



Office of the Secretary

[Docket No. DOT-OST-2026-0761]

Evaluation of the Appropriateness of Public-Private Partnership Project Delivery, including Value for Money or Comparable Analyses; Infrastructure Investment and Jobs Act

AGENCY: Build America Bureau, Office of the Secretary (OST), and Federal Highway Administration (FHWA), U.S. Department of Transportation (DOT).

ACTION: Final guidance.

SUMMARY: The Build America Bureau (the Bureau) and the Federal Highway Administration (FHWA) are issuing guidance to help the public understand statutory requirements to evaluate the appropriateness of using public-private partnerships (P3s) to deliver infrastructure projects. This guidance intends to inform project sponsors of the Bureau's implementation of the evaluation requirements when seeking Federal credit assistance through the Transportation Infrastructure Finance and Innovation Act of 1998 (TIFIA) and the Railroad Rehabilitation and Improvement Financing (RRIF) credit assistance programs and FHWA's implementation of the major project financial plan requirement to perform detailed value for money (VfM) analysis. The guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect. This final guidance also addresses the comments received on the draft guidance published in the Federal Register on November 13, 2024.

FOR FURTHER INFORMATION CONTACT: Build America Bureau at InnovativeFinanceTA@dot.gov or call Jennifer Hara, Strategic Partnerships Program Manager at 202-839-0199.

SUPPLEMENTARY INFORMATION:

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1. Introduction

A public-private partnership (P3) is an infrastructure project delivery method in which a public owner and project sponsor (called the public sponsor) leverages private sector resources and methods through a long-term contract that finances the project and typically includes design, construction, maintenance, and/or operations. A mutually beneficial P3 aligns public and private interests through the commercial and financial terms of a project agreement, herein referred to as the concession agreement.

Where appropriate, P3 delivery could provide more value for projects as compared to conventional public delivery. However, in some cases, P3 delivery also creates complexities and limitations for the public sponsor. Public sponsors can analyze these complexities, including project risks, and consider how best to manage them before choosing a P3 with its long-term partnership obligations. The general term for the process of analyzing and comparing advantages and disadvantages of P3 versus conventional public delivery options is value for money analysis (VfM). The analysis demonstrates whether delivering a project using a P3 would yield more or less value to the public sponsor than the most suitable public delivery option. The analysis also documents the goals, objectives, and underlying assumptions for the project delivery. The intent of VfM is not to analyze the benefits of the project itself but to document the analysis underlying the public sponsor's chosen delivery option based on expected benefits to the public.

Federal surface transportation statutes require public sponsors to conduct a VfM or comparable analysis for certain projects, as described below and shown in Exhibit 1. A VfM or comparable analysis is required for:

- Any project type using any delivery method where the project cost is over \$750 million, the project sponsor is a public entity seeking Federal credit assistance, the project is in a state with transportation P3 authorizing laws, and the project generates revenue or user fees;
- Any surface transportation project receiving Federal financial assistance under title 23, United States Code, in which the project sponsor intends to carry out the project through a P3 delivery method with an estimated project cost over \$500 million; and
- Any project type using a P3 delivery method and seeking Federal credit assistance.

On November 15, 2021, the Infrastructure Investment and Jobs Act (IIJA) was signed into law.¹ Section 70701 of IIJA requires that certain projects with an estimated total cost of more than \$750,000,000 conduct a VfM or comparable analysis. Additionally, section 11508 of IIJA requires that Major Projects² under section 106(h) of title 23, United States Code, for which the project sponsor intends to carry out the project through a P3 include a detailed VfM or similar comparative analysis. In addition, many states' P3 laws require public sponsors to conduct due diligence analysis, such as VfM, to determine whether the P3 delivery method would provide more value and benefits to the public sponsor than other delivery methods.

This final guidance addresses the comments on the draft guidance posted in the Federal Register (89 FR 89692) on November 13, 2024. The public comment period closed on December 31, 2024. The American Federation of State, County and Municipal Employees (AFSCME) suggested including “to enhance worker and community prosperity and well-being, deliver value and serve the public interest, and address transparency and accountability” in the use of VfM data. The Florida Department of Transportation (FDOT) suggested tightening the meaning of “generate user fees or other revenues” and recommended clearer definitions in Exhibit 2. The

¹ Pub. L. 117-58 (2021).

² A Major Project is a project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the Secretary of Transportation pursuant to 23 U.S.C. 106(h).

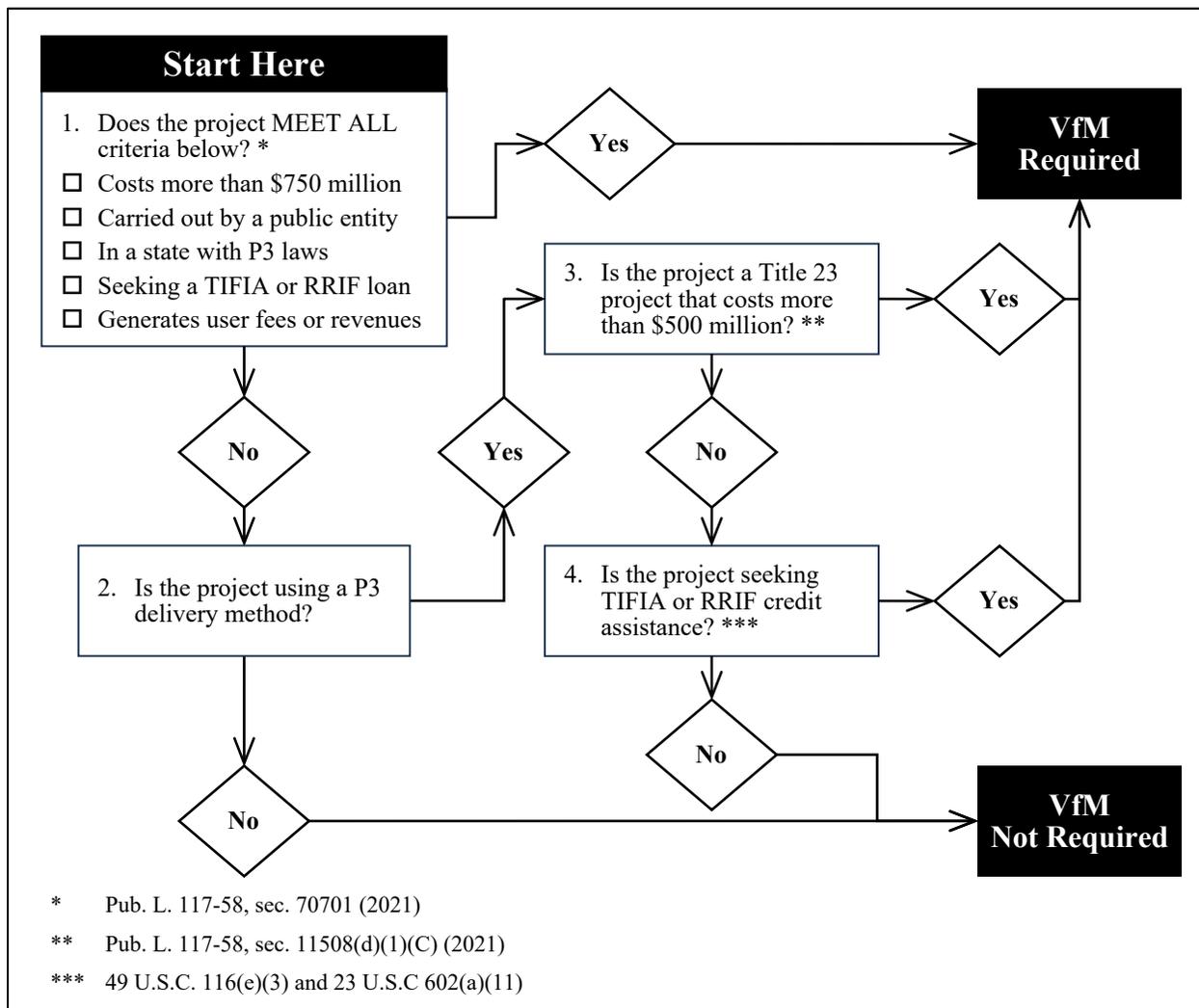
Virginia Department of Transportation (VDOT) suggested adding analysis of the public contribution that would be required to cover all costs in excess of private financing as another step in the detailed Stage 2 evaluation and that any VfM not place an undue burden on the public agency. An anonymous commenter suggested that any user fees or other revenues generated be material.

This guidance is not intended to build the capacity or capability of entities to develop and deliver infrastructure projects through P3s. Entities that want to build their capacities and capabilities may access Bureau and FHWA educational and technical assistance resources.³ Bureau and FHWA subject matter experts are available upon request to conduct targeted workshops and provide training materials for project sponsors.

To improve readability, clarity, and brevity, this guidance describes the requirements with words that might differ from statute and regulation. The guidance does not contain any new criteria, does not impose any new legal requirements, and has no legal effect. The contents of this document do not have the force of law and are not meant to bind the public in any way. This document is intended only to share information with the public on existing requirements under the law or agency policies and is not intended to modify any Major Projects requirements under Section 106(h) of title 23, United States Code or IIJA. Accordingly, please refer to the applicable statute and regulation for appropriate context. Below is a schematic that explains when a VfM is required and when it is not (Exhibit 1).

³ <https://buildamerica.dot.gov/buildamerica/> and <https://www.fhwa.dot.gov/ipd/p3/toolkit/>.

Exhibit 1: Decision Schematic for VfM Requirements



2. Definitions

For purposes of this guidance, the definitions in Exhibit 2 apply. If the exhibit does not specifically define a term, or there is not a definition in the legislation, industry standard definitions apply.

Exhibit 2: Definitions of Terms in this Guidance

Term	Definition
Public-private partnership (P3)	A long-term arrangement between a public sponsor and a private entity for delivery of a project that includes at least the following elements: design, construction, financing, and either operations or maintenance or both of the project over a term specified in a concession agreement (as defined below).

Agreement types

Exhibit 2: Definitions of Terms in this Guidance

Term	Definition
Concession Agreement	An agreement between a public sponsor and private entity (e.g., concessionaire or developer) signed after a preferred bidder is selected or contract price is agreed upon. Other names for such agreements include P3 agreement, project agreement, project development agreement, and comprehensive project agreement. IIJA section 70701(a) uses the term “Project Development Agreement,” which the Bureau interprets as a concession agreement.
Pre-Development Agreement	An agreement between a public sponsor and private entity to develop and design the project further and finalize a committed proposal.
Contract types	
Long-Term Contract	A contract between a public sponsor and a private entity to deliver a project, including some or all elements for design, construction, financing, operations, and maintenance over the concession term.
Short-Term Contract	A contract between a public sponsor and private entity to deliver a project that does not include operations, maintenance, or financing.
Evaluation types	
Initial Evaluation	An evaluation that sets high-level criteria based on the public sponsor’s project goals and objectives. For progressive P3 procurements before detailed project scope, cost, and schedule are available, an evaluation that compares advantages and disadvantages of all practical delivery options, including P3 delivery. The public sponsor documents the process for selecting the preferred delivery option based on the project’s characteristics, feasibility, policy goals, and objectives.
Detailed Evaluation	An evaluation that compares all practical delivery options to select the most suitable public delivery option and most suitable P3 delivery option and then estimates the likely quantitative outcomes of public and P3 options. Detailed evaluation may account for non-financial benefits such as differences in service levels for the public and costs to the public and society at large by use of benefit-cost analysis methodology. For example, if one delivery method results in an earlier start of operations than the other, the public will benefit earlier from higher service levels, which can be quantified in economic terms.
Federal financial assistance	Includes grants and loans from the Federal government to support infrastructure investment, not including private activity bond allocations and grants for technical assistance.
Major Project	A project funded with Federal financial assistance under title 23, United States Code, with a total estimated cost of \$500 million or more and such other projects as identified by the U.S. Secretary of Transportation pursuant to 23 U.S.C. § 106(h).
P3 procurement types	
Conventional P3 procurement	Public sponsor seeks competitive, fixed price, and certain schedule bids from qualified bidders after the public sponsor completes a limited preliminary design of the project.

Exhibit 2: Definitions of Terms in this Guidance

Term	Definition
Progressive P3 procurement	Through a competitive process early in project development, the public sponsor selects a qualified private entity to develop a project without a bid price.

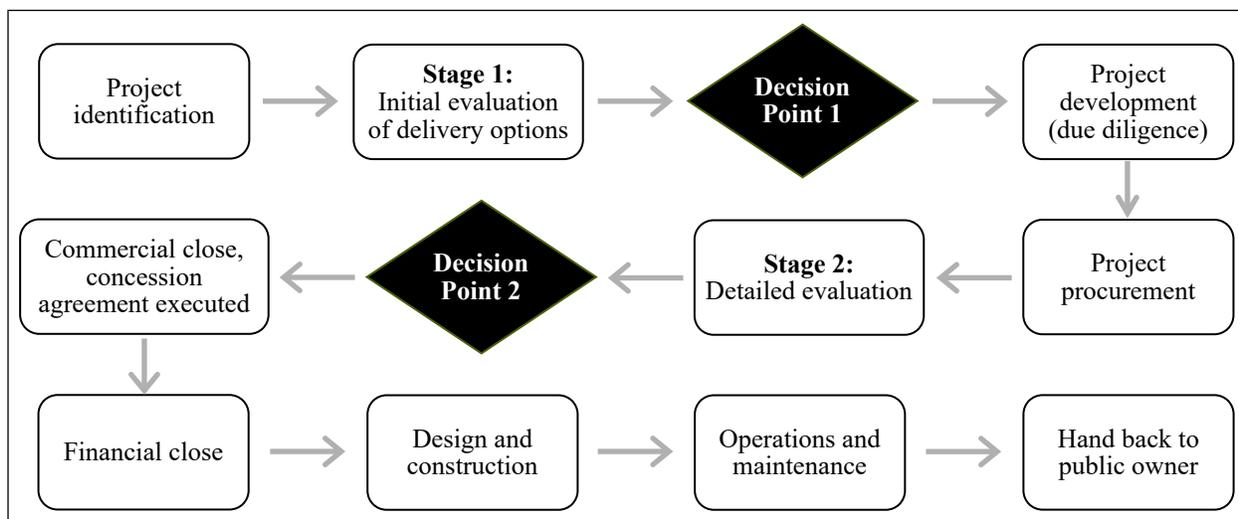
3. Principles of P3 Analysis

If a VfM might be required, the appropriateness of P3 delivery as an option should be evaluated early in the project life cycle (such as during project identification and delivery option screening) and as the project progresses during project development and procurement. If a VfM is not required, Bureau encourages, but does not require, a VfM for projects likely to cost over \$500 million to help inform decision makers. The Bureau encourages, but does not require, public sponsors to study delivery methods that may be outside their existing authorities to document and communicate how new authorities could increase public benefits. With better and more information available later in the project life cycle, and as the commercial and financial terms or assumptions change, the public sponsor should update the P3 evaluation by conducting detailed VfM to ensure a P3 model is still appropriate and in the public interest.

To ensure compliance with statutory VfM or comparable analysis requirements, the Bureau expects public sponsors to evaluate the appropriateness of, and value to be generated from, P3 project delivery at two decision points in the project lifecycle: (1) after project identification and before the project development phase, and (2) after the P3 procurement and before entering into a concession agreement between the public sponsor and private developer at commercial close.

Exhibit 3 below shows these two decision points in a simplified P3 project lifecycle.

Exhibit 3: Simplified P3 Project Lifecycle



The project life cycle presented in Exhibit 3 also applies to Major Projects under section 106(h) of title 23, United States Code, with an estimated total cost above \$750 million that meet the other criteria under IIJA section 70701. Additionally, under IIJA section 11508, the Major Project financial plan for Major Projects being carried out through a P3 must include a detailed VfM or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update, where appropriate. For requirements applicable to Major Projects that do not meet these criteria, see FHWA’s Major Projects guidance documents, available at <https://www.fhwa.dot.gov/majorprojects/>.

Observing principles derived from lessons learned and best practices helps public sponsors objectively analyze the advantages and disadvantages of delivering an infrastructure project through a P3. Following these principles also helps public sponsors communicate to the public the basis of their decisions. The next paragraphs describe principles public sponsors should incorporate into their analyses to support requests for DOT Federal financial assistance.

- A. **Establish Delivery Option Goals.** VfM provides insights to support decision-making, when the public sponsor defines goals related to the delivery method. Examples of delivery goals include maximizing use of innovative approaches and technologies that enhance value and efficiency for the public good, preserving flexibility for future

improvements, promoting economic well-being and broad-based opportunity, creating high quality jobs, and minimizing the taxpayers' financial burden in subsidizing the project. Delivery goals may be different than project goals. Whether a project is likely to achieve project goals is better analyzed through techniques such as benefit-cost analysis or environmental or economic impact analysis, rather than VfM.

B. *Identify Practical Delivery Options.* After setting project delivery goals, public sponsors can consider which delivery methods are likely to fulfill the identified goals. Sponsors can then narrow their choices by screening out impractical ones. For example, a public sponsor might have authority for some delivery methods and not others.

Documenting the basis for rejecting a delivery method or benefits that unavailable delivery methods could generate with new authorities enhances the credibility of the public sponsor's process and provides useful information and insight to decision makers. Also, to the maximum extent practicable, public sponsors should solicit from the private sector and the public input and feedback on innovative funding, financing, and delivery solutions that could deliver better value for the public.

C. *Inform Subsequent Decisions.* VfM analyzes tradeoffs between delivery options to identify the most suitable delivery option. The public sponsor can then determine whether the public or P3 option provides the most value relative to the established delivery option goals. The purpose of VfM is to inform selection of the project delivery method based on a transparent and factual process, not to justify project delivery decisions public sponsors previously made. Using VfM as intended, public sponsors will be able to show how the analysis preceded, and directly contributed to, the decision to advance the project with a P3 or other delivery approach.

D. *Analytical Framework and Data.* VfM involves predictions, projections, and assumptions. Public sponsors should (a) use actual, verifiable data, if possible, (b) where predictions, projections, and assumptions are necessary, provide the methodology and

basis for the inputs, and (c) utilize public agencies or independent entities with no conflicts of interest.

E. *Transparency and Accountability.* To the maximum extent practicable, public sponsors should make information available to the public, including (a) the project's delivery goals, (b) the information used in the VfM, (c) how the VfM was employed in the decision-making process, and (d) the decision makers charged with selecting the final delivery method.

4. P3 Analysis Requirements

Several provisions in legislation established or amended statutory P3 evaluation requirements. Applicability of these requirements depends on project size, source of funding or financing, phase of the project life cycle, and other attributes. In 2005, the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users defined the term major project, reduced the financial plan requirement threshold to \$500 million, and required submission of project management plans.⁴ In 2012, the Moving Ahead for Progress in the 21st Century Act established the requirement to assess the appropriateness of a P3 for delivering major projects.⁵ The 2015 FAST Act established the requirement that public sponsors receiving credit assistance from the Bureau conduct VfM or comparable analysis before deciding to advance projects as P3s.⁶ Enacted November 15, 2021, IIJA established new, and amended prior, statutory P3 evaluation requirements.⁷ IIJA:

- establishes a P3 evaluation requirement for projects with total estimated costs of more than \$750 million. Sponsors of these projects are required to conduct VfM if they are in a State in which there is a State law authorizing the use and implementation of P3s for transportation projects, intend to seek TIFIA or RRIF credit assistance, and the project is

⁴ Pub. L. 109-59, sec. 1904(a) (2005), amending 23 U.S.C. 106(h).

⁵ Pub. L. 112-141, sec. 1503(a)(4)(B) (2012), amending 23 U.S.C. 106(h).

⁶ Pub. L. 114-94, sec. 9001(a) (2015), adding 49 U.S.C. 116(e)(3).

⁷ Pub. L. 117-58, secs. 11508 and 70701 (2021).

anticipated to generate user fees or other revenues that could support project capital and operating costs.⁸ This provision of IIJA further specifies the level of detail and specific elements to be included in this detailed P3 evaluation;⁹

- amends the requirements of section 106(h) of title 23 to require public sponsors of projects with an estimated cost of \$500 million or more, receiving title 23 assistance, and intended to be delivered as a P3 to conduct a detailed VfM or similar comparative analysis;¹⁰
- stipulates reporting and transparency requirements throughout project delivery and after key project delivery milestones;¹¹ and
- adds VfM as a TIFIA eligibility criterion for projects to be carried out through P3s.¹²

Exhibit 4 summarizes the statutory requirements for projects required to conduct a VfM and the expected evaluation type based on the project delivery type.

⁸ Pub. L. 117-58, sec. 70701 (2021).

⁹ Pub. L. 117-58, sec. 70701(a) (2021).

¹⁰ Pub. L. 117-58, sec. 11508(d)(1)(C) (2021), adding 23 U.S.C. 106(h)(3)(D).

¹¹ Pub. L. 117-58, secs. 11508(b), (c), and 70701(c), (d) (2021).

¹² Pub. L. 117-58, sec. 11508(d) (2021), adding 23 U.S.C. 602(a)(11).

Exhibit 4: P3 Evaluation Requirements by Project and Delivery Type

Project Type	Delivery Type	Required Public Sponsor P3 Evaluation *		
		Stage 1	Stage 1A	Stage 2
All transportation projects costing more than \$750 million carried out by certain public agencies in states with P3 authorizing authority for transportation, seeking TIFIA or RRIF credit assistance, and generate user fees or other revenues ¹³	All delivery types, except progressive P3	Initial	<i>n.a.</i>	Detailed
	Progressive P3	Initial	Initial	Detailed
Title 23 projects costing \$500 million or more ¹⁴	All P3	Detailed **		
All projects proposed for P3 delivery and seeking TIFIA or RRIF credit assistance ¹⁵	Conventional P3	Initial	<i>n.a.</i>	Detailed
	Progressive P3	Initial	Initial	Detailed

Notes:

* Stage 1: early in project development before starting the procurement process
 Stage 1A: for a progressive P3, before signing a pre-development agreement
 Stage 2: before signing a concession agreement with a private P3 entity, if a P3 delivery method is selected in Stage 1.

n.a.: not applicable.

**The Major Project financial plan for Major Projects being carried out through a P3 agreement must include a detailed VfM or similar comparative analysis. This analysis is submitted as part of the initial financial plan, or subsequent financial plan annual update, where appropriate. Project sponsors of Major Projects under 23 U.S.C. 106(h) should consider whether their projects are also subject to additional VfM requirements detailed in this guidance.

5. Compliance Guidelines

This section details and clarifies aspects of the P3 evaluation requirements. Public sponsors and their projects often have unique attributes and circumstances that require in-depth analysis and review that might differ from the general descriptions herein. We encourage you to discuss your projects and applicable requirements directly with the Bureau and FHWA staff. Email us at BuildAmerica@dot.gov or FHWAMajorProjects@dot.gov.

A. Early Phase P3 Evaluation (Stage 1). Outlining strategies for the business case early in the project lifecycle, i.e., project identification and screening, is critical for successful project delivery selection. During project identification and screening, public

¹³ Pub. L. 117-58, sec. 70701 (2021).

¹⁴ Pub. L. 117-58, sec 11508(d)(1)(C) (2021).

¹⁵ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).

sponsors should engage relevant stakeholders through brainstorming and risk assessment workshops and may use any tool for qualitative or high-level quantitative analysis to compare the most suitable public project delivery option and the appropriate P3 option. Project sponsors seeking credit assistance under TIFIA and RRIF for all projects procured as P3s (regardless of size) are required to complete VfM or comparable analysis prior to deciding to advance the project as a P3.¹⁶ Because the decision to advance a project as a P3 is made at Stage 1, public sponsors that anticipate seeking either TIFIA or RRIF credit assistance directly or that TIFIA or RRIF might be part of their preferred bidder's financing package, must conduct VfM at Stage 1. Information available at Stage 1 is often limited, so the Bureau anticipates VfMs conducted at this stage would comprise an initial analysis for P3s and any project required to perform detailed VfM under IJA Section 70701.

If the public sponsor cannot define a workable public delivery option (e.g., in a transit-oriented development project for which a private entity already owns the land or has secured development rights), VfM or comparable analysis might not be feasible. In such cases, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

B. *Progressive P3 Procurement (Stage 1A)*. In a progressive P3 procurement, the public sponsor selects a private developer and executes a pre-development agreement to design and de-risk the project collaboratively. Then, the private developer negotiates and submits a firm price proposal for delivering the project. If the public sponsor accepts the proposal, the parties sign a concession agreement.

The Bureau expects public sponsors using a progressive P3 procurement to conduct an initial VfM before signing a pre-development agreement and a detailed VfM prior to

¹⁶ 49 U.S.C. 116(e)(3) and 23 U.S.C. 602(a)(11).

signing a concession agreement. Similar to the discussion of Stage 1 above, the Bureau expects the evaluation at Stage 1A will be an initial VfM with limited information available regarding the project. After the private developer submits a committed bid price pursuant to the pre-development agreement, the Bureau expects the public sponsor to update and finalize the VfM based on the terms and conditions of the proposed P3 agreement. At this point, the Bureau expects the public sponsor to conduct a detailed P3 evaluation prior to signing a concession agreement.

C. *Subsequent P3 Evaluations (Stage 2)*. The Bureau expects this Stage 2 detailed analysis to be done when the project sponsor has additional details on project cost, funding, financing, and risk allocation and before signing the concession agreement. If the Stage 1 analysis resulted in the selection of a non-P3 delivery method, a Stage 2 analysis is not required.

The detailed Stage 2 evaluation must include:

- i. the life-cycle cost and project delivery schedule;
- ii. the costs of using public funding versus private financing for the project;
- iii. the public contribution, if any, that would be required to cover all costs necessary for the development and/or operation of the transportation facility in excess of financing available;
- iv. a description of the key assumptions made in developing the analysis, including—
 - a. analysis of any Federal grants or loans and subsidies received or expected (including tax depreciation costs);
 - b. key terms of the proposed P3 agreement, if applicable, (including the expected rate of return for private debt and equity), and major compensation events;
 - c. discussion of the benefits and costs associated with the allocation of risk;
 - d. determination of risk premiums assigned to various project delivery scenarios;
 - e. assumptions about use, demand, and any user fee revenue generated by the project; and
 - f. any externality benefits for the public generated by the project;
- v. forecast of user fees and other revenues expected to be generated by the project, if applicable; and
- vi. any other information the Secretary of Transportation determines to be appropriate.¹⁷

¹⁷ Pub. L. 117-58, sec. 70701(a) (2021).

Project sponsors may choose any tool that provides analysis of items (i), (ii), and (iii), and items (iv)(a) through (f), above to meet the requirements for detailed VfM. The Bureau recommends public sponsors document the basis for the analysis, project goals and objectives, and the underlying assumptions and rationale, and then make such analysis and documentation available for public review. Any enhancements or adjustments, such as risk premiums, should be based on actual data, to the extent possible, and reasonably verifiable. The Bureau recommends using assumptions that are supported by empirical data. Where empirical data is unavailable, the absence of this data should be directly expressed.

The Bureau strongly encourages public sponsors of P3 projects that anticipate seeking TIFIA or RRIF credit assistance to undertake both (a) an initial analysis at Stage 1 or Stage 1A and (b) a detailed VfM or comparable analysis at Stage 2. The Bureau will evaluate the type of VfM conducted at each stage to determine whether a public sponsor has satisfied all applicable requirements. In doing so, the Bureau will seek to ensure the public sponsor used information appropriate for the stage at which the analysis was conducted and that the VfM was thorough. The Bureau therefore expects to see a bifurcated analysis as described above and that public sponsors of P3 projects seeking Bureau credit assistance¹⁸ conduct a detailed VfM that includes evaluation of the elements in IIJA Section 70701. The Bureau is unlikely to find a public sponsor satisfied these requirements if a P3 project of any size or a project with an anticipated cost of more than \$750 million in a State with P3 laws and that generates user fees or other revenues did not undergo an initial VfM at Stage 1 (or Stage 1A for a progressive P3) and, for projects selected for delivery as a P3 as a result of Stage 1 analysis, a detailed VfM at Stage 2 that evaluates the elements in IIJA Section 70701. The Bureau interprets

¹⁸ Including where the public sponsor is not directly seeking TIFIA or RRIF credit assistance but anticipates that its preferred bidder might do so.

“generates user fees or other revenues” as having the potential to generate more than a de minimis amount.

If the public sponsor cannot define a workable public delivery option, the public sponsor can demonstrate compliance with statutory requirements by documenting before signing a concession agreement why it cannot complete a meaningful VfM or comparable analysis and why it decided to use a P3 delivery option.

D. *Auditing and Public Information.* Transparency is an integral part of proper public sector decision making, particularly for long term commitments. The Bureau recommends public sponsors conduct an independent audit for projects subject to this guidance prior to signing contracts. An entity that has no ties to the project and no conflicts of interest should conduct the audit and should ensure all processes have been followed and all major risks are properly identified, documented, and shared with decision makers and stakeholders. It should also ensure all local and Federal approvals needed prior to execution of the concession agreement are in place and execution of the agreement will not impose any undisclosed major risks to the public.

In addition to the foregoing, Section 116(e)(3) of title 49, United States Code, requires public sponsors to make the analysis and key terms of the concession agreement publicly available at an appropriate time. Also, IIJA Section 70701 requires public sponsors to post the results of the analysis on the project’s website. The Bureau believes the appropriate time is as early as possible and before signing the concession agreement, subject to any statutory or other binding limitations on a public sponsor’s ability to make this information public.

6. P3 Post-Implementation Review Requirements

The FAST Act and IIJA require project sponsors to conduct post-implementation reviews of the private partners’ compliance with concession agreement terms, as a condition for receiving

TIFIA and RRIF credit assistance.¹⁹ IJA directs the Secretary to require the public sponsors of title 23 P3 projects costing \$100,000,000 or more that receive Federal financial assistance, including Bureau credit assistance, not later than three years after the date of opening of the project to traffic, to:

- Review the project, including the private partner's compliance with the terms of the concession agreement;
- Certify to the Secretary that the private partner is meeting terms of the concession agreement for the project or notify the Secretary about the private partner's non-compliance, including a brief description of each violation of the concession agreement; and
- Make publicly available the above certification or notification without disclosing proprietary or confidential business information.²⁰

Section 116(e)(3)(A)(iii) of title 49, United States Code, establishes a similar review requirement for any P3 project receiving TIFIA or RRIF credit assistance and further requires the public sponsor to provide a publicly available summary of total Federal financial assistance in the project. To satisfy these statutory review and disclosure requirements, the Bureau will expect a public sponsor to sign, prior to closing on Bureau credit assistance, a direct agreement (or other enforceable commitment) with the Bureau that memorializes the public sponsor's obligation to conduct and disclose the results of such review.

A public sponsor should incorporate into its concession agreement the public sponsor's obligation to evaluate the concessionaire's performance and report as the law requires. A public sponsor can find the requisite statutory basis for his or her obligations at <https://www.govinfo.gov/content/pkg/PLAW-117publ58/html/PLAW-117publ58.htm> (Public Law 117-58, § 11508 and Public Law 117-58, § 70701).

¹⁹ 49 U.S.C. 116(e)(3)(A)(iii) and (iv) and Pub. L. 117-58, sec. 11508(b) (2021).

²⁰ Pub. L. 117-58, sec. 11508(b).

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