital markets debt, TIFIA loans, public entity contributions, and any projected revenue streams.
 - Documentation supporting the financial plan.
 - Sufficiency of projected funding from all sources to support all proposed activities, contingencies and sums to meet turn back requirements and the end of the P3 Agreement, where applicable.
 - Ability to obtain required bonding, insurance coverage, or other sureties.
- Technical Qualifications and Approach, including but not limited to experience and capability in terms of personnel and other resources to perform the project including all proposed partners/subcontractors, and respective roles and qualifications
- Business Structure including but not limited to: details regarding management and other key personnel; quality assurance plans and programs; ethics and safety policies and programs.
- Past Performance References and certifications of State and Federal non-debarment/non-default.

13. P3 Agreements Once a P3 Agreement is executed, the private entity will be referred to as the “Contractor.” The terms and structure of P3 Agreements will vary based upon the needs and characteristics of the P3 Project, however, all P3 Agreements will, at a minimum, include the following terms:

- A detailed project description and scope of work.
- The term of the Agreement.
- The nature of the parties’ property interests including the acquisition of any needed right-of-way.

- The right of the State to inspect the project, related assets and properties, and project records.
- Procedures for the amending the P3 Agreement.
- Rights and remedies for breach and default and/or failure to meet performance expectations.
- Requirements for bonds, insurance and other forms of security.
- Standards for the construction, maintenance and operation of the facility.
- Payment terms
- Standards for cost allocation (where applicable) including cost overruns
- Performance incentives (if any).
- Terms regarding the return of the facility to the State upon termination of the agreement.
- Grounds for termination of the P3 Agreement.
- Dispute resolution procedures.
- Insurance requirements.

14. Reporting The Secretary of Transportation, on or before January 15th, shall submit an annual report to the House and Senate committees on Transportation which includes:

- A description of each P3 Agreement entered into following legislative approval for as long as the P3 Agreement is in effect, and any substantive changes to the P3 Agreement since the prior year's report; and
- A description of each P3 Agreement and project entered into since the prior year's report, that did not require legislative approval.

