

**INDIANA DEPARTMENT OF TRANSPORTATION**

# Public-Private Partnership Program

## *Implementation Guidelines*

September 2013



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# 1 INTRODUCTION

Welcome to the State of Indiana’s Public-Private Partnership (“P3”) Program Implementation Guidelines for transportation projects. The purpose of this document is to be a resource for the private sector and stakeholders of the P3 Program to assist in delivering needed projects that provide value to the State of Indiana. This introduction outlines Indiana’s objectives for its P3 Program, presents the project delivery guidelines, and provides additional considerations affecting the P3 process.

Indiana has organized its P3 Program as a partnership between the Indiana Department of Transportation (INDOT) and the Indiana Finance Authority (IFA). The partnership allows the State to leverage the core competencies and unique capabilities of each agency. The IFA will be the procuring agency for P3 projects. IFA will work closely with INDOT.

IFA’s primary mission is to oversee State-related debt issuances and provide efficient, effective financing solutions to facilitate state, local government and business investments in the State. As the entity responsible for the planning and development of the transportation system in the State, INDOT will work closely with IFA to assist with the procurement of projects and oversee the work of the developers involved in all technical aspects of the project. INDOT’s procurement role is to assist the IFA in all technical aspects.

## 1.1 P3 Program Objectives

There are three objectives of IFA/INDOT for the P3 Program:

- **Performance** – Any project that is delivered through a P3 process should meet or exceed the expectations of a traditional delivery method. The P3 process should provide innovations and efficiencies through private sector participation and ideally accelerate the delivery of projects to the public. Finally, the use of P3 delivery methods are viewed as an enhancement to the overall capital program and the majority of projects delivered by INDOT will use established methods of delivery.
- **Strategic** – While efficiencies can be gained through standardizing the P3 process, it is important to recognize the unique nature of various P3 projects. The P3 Guidelines provide a process as guidance to be applied to a variety of projects, including unsolicited projects. However, this process may be modified to adjust to the specifics of each project under consideration. In general, IFA/INDOT will endeavor to be consistent with this guidance to ensure that potential P3 projects benefit from using a “whole-life approach” (i.e., an approach that takes into account the costs over the entire lifecycle of the project) that is consistent with INDOT’s overall asset management strategy for the state highway system.
- **Financial** – P3 projects must be financially sound and be compatible with IFA’s/INDOT’s financial capacity to pursue a P3 delivery method. Projects leverage INDOT’s existing capital budget by providing an alternative financing mechanism.

## 1.2 P3 Project Delivery Guidelines

The P3 Program Implementation Guidelines (“P3 Guidelines”) set forth in Sections 2 to 6 is a guide for the development and delivery of a P3 transportation project. The P3 Guidelines outline the typical processes involved in the P3 project development lifecycle for both solicited proposals (i.e., projects initiated by INDOT) and unsolicited proposals. The P3 Guidelines have five phases, which are listed below. Each phase is discussed in more detail in Sections 2 to 6.

- Section 2 - Project identification
- Section 3 - Project screening
- Section 4 - Project development
- Section 5 - Project procurement
- Section 6 - Contract award

INDOT in cooperation with IFA will determine, in its sole discretion, whether a P3 project will progress through the P3 Guidelines. Even if a project meets eligibility criteria, the project may not necessarily proceed through the P3 Guidelines. If IFA/INDOT elect not to proceed with a project through a P3 delivery, it may later reconsider if project characteristics change or more information is available to support reconsideration. INDOT may elect to proceed with the project through a traditional delivery.

### **1.3 Additional Considerations**

#### ***1.3.1 Legal Framework***

The P3 Program operates within the general legal framework set forth in the Indiana Code (“IC”). Both INDOT and the IFA have been granted legislative authority to procure P3 projects. The statutes providing authorization to procure P3 projects are IC 8-15.5 for the IFA and IC 8-15.7 for INDOT. Indiana has organized its P3 program around the joint capabilities of IFA/INDOT. It is envisioned that the IFA will lead the procurement on most projects. INDOT will be responsible for the technical aspects of P3 projects and will commit, where it is appropriate, its appropriations towards a project. The IFA will oversee the financial terms of P3 procurement. The IFA must be involved in projects that are financed through bonds, debt and loans.

The relevant statutes permit both tolled and non-tolled transportation projects and allow for the development, financing, and operation of P3 projects. Appendix A contains summaries of selected topics set forth in the P3 statute such as tolling, payment mechanisms, financing methods, combining private financing with public funding/financing, and issuing debt, equity or other financial securities.

#### ***1.3.2 Conflict of Interest Policy***

The P3 Program has developed a policy concerning actual or potential conflicts of interest in connection with the P3 Program or a P3 project. The policy, attached as Appendix B, is intended to accomplish the following goals:

- ***Integrity*** – Promote the integrity, competitiveness and fairness of the P3 Program and IFA/INDOT’s P3 procurement processes;
- ***Fairness*** – Prevent P3 proposers and contractors from obtaining or appearing to obtain an unfair competitive advantage;
- ***Guidance*** – Provide guidance to enable contractors to make informed business decisions concerning participation in the P3 Program;
- ***High Standard*** – Ensure that there is sufficient contractor talent available for both INDOT and potential P3 proposers to successfully implement the P3 Program and a P3 project.

#### ***1.3.3 Indiana Access to Public Records Act***

All proposals submitted by proposers to IFA/INDOT become the property of IFA/INDOT. Proposals are subject to disclosure pursuant to the Indiana Access to Public Records Act (IC 5-14-3), IC 8-15.5-4-6 and IC 8-15.7-4-6, which specifically governs disclosure of P3 proposals.

IFA/INDOT may not disclose the contents of proposals during discussions or negotiations with potential offerors. IFA/INDOT has discretion to treat as confidential all records relating to discussions or negotiations between IFA/ INDOT and potential offerors if those records are created while discussions or negotiations are in progress.

Confidential documents submitted to IFA/INDOT must be prominently marked as confidential or proprietary. Even if marked as such, it is possible that documents may be released in accordance with public access laws.

Private entities, either proposing unsolicited projects or responding to solicitation requests issued by IFA/INDOT or other state agencies, are advised to familiarize themselves with these provisions to ensure that they are taking the necessary steps to protect documents identified as confidential or proprietary from disclosure pursuant to the Indiana Access to Public Records Act.

### **1.3.4 Non-INDOT Reviews and Approvals**

During a P3 procurement certain actions and documents require review and approval outside of IFA/INDOT. The Budget Committee, a group of five members and four alternates from the Indiana General Assembly, must review and the Governor must approve P3 projects at specific points in the P3 Guidelines as further detailed in the sections below. Budget Committee review is deemed to have happened when the action requiring review has been included on an approved agenda of the budget committee agenda as an item requiring review. A very high level summary of the review and approval process immediately follows. The junctures at which each review and approval occurs within the P3 Guidelines are highlighted throughout this manual.

Required Review by Budget Committee:

- **Preliminary Feasibility Study** – A preliminary feasibility study must be completed for toll projects by INDOT or IFA and reviewed by the Budget Committee before a P3 procurement may commence. For toll projects, the Budget Committee must meet and review the preliminary feasibility study within 90 days of submission.
- **Economic Impact Study** – An economic impact study must be completed for toll projects by INDOT or the IFA and reviewed by the Budget Committee before a P3 procurement may commence. For toll projects, the Budget Committee must meet and review the economic impact study within 90 days of submission.
- **Request for Proposal** – The draft Request for Proposal (RFP) must be submitted to the Budget Committee for review before issuance of the RFP. For toll projects, the Budget Committee must meet and review the draft RFP within 90 days of the submission.
- **Selection of Offeror** – The determination of the successful offeror is submitted to the Budget Committee for review and the Governor for approval. For toll projects, the Budget Committee must meet and review the INDOT determination within 90 days of submission. The Governor must approve the determination.

Required Approval by the Governor:

- **Toll Road Location** – For toll road projects the Governor must approve the: (i) location of the toll road and (ii) conversion of a state highway to a toll road. In this document the use of the term “Toll Road” will have the same meaning as “Tollway” as stated in IC 8-15-3-7.

- ***Determination of Selected Offeror*** – After IFA/INDOT determine the successful offeror that should be designated as the Operator (defined at IC 8-15.7-2-11 and IC 8-15.5-4-11) (and after review of the determination by the Budget Committee), the Governor must approve the successful offeror as the Operator before IFA/INDOT executes the public-private agreement with the private entity. (IC 8-15.7-4-3 and IC 8-15.5-5-1.)

## 2 Project Identification

<b>Project Identification</b>	Project Screening	Project Development	Project Procurement	Contract Award
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IFA/INDOT will consider both solicited and unsolicited P3 projects. Solicited P3 projects will be identified by INDOT for potential P3 delivery using the project screening and project development guidelines found in later sections of this manual. INDOT welcome proposals for unsolicited projects from private entities for consideration under P3 delivery. These should be submitted to INDOT for preliminary review.

### 2.1 Solicited Projects

Comprehensive transportation planning is carried out by INDOT and also by agencies at the regional, local and municipal levels throughout the State. Projects that are identified for potential delivery under a P3 model should have one or more of the following characteristics:

1. Advances the State’s transportation goals of improving safety and security; reducing congestion; advancing system maintenance and preservation; increasing mobility, connectivity, and accessibility; enhancing environmental stewardship; improving economic vitality;
2. Meet P3 suitability criteria as outlined in Section 3 (Project Screening);
3. May result in the availability of the facilities to the public in a more timely, efficient, or less costly fashion, thereby serving the public safety and welfare.

### 2.2 Unsolicited Projects

INDOT welcomes unsolicited proposals from private entities to develop and/or operate P3 projects throughout the State. Entities may submit unsolicited proposals for all transportation modes. All unsolicited proposals should be submitted to the attention of the P3 Program Director at the following address:

**Indiana Department of Transportation  
100 North Senate Avenue  
Indianapolis, IN 46204**

**Attn: Director, Public Private Partnerships**

#### 2.2.1 *Proposal Review Fee*

Private entities submitting an unsolicited proposal are required to pay a non-refundable, non-negotiable proposal review fee of \$25,000 at the time of submitting the unsolicited proposal to INDOT. The proposal review fee must be submitted in the form of a cashier’s check made payable to the Indiana Department of Transportation. Proposers submitting multiple proposals for separate, unrelated projects must 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.

### **2.2.2 Contents of an Unsolicited Proposal**

There are threshold requirements that any unsolicited proposal must meet in order to be given consideration for P3 delivery by INDOT. The unsolicited proposal must be of a quality that evidences that the proposer undertook serious consideration for the feasibility of the project under a P3 delivery model. In order for an unsolicited proposal to be considered by INDOT, it must include:

- A technical description of the project such that INDOT can understand whether the design and engineering of the project is technically feasible and fundamentally sound.
- If the proposed project is tolled, then traffic and revenue assumptions along with a preliminary traffic and revenue study (e.g., Level 1 study).
- Preliminary financial plan that demonstrates the financial viability of the project. This will include the amount and type of financing required, the amount of any public funds that will be required and, if tolled, the amount of any concession fee, if applicable, that will be paid to INDOT in exchange for the right to collect tolls on the project. The financial plan must demonstrate that the project fits within the existing capital budget for INDOT.
- A discussion regarding the extent to which the proposed project fits within the State's existing transportation network and future transportation plans.
- The proposal review fee.

INDOT encourages private entities considering submission of an unsolicited proposal to explore the publicly available information regarding current capital budgeting, and long-term transportation goals of the State. Information regarding long-term transportation planning can be found here: <http://www.in.gov/indot/2348.htm>. If IFA/INDOT choose to pursue an unsolicited proposal, the project will be pursued through a competitive procurement.

### 3 SECTION 3: Project Screening

Project Identification	<b>Project Screening</b>	Project Development	Project Procurement	Contract Award
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The Project Screening phase provides IFA/INDOT with guidelines to assess the suitability of delivering P3 projects. The P3 Project Screening phase applies to solicited and unsolicited P3 projects. However, unsolicited proposals have additional administrative requirements to ensure the proposals adhere to the State's process and goals.

Project screening is organized into two phases: (1) a high level review of projects and (2) a detail level review for projects, which pass the initial high-level review.

IFA/INDOT reserve the right to amend screening criteria for any reason including to adapt to State transportation goals or policies and to address unique aspects of each project, such as mode of transportation, new and rehabilitation projects vs. asset leases, and revenue risk vs. non-revenue risk.

#### 3.1 High Level Project Screening

The high level project screening and policy review represents the first phase of a two-step screening process. The objective of the high level project screening step is to identify any major obstacles that must be overcome before further considering the project for delivery under a P3 model. The high level screening form is provided in Appendix C.

##### 3.1.1 *Solicited Projects*

IFA/INDOT will review available project information and data and assess the project against the high level screening criteria to determine the feasibility of delivering a proposed project via the P3 delivery method. The table below summarizes criteria that may be examined for a project that is being considered for P3 delivery. A project that does not meet some or all of the high level screening criteria may still advance to a detail level screening based on other considerations. The high level screening criteria are merely a guide for assessment. Other unique characteristics of the project may require assessment of additional considerations.

High Level Project Screening Criteria for All Proposals	
<b>Project Complexity</b>	Is the project sufficiently complex in terms of technical and/or financial requirements to effectively leverage private sector innovation and expertise?
<b>Accelerating Project Development</b>	If the required public funding is not currently available for the project, could using a P3 delivery method accelerate the delivery of the project?
<b>Transportation Priorities</b>	Is the project consistent with overall transportation objectives of the State? Does the project adequately address transportation needs?
<b>Project Efficiencies</b>	Would the P3 delivery method help foster efficiencies through the most appropriate transfer of risk over the project life-cycle? Is there an opportunity to bundle projects or create economies of scale?

High Level Project Screening Criteria for All Proposals	
<b>Ability to Transfer Risk</b>	Would the P3 delivery method help transfer project risks and potential future responsibilities to the private sector on a long-term basis?
<b>Funding Requirement</b>	Does the project have 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 its entire costs up front?
<b>Ability to Raise Capital</b>	Would doing the project as a P3 help free up funds or leverage existing sources of funds for other transportation priorities with the State?

### 3.1.2 Unsolicited Projects

IFA/INDOT encourage private entities to submit unsolicited proposals for projects that meet the high level screening criteria set forth above. In addition to the high level screening criteria, unsolicited proposals must also meet the administrative requirements set forth below:

Administrative Requirements for an Unsolicited Proposal	
<b>Proposal Review Fee</b>	Has the proposal review fee been submitted?
<b>Technical Requirements</b>	Is the technical description of the project sufficient to ensure INDOT that the design and engineering is technically feasible and fundamentally sound?
<b>Traffic and Revenue Study</b>	For tolled proposals, is a Level 1 traffic and revenue study included?
<b>Financial Plan</b>	Is the project financially viable as demonstrated by a sound and marketable financial plan? Does the proposal include amount and type of financing required, public funds required, or the fee paid to the State for tolled projects, if appropriate? Does the project fit within the existing capital budget?
<b>Meets a Transportation Need</b>	Does the proposed project fit into transportation planning policies or meet an identified transportation need?

**Decision 1:** After completing the high level review, INDOT will decide whether a candidate project is eligible for detail level screening consideration.

If INDOT determines that an unsolicited project is not suitable for further consideration as a P3 project, then it will notify the private entity submitting the unsolicited proposal of its decision.

## 3.2 Detail Level Project Screening

INDOT will conduct a detail level screening review for solicited and unsolicited projects that have successfully passed the high level screening phase. Appendix D is the detail level screening form.

The objective of the detail level project screening is to further assess delivering the project as a P3, examine in greater detail the current status of the project, and identify potential risk elements. In addition,

the detail level project screening criteria evaluates the desirability and feasibility of delivering projects utilizing the P3 delivery method. The desirability evaluation includes factors such as effects on the public, market demand, and stakeholder support. The feasibility evaluation includes factors such as technical feasibility, financial feasibility, financial structure, and legal feasibility. INDOT will also begin to assess a timeline for achieving environmental approvals based on specific project criteria during this screening phase.

INDOT intends to evaluate solicited and unsolicited projects against the same criteria where applicable.

**Decision 2: After evaluation of detail level project screening criteria and review of other relevant information, IFA/INDOT will decide whether a candidate project is eligible for further consideration as a P3 project.**

If IFA/INDOT determine that an unsolicited project is not suitable for further consideration as a P3 project, then it will notify the private entity submitting the unsolicited proposal of its decision.

## 4 SECTION 4: Project Development

Project Identification	Project Screening	<b>Project Development</b>	Project Procurement	Contract Award
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This section describes the Project Development phase and related activities for projects that are selected for implementation under the P3 Program.

The Project Development phase will be tailored to each project's needs. IFA/INDOT will continue to consider whether a project is suitable for P3 delivery by evaluating project scope, market sounding, commercial structure, payment mechanisms and Value-for-Money. Other important milestones in the Project Development phase include developing preliminary feasibility and economic impact studies, conducting public hearings related to the studies, submitting studies for Budget Committee review, submitting documents for environmental approval under NEPA, and securing Governor approval.

### 4.1 Project Scoping

The table below summarizes items that may be evaluated during the project scoping process:

<b>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:</b>
• Define project priority, project scope, design concept and phasing schedule
• Analyze compliance with environmental and transportation planning requirements
• Analyze technical feasibility and operations and maintenance evaluations
• Refine project cost, revenue estimates and life cycle costing
• Submit funding and grant applications as required
• Define an approach to risk allocation and management
• Refine commercial structure
• Perform a Value-for-Money analysis

### 4.2 Market Sounding

IFA/INDOT may elect to assess market interest by performing a “market sounding” exercise. Widely used “market sounding” methods include issuing a Request for Interest (“RFI”), conducting an industry forum, and conducting one-on-one interviews. However, IFA/INDOT may choose to use other methods to determine market interest based on the specific needs and risks of a particular project.

An RFI is a listing of questions IFA/INDOT create and circulate through the market, which consists of rating agencies, banks and investment funds. If the market has interest in the project or insights into what they will accept from the project, the market will return the questionnaire. Through an RFI, IFA/INDOT will be able to evaluate the market appetite as well as glean possible ideas regarding the commercial structure or payment mechanism that the market would accept.

An industry forum is a conference sponsored by IFA/INDOT that allows private entities to gather, ask questions about the project, and begin to form partnerships and teaming arrangements for the bidding process.

### **4.3 Commercial Structure**

During the Project Development phase, IFA/INDOT will continue to develop appropriate commercial structures. IFA/INDOT will identify a commercial structure that brings the most value based on the specific characteristics of the project and the market appetite at that time. Potential commercial structures include but are not limited to:

- Design-Build (“DB”);
- Design-Build-Operate-Maintain (“DBOM”);
- Build-Finance (“BF”)
- Design-Build-Finance (“DBF”);
- Design-Build-Finance-Operate-Maintain (“DBFOM”);
- Full Concession/Development Rights; and
- Operate and Maintain (“OM”).

IFA/INDOT recognize that all projects are different and a unique commercial structure may create value for a certain project and, therefore, IFA/INDOT may explore additional commercial structures other than those listed above.

### **4.4 Payment Mechanisms**

Three common payment mechanisms for P3 projects include:

- **Availability payments** – Availability payments provide the operator with a steady stream of predefined revenue over the term of the contract. In an availability payment structure, the owner pays the operator an annual payment as long as the operator meets certain known performance criteria. Any toll revenue from a facility under an availability payment mechanism is remitted to the owner;
- **Milestone payments** – A milestone payment mechanism pays the operator a predefined sum when the operator achieves certain thresholds. Thresholds can be related to performance, maintenance, or construction;
- **Real tolls** – The operator will directly collect tolls from the users of the facility. The owner has no obligation to the operator, but does not receive any toll revenue;

Other less common payment mechanisms for P3 projects include:

- **Shadow tolls** – The owner pays the operator a user fee based on the actual usage of the facility, but the owner collects actual toll revenue;
- **Value capture** – Operator compensates the owner for the cost of an investment that generates economic value to the operator. This may involve the development of land adjacent to a transportation facility that increases the value as a result of investment (e.g., Tax Increment Financing);

As with all structures, the payment mechanism can be tailored to benefit the P3 project being developed.

## **4.5 Value for Money (“VfM”) Analysis**

Once the Project Development work activities reach a sufficient level to support more detailed analysis (i.e., technical input refinement, completion of environmental studies and NEPA finality) IFA/INDOT may choose to perform a detailed VfM analysis. The VfM analysis provides both quantitative and qualitative information regarding the relative value of P3 delivery versus a traditional delivery of the project. The VfM analysis may be used in conjunction with the feasibility study or the economic impact study required for a toll road project.

This VfM analysis tests the value of a project delivered as a P3 (commonly referred to as a Shadow Bid Model) in comparison the value of a project delivered using a traditional delivery model (commonly referred to as the Public Sector Comparator or “PSC”). This information is a useful decision making tool to help determine whether it is worth procuring a project under a P3 delivery model. If the use of a P3 delivery model results in VfM, when compared to a traditional project delivery method, then the P3 delivers optimum combination of project life cycle costs and quality that will meet the objectives of the project and the State.

The VfM analysis is only one factor to consider when evaluating which procurement method is optimal. IFA/INDOT may move a project forward based on other benefits, such as faster delivery or that the project meets the established affordability limits. For example, a project may not offer clear quantitative benefit in terms of costs or revenue under a P3 delivery model; however, P3 delivery may offer accelerated project delivery which benefits the State by, for example, reducing congestion and stimulating the economy.

## **4.6 Environmental Approvals**

All federally-funded infrastructure projects must comply with National Environmental Policy Act (“NEPA”). In addition, all projects regardless of funding are subject to Indiana state laws.

For prospective projects, INDOT will work towards completing an environmental document in accordance with NEPA before beginning procurement for a project. During NEPA, the purpose and need for the project will be established, alternative design concepts and scopes will be analyzed, timelines assessed and operational features identified. To the extent that environmental approvals have not been secured prior to the project development phase of the P3 Guidelines, then INDOT intends to secure environmental approvals during the project development phase. In some instances, NEPA approval may not be received until after the project development phase.

## **4.7 Feasibility and Economic Impact Studies**

The process for the feasibility and economic impact study differs depending on whether the project is designated as a toll road or non-toll road. IFA/INDOT anticipate completing the feasibility and economic impact studies prior to the issuance of the Request for Proposals for a project.

### ***4.7.1 Toll Road***

INDOT will commission a preliminary feasibility study and an economic impact study as required by Indiana Code. The preliminary feasibility study will identify the public-private financial structure and the project delivery structure INDOT chooses to pursue. The economic impact study will at a minimum include analysis relating to the following characteristics of the proposed project:

- Economic impacts on existing commercial and industrial development;

- Potential impact on employment;
- Potential for future development near the project site, including consideration of locations for interchanges that will maximize opportunities for development;
- Fiscal impacts on revenue to local units of government; and
- Demands on government services (i.e., public safety, public works, education, zoning and building, local airports).

After completing the preliminary feasibility study and the economic impact study, IFA and/or INDOT will conduct another public hearing in an affected county. At the hearing the public will have an opportunity to comment on the proposed project and the studies. At least 10 days before the pre- and post-feasibility study hearings, IFA/INDOT will post a notice of the public hearings. The public hearings will be facilitated by firms that prepared the relevant studies.

#### 4.7.2 Non-Toll Road

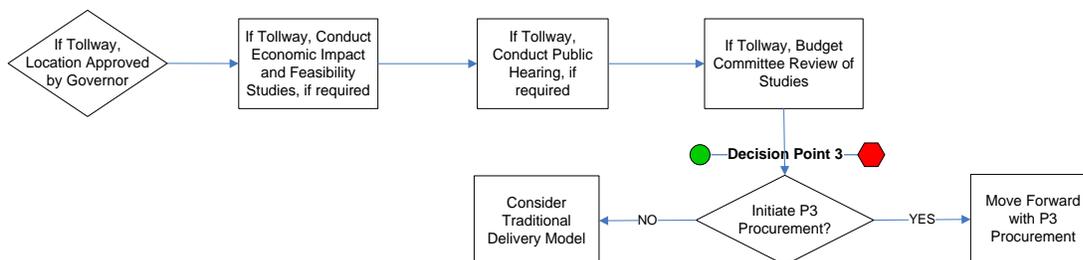
A feasibility study and economic impact study are not required for non-toll road project. If all other project development steps are complete, then a non-toll road project will progress to the Project Procurement phase.

### 4.8 Budget Committee Review

The preliminary feasibility study and economic impact study for toll road projects must be reviewed (not approved) by the Budget Committee.

After the conclusion of the feasibility and economic impact studies, IFA/INDOT must post copies of the studies on their website and provide copies to the Governor and the legislative council. The Budget Committee has 90 days to review the studies. If the Budget Committee does not review the studies within 90 days, the project can continue to the project procurement phase.

The graphic below illustrates the review and approval processes associated with feasibility and economic impact studies and budget committee review:



**Decision 3: Upon completion of the Project Development phase, IFA/INDOT will decide whether or not to initiate procurement.**

## SECTION 5: Project Procurement

Project Identification	Project Screening	Project Development	<b>Project Procurement</b>	Contract Award
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Generally, most P3 projects will undergo a two-stage procurement process (RFQ and RFP); however, IFA/INDOT recognize that some projects may require a different procurement process based on the unique characteristics and objectives of each project (e.g., one-stage procurement).

Regardless of whether IFA uses a two-stage or one-stage procurement process, submission received at each stage will be evaluated by IFA/INDOT against pre-determined criteria that will produce the desired outcome of the individual project. To the extent that IFA pursues a two stage process including a RFQ and RFP, IFA/INDOT will review Statements of Qualification (SOQs) received at the RFQ stage to determine a shortlist of bidders based on the criteria set forth in the RFQ. The IFA will issue an RFP to the shortlisted bidders. IFA/INDOT will evaluate the responses to the RFP and choose a selected proposer. The outcome of the Project Procurement phase will be the designation of an Operator presented to the Budget Committee for review and Governor for approval.

IFA intends to use the above described P3 Guidelines for both solicited and unsolicited proposals and tolled and non-tolled projects, unless otherwise noted.

### 4.9 Request for Qualifications (RFQ)

The IFA may launch the first stage of a two-stage P3 procurement process by issuing an RFQ. The primary objective of the RFQ is to define a pool of qualified, potential proposers for a project.

#### **4.9.1 Development of the RFQ**

In concert, IFA/INDOT will develop the RFQ. The procurement documents and process will take into account a number of factors including the nature and status of the project, project objectives, complexity, schedule requirements, public support, estimated costs and funding requirements. Once IFA issues an RFQ it will provide public notice of the RFQ.

The RFQ will contain a description and status of the project and request that potential proposers submit certain information to help IFA/INDOT adequately assess the qualifications of each bidder. The information requested may include:

- Team experience and qualifications
- Technical competence
- Past performance
- Utilization of local and disadvantaged businesses
- Workforce capacity to perform
- Resumes of key personnel
- Financial capability, capacity and approach
- Approach to development

#### **4.9.2 Submission of Qualification (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. IFA/INDOT are responsible for reviewing, scoring and ranking all responsive SOQs.

Upon completion of the SOQ evaluation process, IFA/INDOT will decide which respondents should advance to the RFP stage. These individuals will be short-listed. Scoring of qualifications and any ranking of the SOQs will not be carried over to the evaluation of the final RFP responses.

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

SOQ respondents that pass the SOQ evaluation will advance to the RFP stage. IFA will notify all respondents whether they have been short-listed to proceed to the RFP stage.

If there are no qualified respondents for a particular project, IFA/INDOT may decide to cancel the procurement or re-procure at a later date.

### **4.10 Request for Proposal (RFP)**

A key objective of the RFP process is to create competition among shortlisted proposers in order to generate the best value for the State. The IFA must issue a RFP for both solicited and unsolicited projects before it can enter into a public-private agreement.

#### **4.10.1 Development of the RFP**

The RFP will normally consist of a variety of procurement documents that together comprise the entire RFP, including:

- Instruction to Proposers
- Public-Private Agreement
- Technical Provisions
- Reference Documents
- Forms and Certifications

IC 8-15.5-4-2 and IC 8-15.7-4-2 sets forth specific requirements IFA/INDOT will include in any RFP such as:

- **Scope of Work** – the RFP will indicate in general terms the scope of work, goods, and services sought to be procured;
- **Contract** – the RFP will include or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement and the project;
- **Evaluation Criteria** – the RFP will specify the factors, criteria, and other information that will be used in evaluating the proposals;
- **Evidence of Financial Responsibility** – the RFP will require a statement that a proposal must be accompanied by evidence of financial responsibility as considered appropriate and satisfactory by the Project Sponsors;
- **MBE/WBE/DBE** – the RFP will specify any requirements or goals for use of:
  - (A) minority business enterprises and women's business enterprises certified under IC 4-13-16.5; (B) disadvantaged business enterprises under federal or state law; (C) businesses defined under IC 5-22-15-20.5 as Indiana businesses, to the extent permitted by applicable federal and state law and regulations; and (D) businesses that qualify for a small business set-aside under IC 4-13.6-2-11;
- **Alternative Proposals for Toll Road** – if all or part of the project will consist of a toll road, require any proposer to submit a proposal based upon that part of the project that will consist of a toll road, as set forth in the request for proposals, and permit any proposer to submit one (1) or more alternative

proposals based upon the assumption that a different part or none of the project will consist of a toll road.

Before the RFP can be issued, IFA must submit the RFP to the Budget Committee for review. For tolled projects, the Budget Committee has up to 90 days to review the RFP. For non-tolled projects, there is no specific time frame by which the Budget Committee must review the RFP.

If IFA/INDOT conduct a one-stage procurement, IFA will provide a public notice before the RFP is issued. If IFA/INDOT conduct a two-phase procurement, then a public notice is not necessary before issuing the draft RFP to short listed proposers. Public notice will be provided in accordance with IC 5-3-1 and IC 8-15.5-4-9 once the final RFP is ready to be issued.

#### ***4.10.2 Evaluation of Proposals***

IFA, INDOT and other appropriate personnel will evaluate responses to the RFP based on appropriate evaluation criteria.

In accordance with IC 8-15.5, the IFA shall determine the evaluation criteria that are appropriate for each project and shall specify those criteria in the RFP. IFA/INDOT reserve the right to use: a selection process that results in selection of the proposal offering the best value to the public; a selection process that results in selection of the proposal offering the lowest price or cost or the highest payment to, or revenue sharing with, IFA/INDOT; or any other selection process that is determined to be in the best interest of the state.

IFA/INDOT will evaluate the proposals received according to the requirements and criteria set forth in the RFP.

IFA reserves the right to proceed with negotiations with more than one proposer and/or run a Best and Final Offer (“BAFO”) process, as set forth in IC 5-23-5-7, with some or all of the short-listed proposers.

#### ***4.10.3 Use of Unsuccessful Proposers’ Work Product***

Pursuant to IC 8-15.7-4-4, INDOT may elect to pay unsuccessful proposers for the work product that they submit with their proposal in response to an RFP solicitation. The use by INDOT of any design element contained in an unsuccessful proposal is at the sole risk and discretion of INDOT and does not confer liability on the recipient of the stipulated amount under this section.

After payment of the stipulated amount, IFA/INDOT and the unsuccessful proposer will jointly own the rights to, and may make use of any work product contained in the proposal including the technologies, techniques, methods, processes, ideas, and information contained in the proposal, project design, and project financial plan. The use by the unsuccessful proposer of any part of the work product contained in the proposal is at the sole risk of the unsuccessful proposer and does not confer liability on INDOT.

### **4.11 Basis for Award and Selection of Operator**

**Decision 4: Upon completion of the evaluation of the proposals, IFA may select one or more proposers for negotiations.**

If IFA determines that: (a) the proposal meets the evaluation selection criteria and (b) one of the proposers from negotiations provides the proposal that is in the best interest of the State, IFA will hold a public hearing in accordance with IC 8-15.5-4-9. At least 10 days prior to the hearing, IFA will post the proposal, the public-private partnership agreement, and the basis for selection on the IFA website. IFA

will make all proposals, the public-private agreement, and the basis for selection available for public inspection and copying.

In accordance with IC 8-15.5-4-11, after the evaluation and public hearing period, IFA/INDOT will make a determination whether the successful proposer should be deemed the operator and will then submit its decision to the Budget Committee for review and the Governor for approval. If the determination relates to a tolled project, the Budget Committee must hold a meeting and conduct a review of IFA/INDOT's determination within 90 days of the submission. If the determination relates to a non-tolled project, the Budget Committee can hold a meeting and review the determination at any time.

After IFA's determination has been reviewed by the Budget Committee, the Governor will then accept or reject the determination. If the Governor accepts the determination, then the successful proposer will be designated as the operator for the project and IFA may execute the public-private agreement.

IFA/INDOT reserve the right to modify its request, seek revised proposals, or decline to award a public-private agreement for any reason. In addition, IFA may withdraw a RFQ or RFP at any time and, in its discretion, publish a new RFQ or RFP.

IFA/INDOT may use an additional VfM analysis as discussed in Section 4 as an evaluation methodology.

## 5 Contract Finalization and Award



Contract Award is the end of the P3 Guidelines resulting in a selected proposer being designated as the operator and IFA entering into a public-private agreement with the private entity.

If the Governor accepts the determination and designates the selected proposer as the operator, then IFA will publish a notice of designation of the operator in accordance with IC 8-15.5-4-11. An action to contest the validity of a public-private agreement may not be brought after the fifteenth day following the publication of the notice of the designation of the operator by IFA/INDOT.

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The IFA/INDOT reserve the right to revise these Guidelines at their sole discretion.

## Appendix A: Contractual Considerations

An overview of the contractual framework considerations is provided in the table below:

Topic / IC Reference	Description
Solicited/Unsolicited Proposals  IC 8-15.7-4 IC 8-15.5-4	IFA/INDOT can consider both solicited and unsolicited proposals for P3 projects. For solicited proposals, the IFA/INDOT may solicit proposals from entities for the development and/or operation of transportation facilities. For unsolicited proposals, any entity seeking authorization to develop and/or operate a qualifying transportation facility may submit a P3 proposal.
Payment Mechanism  IC 8-15.7-5-1(b)(8),(9)	<p>Compensation or payments to the operator, attorneys, bankers, financial advisors, or other professionals. Compensation or payments may include one (1) or more of the following:</p> <ul style="list-style-type: none"> <li>(A) A development fee, payable on a lump sum basis, progress payment basis, time and materials basis, or any other basis considered appropriate by INDOT.</li> <li>(B) An operations fee, payable on a lump sum basis, time and material basis, periodic basis, or any other basis considered appropriate by the department.</li> <li>(C) All or part of the revenues, if any, arising out of operation of the qualifying project.</li> <li>(D) A maximum rate of return on investment or return on equity or a combination of the two (2).</li> <li>(E) In kind services, materials, property, equipment, or other items.</li> <li>(F) Compensation in the event of any termination.</li> <li>(G) A cash payment to pay part of the project cost.</li> <li>(H) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the department.</li> </ul> <p>Compensation or payments to the department, if any. Compensation or payments may include one (1) or more of the following:</p> <ul style="list-style-type: none"> <li>(A) A concession payment, lease payment, or other fee, which may be payable in a lump sum, on a periodic basis, or on any other basis considered appropriate by the department.</li> <li>(B) Sharing of revenues, if any, from the operation of the qualifying project.</li> <li>(C) Payment for any services, materials, equipment, personnel, or other items provided by the department to the operator under the public-private</li> </ul>

	<p>agreement or in connection with the qualifying project.</p> <p>(D) Other compensation set forth in the public-private agreement or otherwise considered appropriate by the department.</p>
<p>Security</p> <p>IC 8-15.7-5-1(b)(1)</p>	<p>Delivery of performance and payment bonds or other performance security determined suitable by IFA/INDOT, including letters of credit, United States bonds and notes, parent guaranties, and cash collateral, in connection with the development, financing, or operation of the qualifying project, in the forms and amounts set forth in the public-private agreement or otherwise determined as satisfactory by IFA/INDOT to protect IFA/INDOT and payment bond beneficiaries who have a direct contractual relationship with the operator or a subcontractor of the operator to supply labor or material.</p> <p>A payment or performance bond or alternative form of performance security required under a public-private agreement shall not be required for the part of a public-private agreement that includes only design, planning, or financing services, the performance of preliminary studies, or the acquisition of real property.</p>
<p>Handback</p> <p>IC 8-15.7-5-1(b)(11)</p>	<p>Reversion of the qualifying project to the department at the termination or expiration of the public-private agreement.</p>
<p>Financial Liability</p> <p>IC 8-15.7-5-1(c)</p> <p>IC 8-15.5-5-4(b)</p>	<p>A public-private agreement may not provide that the state or the INDOT is responsible for any debt incurred by an operator in connection with the delivery of a project.</p> <p>Any bonds, debt other securities, or other financing issued for the purposes of this article shall not be considered to constitute a debt of the state or any political subdivision of the state or a pledge of the faith and credit of the state or any political subdivision.</p>
<p>Design Review</p> <p>IC 8-15.7-5-1(b)(2)</p>	<p>Review of plans for any development or operation, or both, of the qualifying project by the department</p>
<p>Oversight</p> <p>IC 8-15.7-5-1(b)(3),(5)</p>	<p>IFA/INDOT may inspect any construction of or improvements to the qualifying project by the department or another entity designated by the department or under the public-private agreement to ensure that the construction or improvements conform to the standards set forth in the public-private agreement or are otherwise acceptable to the department.</p> <p>If operations are included within the operator's obligations under the public-private agreement, monitoring of the maintenance practices of the operator by the department or another entity designated by the department or under the public-private agreement, and the taking of the actions that the department</p>

	finds appropriate to ensure that the qualifying project is properly maintained.
<p>Insurance</p> <p>IC 8-15.7-5-1(b)(4) IC 8-15.5-5-3(3)</p>	<p>The public private agreement may contain provisions requiring maintenance of:</p> <p>(A) one (1) or more policies of public liability insurance (copies of which shall be filed with INDOT accompanied by proofs of coverage); or</p> <p>(B) self-insurance; each in the form and amount required by the public-private agreement or otherwise satisfactory to the department as reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project.</p>
<p>Notice of Default and Cure Period</p> <p>IC 8-15.7-5-4</p>	<p>The public-private agreement may contain provisions under which INDOT or IFA agrees to provide notice of default and cure rights for the benefit of the operator and the persons or entities described in the public-private agreement that are providing financing for the qualifying project.</p>
<p>Ownership</p> <p>IC 8-15.7-5-1.5</p>	<p>The public-private agreement must include a requirement for ownership by INDOT in the name of the State of Indiana of:</p> <p>(A) all the real property on which the project is located; and</p> <p>(B) all of the improvements on that real property.</p>
<p>Financing</p> <p>IC 8-15.7-8-6</p>	<p>The IFA may enter into agreements, leases, or subleases with INDOT or an operator and:</p> <p>(A) Issue bonds, debt, or other obligations</p> <p>(B) Enter into loan agreements or credit facilities</p> <p>(C) Secure financing with a pledge of, security interest in, or lien on all or part of property subject to the agreement</p>
<p>Approval</p> <p>IC 8-15.5-5-1, 8-15.7-4-3(b)</p>	<p>Governor must approve any public-private agreement</p>
<p>Term</p> <p>IC 8-15.7-13-1</p>	<p>The term of a public-private agreement for any toll road project cannot exceed 75 years</p>

## Appendix B: Conflict of Interest Policy

### A. Introduction

In order to provide guidance to potential Consultants (as defined below) participating in the Indiana Department of Transportation ("INDOT") and Indiana Finance Authority ("IFA") Public-Private Partnership Program ("P3 Program"). , These Guidelines ("Guidelines") were developed concerning actual or potential conflicts of interest in connection with a P3 Program project as defined in IC 8-15.7-2-14 ("Project").

These guidelines are intended to accomplish the following goals:

- Promote the integrity, competitiveness and fairness of the P3 Program its procurement processes;
- Prevent P3 proposers and Consultants from obtaining or appearing to obtain an unfair competitive advantage;
- Provide guidance to enable Consultants to make informed business decisions concerning participation in the P3 Program;
- Permit Consultants to compete fairly to either work for INDOT/IFA or as part of a P3 Program proposer;
- Protect INDOT's and IFA's interests, especially confidential and sensitive Project-specific and programmatic information;
- Permit Consultants to work without actual or apparent conflict of interest; and
- Ensure that there is sufficient Consultant talent available for both INDOT/IFA and potential P3 Program proposers to successfully implement the P3 Program.

In general, INDOT/IFA prefers that the Consultants engaged by INDOT/IFA in connection with a P3 Project are dedicated to providing their services to INDOT. Except in limited circumstances, as described in these Guidelines, Consultants may not participate on a P3 proposer team on any P3 Project in which they are currently performing or have performed services to INDOT/IFA. A Consultant's participation on P3 Program proposer teams or in performing work for INDOT/IFA on future Projects will generally be permitted unless INDOT/IFA determines, in its sole discretion, that such participation raises an actual or potential conflict of interest, as set forth in these Guidelines.

INDOT/IFA recognizes that, given the complexity of the P3 Program, there will be situations in which there is a potential or actual conflict of interest but the strict application of these Guidelines may not further the goals set forth above or that there will be tension between some of such goals. The factors INDOT/IFA may examine in relation to a Consultant's potential or actual conflict of interest and their eligibility to perform services for INDOT/IFA or as part of a P3 Program proposer include:

- Type of consulting services required;
- Particular circumstances of the Project;
- INDOT's and IFA's need for specialized expertise to implement a Project;
- INDOT's and IFA's past, present, or future working relationship with the Consultant;
- Time frame between the potential or actual conflict of interest situation and the Project; and
- Other factors deemed relevant by INDOT.

INDOT/IFA also recognize that any conflict of interest issue must be balanced with the necessity to ensure that an adequate number of Consultants are available not only to INDOT/IFA for the P3 Program, but also to P3 proposer teams on a Project.

These Guidelines do not attempt to address every conflict situation that may arise in the context of the P3 Program. These Guidelines do not mandate INDOT/IFA to make a particular decision or determination

when facts similar to those given as examples in these Guidelines occur during a Project. INDOT/IFA has the authority in its sole discretion, to determine on a case-by-case basis whether a material conflict of interest exists, what are the best interests of INDOT/IFA, the specific Project and the P3 Program generally, and what actions may be appropriate.

#### B. Federal Legislation

For federal-aid P3 projects, INDOT must comply with the Federal Highway Administration's ("FHWA") organizational conflict of interest rules found as 23 CFR § 636.116 and all other applicable federal laws and regulations (e.g., National environmental Policy Act ("NEPA") rules and regulations) (collectively, "Federal Rules"). INDOT will examine each situation to ensure compliance with the Federal Rules and will utilize the Federal Rules in examining any actual or potential issues that arise in the P3 Program. Furthermore, nothing in these Guidelines is intended to limit, modify supersede or otherwise alter the effect of the Federal Rules.

#### C. Other Regulations, Statutes and Rules

These Guidelines are not intended to limit, modify, supersede, or otherwise alter the applicability or effect of other relevant Indiana, or local regulations, statutes and rules (e.g., ethical rules pertaining to Legal Services (as defined below), and state laws concerning state employee and consultant ethics.)

#### D. Definitions

1. "Affiliate" means any entity which directly or indirectly controls, or is controlled by, or is under common control, with the business entity.
2. "Conflict of Interest" means an actual or potential circumstance arising out of a Consultant's existing or past activities, business interests, contractual relationships and/or organizational structure (i.e.:, parent entities, subsidiaries, Affiliates, etc.) wherein the Consultant is, or may be, unable to render impartial assistance and/or advice to INDOT/IFA; the Consultant's objectivity is, or may be, impaired in performing the scope of work INDOT/IFA desires; the Consultant has an unfair competitive advantage; the Consultant's services to INDOT/IFA may create or actually creates an unfair competitive advantage to a third party; or there is a perception or appearance of impropriety and/or unfair competitive advantage benefiting the Consultant or a third party as a result of Consultant's participation in a Project.
3. "Consultant" means any person or business entity (including any division of such entity and any Affiliate of such entity) retained by INDOT/IFA to provide professional consulting services including, without limitation, architectural and engineering, right-of-way acquisition, environmental, procurement assistance, traffic c and revenue projections, project oversight services, financial services (including financial advisory and banking services), and legal services in connection with a Project, including sub-consultants.
4. "Financial or Other Interest" means any known benefit other than enhancement of professional reputation, and includes a promise of future work on a Project as well as any indirect benefit of which a Consultant is aware.
5. "Operator" means a person or business entity that has entered into a public-private agreement with INDOT for the development, design, construction, operation, maintenance, planning and/or financing of a project.

6. "Sub-consultant" includes those that have performed or will perform work on behalf of a Consultant to INDOT/IFA in the performance of the consultant's work for INDOT/IFA.
7. "Proposer" means any person or business entity (including any division of such entity and any Affiliate of such entity) that submits a statement of qualifications, solicited proposal, unsolicited proposal, or other submission in order to participate in the Project for the development, design, construction, financing, operation and/or maintenance of a Project.

Capitalized terms that are not defined in these Guidelines shall have the meanings provided in either the Federal Rules, or Indiana Code 8-15.7-2.

#### E. Scope of Guidelines

With these guidelines, INDOT/IFA addresses eight categories of Consultant services that may be utilized in the context of a Project:

1. Preliminary engineering and architectural services ("PE Services");
2. Procurement services ("Procurement Services");
3. Environmental and planning services ("E&P Services");
4. Traffic and revenue services ("T&R Services");
5. Project oversight services ("PO Services");
6. Financial services ("Financial Services");
7. Legal services ("Legal Services"); and
8. Other consulting services ("Other Services").

The foregoing enumerated services are collectively the "Services." Because of the different considerations and concerns applicable to each of these categories of services, separate guidelines are appropriate. If a Consultant is providing more than one category of Services to INDOT, and there are differences in the standards, restrictions and limitations applicable to those categories, INDOT may, in its sole discretion, apply the more stringent standards, restrictions and limitations.

#### F. Application of Guidelines to Individuals Employed by the Consultant

If, in INDOT's determination, the performance of the Services described in these Guidelines, raises a potential or actual Conflict of Interest for a Consultant, such Conflict of Interest shall apply individually and independently to any employee of such Consultant that has participated in a material way in the performance of the Services on a specific Project. If such individual leaves the Consultant's employment, the potential or actual Conflict of Interest shall continue to apply to such individual in the same manner as it applies to the Consultant (e.g., for a period of one (1) year from the termination of the individual's services to INDOT) for Projects other than those in which the individual was materially involved while employed by Consultant.

The potential or actual Conflict of Interest and prohibition with respect to the individual employee will not apply to the individual's new employer. In such an instance, if the new employer is otherwise eligible to perform certain Consultant services under these Guidelines, such new employer will remain eligible despite the employment of such individual, provided that, the employee will be subject to the limitations described in Section 6 below.

#### G. Time Period in which a Potential or Actual Conflict of Interest applies.

If, in INDOT/IFA's determination, the performance of the Consultant services described in Section 8 below raises a potential or actual Conflict of Interest, such Conflict of Interest shall be deemed to exist for the

firm for a period of one (1) year and, for the individuals performing such work, for a period of one (1) year, whether or not such individual remains employed with the firm at which the individual was employed when the potential Conflict of Interest occurred. Following the expiration of the applicable period, the restrictions on eligibility set forth in the applicable subsections of Article VIII below shall no longer apply absent a determination by INDOT/IFA, in its discretion, that the potential or actual Conflict of Interest remains applicable.

#### H. Conflict of Interest Rules

##### 1. Preliminary Engineering and Architectural Services

- a. PE Services consist of some or all of the following services provided to INDOT with respect to a Project:
  - i. Preparation of preliminary design and architectural documents and reports that will be incorporated by others into P3 solicitation documents (e.g., Request for Qualifications or Request for Proposals);
  - ii. Utility and right-of-way mapping and provision of similar technical documents that will be incorporated by others into P3 solicitation documents.
- b. PE Services do not include:
  - i. Evaluation or selection of alignments in connection with the development of NEPA documents,
  - ii. Assistance with development of solicitation documents, Operator scope of work/technical provisions, evaluation criteria for a Project or
  - iii. Other items that would fall under the E&P Services or Procurement
- c. A Consultant actively engaged in providing PE Services or which has previously provided PE Services to INDOT with respect to a Project, maybe a Proposer or participate as an equity owner, team member, and consultant or sub-consultant of, or to, a Proposer or have a Financial or Other Interest in any of the foregoing entities with respect to that Project provided that INDOT is satisfied that:
  - i. The Consultant will not, or in the case of past performance of PE Services did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that Project;
  - ii. The data and information provided to the Consultant in the performance of the PE Services is either irrelevant to the procurement for the Project or available on an equal and timely basis to all Proposers; and
  - iii. The work products from the Consultant incorporated into or relevant to the procurement for that Project are available on an equal and timely basis to all Proposers.
- d. Consultants performing PE Services for INDOT on a Project may participate in a different Project as a Proposer or participating as an equity owner, team member, consultant or sub-consultant of, or to, a Proposer for the Project or have a Financial or Other Interest in any of the foregoing entities with respect to that Project. However, INDOT reserves the right to restrict the ability of a Consultant to participate in different Projects if in INDOT's judgment; the Consultant has, in the course of performing the PE Services for INDOT, obtained access to or the ability to gain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement of the other Project or otherwise has a Conflict of Interest.

- e. A Consultant participating with respect to a Project as a Proposer or Operator or as an equity owner, team member, consultant or sub consultant of or to a Proposer or Operator or having a Financial or Other Interest in any of the foregoing entities, is eligible to pursue PE Services work from INDOT for a different Project (provided that, once such Consultant is retained to perform PE Services for INDOT, Section 1(b) above shall apply).

## 2. Procurement Services

- a. Procurement Services consist of soil or all of the following services provided to INDOT/IFA with respect to a Project:
  - i. Development of procurement strategy;
  - ii. Development and preparation of the solicitation documents, Operator scope of work/technical provisions and/or Public-Private Agreements;
  - iii. Implementation and administration of the solicitation;
  - iv. Preparation and/or implementation of any evaluation criteria, process or procedures;
  - v. Evaluation of Proposer submission (e.g., qualification submittals, proposals, etc);
  - vi. Negotiation of the Public-Private Agreement; and/or such other activities determined by INDOT/IFA as related to a P3 Procurement.
- b. Consultant actively engaged and providing Procurement Services to INDOT/IFA for a Project may not participate as an equity owner, team member, sub-consultant or consultant of or to a Proposer, on any Project arising during the term of the Consultant's engagement with INDOT/IFA or have a Financial or Other Interest in any of the foregoing entities on any Project.
- c. A Consultant that performed Procurement Services on behalf of INDOT/IFA for a Project and completed such services may be a Proposer or participate as an equity owner, team member, sub-consultant or consultant of, or to, a Proposer on a different Project or have a Financial or Other Interest in any of the foregoing entities with respect to a different Project, provided that INDOT/IFA is satisfied that:
  - i. The Consultant did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage to the Consultant or a Proposer with respect to the different Project; and
  - ii. The data and information provided to the Consultant in the performance of the Procurement Services was either irrelevant to the procurement for the other Project or available on an equal and timely basis to all Proposers on that Project. In such instances where INDOT/IFA is satisfied in the manner described above, INDOT/IFA may still, in its discretion, restrict the scope of Procurement Services for which the Consultant may be eligible to perform in order to further the intent and goals of these Guidelines.
- d. A Consultant participating in a Project as a Proposer or as an equity owner, team member, consultant or sub-consultant of or to a Proposer or having a Financial or Other Interest in any of the foregoing entities, may not perform Procurement Services for INDOT/IFA for another Project at the same time. To the extent that INDOT seeks to retain a Consultant to perform a scope of work that includes both Procurement Services

and other work described in these Guidelines (such as PE Services), the Consultant is not generally eligible for the work.

- e. A Consultant participating as an Operator or as part of a Operator team for a Project is eligible, after the completion of the procurement for such Project, to perform Procurement Services for INDOT/IFA for another Project (provided that once such Consultant is retained to perform Procurement Services for INDOT/IFA, Sections 2 (b) and 2 (c) above shall apply).

### 3. Environmental and Planning Services

- a. E&P Services consist of some of or all of the following services provided to INDOT with respect to a Project:
  - i. The study and evaluation of alternatives and potential environmental impacts of the proposed Project;
  - ii. Preparation of environmental analysis and impact documents relating to the project including facility and corridor analysis and draft and final environmental impact statements.
  - iii. Planning associated with the NEPA approval, permitting and clearance process for the project; and
  - iv. Planning associated with other (non-NEPA) environmental approvals, permitting and clearance for the project.
- b. A Consultant actively engaged and providing E&P Services described in Section 3 (a) (i-iii) above, with respect to a Project may not:
  - i. Participate as an equity owner, team member, consultant or sub-consultant of or to a Proposer for the Project or have a Financial or Other Interest in any of the foregoing entities with respect to that Project, or
  - ii. Have a Financial or Other Interest in the Project at the time that the Consultant is providing the services identified in Section 3 (a) (i-iii).
- c. A Consultant actively engaged and providing E&P Services described in Section 3 (a) (iv) above with respect to a Project may be a Proposer or participate as an equity owner, team member, consultant or sub-consultant of or to a Proposer for the Project or have a Financial or Other Interest in any of the foregoing entities with respect to that Project, provided that INDOT is satisfied that:
  - i. The Consultant will not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for the Project;
  - ii. The data and information provided to the Consultant in the performance of the E&P Services is either irrelevant to the procurement for that Project or available on an equal and timely basis to all Proposers; and
  - iii. The work products from the Consultant incorporated into or relevant to the procurement for that Project are available on an equal and timely basis to all Proposers.
- d. A Consultant previously engaged to provide E&P Services to INDOT for a Project and which has completed such E&P Services may be a Proposer or participate as an equity owner of, team members of consultant or sub-consultant to a Proposer for that Project or have a Financial or Other Interest in any of the forgoing entities provided that FHWA has

issued a Record of Decision (ROD), a Categorical Exclusion (CE) or a Finding of No Significant Impact (FONSI) for the Project; and that INDOT is satisfied that:

- i. The Consultant did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that Project;
  - ii. The data and information provided to the Consultant in the performance of the E&P Services is either irrelevant to the procurement for the Project or available on an equal and timely basis to all Proposers; and
  - iii. The work products from the Consultant incorporated into or relevant to the procurement for that Project are available on an equal and timely basis to all Proposers.
- e. A Consultant performing E&P Services on behalf of INDOT for a Project may participate in a different Project as a Proposer or participating as equity owner, team member, consultant or sub-consultant of or to a Proposer for a different Project or having a Financial or Other Interest in any of the foregoing entities with respect to that different Project. However, INDOT reserves the right to restrict the ability of a Consultant to participate in such manner on a different Project if, in INDOT's judgment, the Consultant has, in the course of performing E&P Services for INDOT, obtained access to or knowledge of confidential or sensitive information, procedures, policies and processes that could provide for an unfair competitive advantage with respect to the procurement of that different Project or otherwise has a Conflict of Interest.
- f. A Consultant participating with respect to a Project as a Proposer or Operator or as an equity owner, team member, consultant or sub-consultant of or to a Proposer or Operator or having a Financial or Other Interest in any of the foregoing entities, is eligible to pursue E&P Services work from INDOT for another Project (provided that, once such Consultant is retained to perform E&P Services for INDOT, Sections 3 (b) and 3 (b) above shall apply).

#### 4. Traffic and Revenue Services

- a. T&R Services consist of some or all of the following services provided to INDOT:
- i. Conducting draft and investment grade traffic and revenue studies, toll elasticity studies, toll feasibility studies, toll pricing studies, origin and destination surveys and studies and/or studies or analyses of a similar nature, including "peer review" studies and/or
  - ii. Data mining and preparation of reports, analyses and projections in connection with the traffic and projected revenues.
- b. A Consultant actively engaged and providing T&R Services to INDOT may not participate as an equity owner, team member, sub-consultant or consultant of or to a Proposer for that Project or have a Financial or Other Interest in any of the foregoing entities with respect to that Project.
- c. A Consultant previously engaged to provide T&R Services to INDOT with respect to a Project and which has completed such services may be a Proposer or participate as an equity owner, team member, consultant or sub-consultant of, or to, a Proposer for the Project provided that INDOT is satisfied that:

- i. The Consultant did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that Project;
    - ii. The data and information provided to the Consultant in the performance of the T&R Services is either irrelevant to the procurement for that Project or available on an equal and timely basis to all proposers;
    - iii. The work products from the Consultant incorporated into or relevant to the procurement for that project are available on an equal and timely basis to all Proposers; and
    - iv. There will be no impact on that Project's plan of finance, including the ability to obtain and close funding and potential sources of funding.
  - d. Consultants performing T&R Services may participate on a different Project as a Proposer, or participate as an equity owner, team member, consultant or sub-consultant of or to a Proposer for the different Project, or have a Financial or Other Interest in any of the foregoing entities with respect to that different Project. However, INDOT reserves the right to restrict the ability of a Consultant to participate in such manner on a different Project if, in INDOT's judgment, the Consultant has, in the course of performing the T&R Services for INDOT, obtained access to or knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement of that different Project or otherwise has a Conflict of Interest.
  - e. A Consultant participating with respect to a Project as a Proposer or Operator or as an equity owner, team member, consultant or sub-consultant of or to a Proposer or Operator or having Financial or Other Interest in any of the foregoing entities, is eligible to pursue T&R Services work from INDOT for another Project (provided that, once such Consultant is retained to perform T&R Services for INDOT, Section 4 (b) above shall apply).
- 5. Financial Services
  - a. Financial Services consist of some or all of the following services:
    - i. Acting in the capacity of Financial Advisor ("FA") to INDOT/IFA by providing advice on finance-related issues, including development of short-term or long-term finance strategy and plans of finance for a Project, and the development of financial aspects of the solicitation documents and public-private agreement;
    - ii. Identifying and pursuing sources of funds; or
    - iii. Acting as underwriter (either lead or co-lead) for a revenue bond issuance, a TIFIA instrument private activity bond issuance on a Project, but excluding underwriters for bonds that are not related to any Project.
  - b. A Consultant actively engaged and providing Financial Services to INDOT/IFA for a Project may not participate as an equity owner, team member, financial consultant. Sub-consultant or banker for a Proposer, on any Project arising during the term of the Consultant's engagement with INDOT/IFA or have a Financial or Other Interest in any of the foregoing entities with respect to any Project.
  - c. A Consultant previously engaged to provide Financial Services to INDOT/IFA on a Project and which has completed such services may be a Proposer or may participate as an equity owner, team member, consultant or sub-consultant of or to a Proposer for

another Project, or have a Financial or Other Interest in any of the foregoing entities with respect to such other Project, provided that INDOT is satisfied:

- i. The Consultant did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement for that Project;
- ii. The data and information provided to the Consultant in the performance of the Financial Services is either irrelevant to the procurement for that Project or available on an equal and timely basis to all Proposers;
- iii. The work products from the Consultant incorporated into or relevant to the procurement for that Project are available on an equal and timely basis to all Proposers.

- d. Generally, Consultants participating with respect to a Project as a Proposer or Operator or as an equity owner, team member financial consultant/advisor/banker, consultant or sub-consultant of or to a Proposer or Operator or having a Financial or Other Interest in any of the foregoing entities, shall be eligible to pursue Financial Services from INDOT/IFA for a different Project (provided that once such Consultant retained to perform Financial Services for INDOT, Section 5(b) and 5(c) above shall apply).

#### 6. Project Oversight Services

- a. Project Oversight (PO) Services consist of some or all of the following services:
  - i. Design review;
  - ii. Construction oversight and inspections;
  - iii. Quality control and quality assurance;
  - iv. Project management and overview;
  - v. Contract administration;
  - vi. Claims management;
  - vii. Public relations and community outreach;
  - viii. Right-of-way acquisition services; and/or
  - ix. Appraisal, legal description, condemnation package and/or utility assembly review.
- b. A Consultant shall be not eligible to perform PO Services on behalf of INDOT for a Project in which the Consultant is acting as the Operator or is part of an Operator team, or has a Financial or Other Interest in any of the foregoing entities with respect to that Project.
- c. Generally, a Consultant performing PO Services on behalf of INDOT may participate on a different Project as a Proposer or participating as an equity owner, team member, consultant or sub-consultant of or to a Proposer for the different Project or having a Financial or Other Interest in any of the foregoing entities with respect to that different Project. However, INDOT reserves the right to restrict the ability of a Consultant to participate in such manner on a different Project if, in INDOT's judgment, the Consultant has, in the course of performing the PO Services for INDOT, obtained access to confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage with respect to the procurement of that different Project or otherwise has a Conflict of Interest.
- d. Generally, a Consultant participating with respect to a Project as a Proposer or Operator or as an equity owner, team member, consultant or sub-consultant of or to a Proposer or Operator or having a Financial or Other Interest in any of the foregoing entities is eligible

to pursue PO Services work from INDOT for a different Project (provided that, once such Consultant is retained to perform PO Services for INDOT, Section 6(b) above shall apply).

7. Legal Services

- a. Legal Services consist of some or all of the following services:
  - i. Providing advice on legal issues and strategies relating to project environmental approvals, planning, procurement, financing, contract administration, risk management and disputes/claims/litigation; and
  - ii. Reviewing, drafting and negotiating procurement documents, project contracts and other documents.
- b. A Consultant who is providing or has provided Legal Services to INDOT/IFA with respect to a Project may not provide Legal Services for a Proposer, an equity owner, team member, consultant or sub-consultant of or to a Proposer for that Project, or have a Financial or Other-Interest in any of the foregoing entities with respect to that Project.
- c. A Consultant that was previously engaged to provide Legal Services to INDOT/IFA with respect to a Project and completed such services may be a Proposer or participate as an equity owner, team member, legal advisor, sub-consultant or consultant of or to a Proposer on a different Project, or have a Financial or Other Interest in any of the foregoing entities with respect to a different project, provided that INDOT/IFA is satisfied that (1) the Consultant did not have access to or obtain knowledge of confidential or sensitive information, procedures, policies and processes that could provide an unfair competitive advantage to the Consultant or a Proposer with respect to the different Project: and (2) the data and information provided to the Consultant in the performance of the Legal Services is either irrelevant to the procurement for the other Project or available on an equal and timely basis to all Proposers on that-Project. In such instances where INDOT is satisfied in the manner described above, INDOT/IFA may still, in its discretion, restrict the scope of Legal Services for which the Consultant shall be eligible to perform in order to further the intent and goals of these Guidelines.
- d. Generally, a Consultant participating with respect to a Project as a Proposer or as an equity owner, team member, legal advisor, consultant or sub-consultant of or to a Proposer or having a Financial or Other Interest in any of the foregoing entities, is not eligible to be hired to perform Legal Services for INDOT/IFA for another Project at the same time. However, once the procurement process is completed for the Project in which the Consultant is participating as a Proposer or as an equity owner, team member, legal advisor, consultant or sub-consultant of or to a Proposer or a Potentially Adverse Agency, the Consultant will be eligible to be retained by INDOT/IFA to perform Legal Services for a different Project (provided that, once such Consultant is retained to perform Legal Services for INDOT/IFA, Sections 7 (b) and 7 (c) above shall apply).

8. Other Services

Professional engineering, financial, legal and consulting services utilized from time to time by INDOT/IFA with respect to a Project that do not fall within any of the categories described above will be analyzed by INDOT/IFA on a case-by-case basis, applying the principles and goals set forth in these Guidelines.

## Appendix C: High Level Project Screening Report

The project screening phase of the P3 Guidelines assists IFA/INDOT in determining the suitability of delivering projects under the P3 Guidelines. The P3 project screening methodology systematically and consistently applies evaluation criteria to Solicited and Unsolicited Proposals submitted as candidates for P3 consideration.

IFA/INDOT will use the High Level Project Screening Report to assist in evaluating candidate projects against the high-level criteria.

PROJECT BACKGROUND		
Date:		
Project Name:		
Project Description:		
Project Concept Source:	<input type="checkbox"/> SOLICITED	<input type="checkbox"/> UNSOLICITED
If unsolicited, enter name of submitter:	N / A	
Attachments:	<input type="checkbox"/> YES	<input type="checkbox"/> NO
PROJECT SCREENING CRITERIA		
<b>Project Complexity:</b>	<ul style="list-style-type: none"> <li>Is the project sufficiently complex in terms of technical and/or financial requirements to effectively leverage private sector innovation and expertise?</li> </ul>	
Comments:		
<b>Accelerating Project Development:</b>	<ul style="list-style-type: none"> <li>If the required public funding is not currently available for the project, could using a P3 delivery method accelerate the delivery of the project?</li> </ul>	
Comments:		

<b>PROJECT SCREENING CRITERIA</b>	
<b>Transportation Priorities:</b>	<ul style="list-style-type: none"> <li>▪ Is the project consistent with overall transportation objectives of the State?</li> <li>▪ Is the project consistent with the objectives of the appropriate plans or programs?</li> <li>▪ Does the project adequately address transportation needs?</li> </ul>
<i>Comments:</i>	
<b>Project Efficiencies</b>	<ul style="list-style-type: none"> <li>▪ Would the P3 delivery method help foster efficiencies through the most appropriate transfer of risk over the project life-cycle?</li> <li>▪ Is there an opportunity to bundle projects?</li> </ul>
<i>Comments:</i>	
<b>PROJECT SCREENING CRITERIA</b>	
<b>Ability to Transfer Risk</b>	<ul style="list-style-type: none"> <li>▪ Would the P3 delivery method help transfer project risks and potential future responsibilities to the private sector on a long-term basis?</li> </ul>
<i>Comments:</i>	
<b>Funding Requirement</b>	<ul style="list-style-type: none"> <li>▪ Does the project have revenue generation potential to partially offset the public funding requirement?</li> <li>▪ Is it necessary to offset a public funding requirement?</li> <li>▪ Could a public agency pay for the project over time, such as through an availability payment, as opposed to paying for its entire costs up front?</li> </ul>
<i>Comments:</i>	
<b>Ability to Raise Capital</b>	<ul style="list-style-type: none"> <li>▪ Would delivering the project as a P3 help free up capital from other sources for transportation priorities with the State?</li> </ul>
<i>Comments:</i>	
<b>Additional Comments or Observations:</b>	

## Appendix D: Detail Level Project Screening Report

Those qualifying projects that have passed through the high level screening process are eligible for detail level screening. The detail level project screening criteria form the basis upon which IFA/INDOT evaluate the feasibility of delivering transportation projects across all transportation modes using the P3 project delivery method. The screening criteria reflect the policy priorities of the State 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 IFA/INDOT will evaluate as they make their decision to invest in advancing the project forward under the P3 Program.

In the detail level project screening, IFA/INDOT 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 private and public sectors as to how to interpret the criteria:

Detail Level Screening Form	
<b>Project:</b>	<b>Date:</b>
Detail Level Screening Criteria – Desirability of the Project	
<b>Public Need</b>	<ul style="list-style-type: none"> <li>▪ Does the project address the needs of the local, regional and state transportation plans, such as congestion relief, safety, new capacity, preservation of existing assets?</li> <li>▪ Does the project support improving safety, reducing congestion, increasing capacity, providing accessibility, improving air quality, improving pedestrian biking facilities, and/or enhancing economic efficiency?</li> </ul>
<i>Comments:</i>	
<b>Public Benefits</b>	<ul style="list-style-type: none"> <li>▪ Will this project bring a transportation benefit to the community, the region, and/or the state?</li> <li>▪ Does the project help achieve performance, safety, mobility or transportation demand management goals?</li> <li>▪ Does this project enhance adjacent transportation facilities or other modes?</li> </ul>
<i>Comments:</i>	
<b>Economic Development</b>	<ul style="list-style-type: none"> <li>▪ Will the project enhance the State's economic development efforts?</li> <li>▪ Is the project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?</li> </ul>
<i>Comments:</i>	

Detail Level Screening Criteria – Desirability of the Project	
<b>Market Demand for solicited proposals</b>	<ul style="list-style-type: none"> <li>▪ Does a sufficient market appetite exist for the project?</li> <li>▪ Are there ways to address industry concerns?</li> </ul>
<i>Comments:</i>	
<b>Stakeholder Support</b>	<ul style="list-style-type: none"> <li>▪ What is the extent of support or opposition for the project? Does the proposed project demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs?</li> <li>▪ What strategies are proposed to involve local, state and/or federal officials in developing this project?</li> <li>▪ Has the project received approval in applicable local and/or regional plans and programs?</li> <li>▪ Is the project consistent with federal agency programs or grants on transportation (FHWA, FTA, MARAD, FAA, FRA, etc.)?</li> </ul>
<i>Comments:</i>	
<b>Legislative Considerations</b>	<ul style="list-style-type: none"> <li>▪ Are there any legislative considerations that need to be taken into account such as tolling, user charges, or use of public funds?</li> </ul>
<i>Comments:</i>	

Detail Level Screening Criteria – Feasibility of the Project	
<b>Technical Feasibility</b>	<ul style="list-style-type: none"> <li>▪ Is the project described in sufficient detail to determine the type and size of the project, the location of the project, proposed interconnections with other transportation facilities, the communities that may be affected and alternatives that may need evaluation?</li> <li>▪ Is the proposed schedule for project completion clearly outlined and feasible?</li> <li>▪ Does the proposed design appear to be technically sound and consistent with the appropriate state and federal standards?</li> <li>▪ Is the project consistent with applicable state and federal environmental statutes and regulations?</li> <li>▪ Does the project identify the required permits and regulatory approvals and a reasonable plan and schedule for obtaining them?</li> <li>▪ Does the project set forth the method by which utility relocations required for the transportation facility will be secured and by whom?</li> </ul>
<i>Comments:</i>	

<b>Detail Level Screening Criteria – Feasibility of the Project</b>	
<b>Financial Feasibility</b>	<ul style="list-style-type: none"> <li>▪ Are there public funds required and if so, are the State's financial responsibilities clearly stated?</li> <li>▪ Is the preliminary financial plan feasible in that the sources of funding and financing can reasonably be expected to be obtained?</li> </ul>
<i>Comments:</i>	
<b>Legal/Legislative Feasibility</b>	<ul style="list-style-type: none"> <li>▪ Is legislation needed to complete the project?</li> </ul>
<i>Comments:</i>	
<b>Project Risks</b>	<ul style="list-style-type: none"> <li>▪ Are there any particular risks unique to the projects that have not been outlined above that could impair project viability?</li> <li>▪ Are there any project risks proposed to be transferred to IFA/INDOT that are likely to be unacceptable?</li> </ul>
<i>Comments:</i>	
<b>Term</b>	<ul style="list-style-type: none"> <li>▪ Does the project include a reasonable term of concession for proposed operation and maintenance?</li> <li>▪ Is the proposed term consistent with market demand, providing a best value solution for the State?</li> <li>▪ Is the proposed term optimal for a whole-of-life approach?</li> </ul>
<i>Comments:</i>	
<b>Additional Comments or Observations:</b>	