



July 15, 2014

Ms. Renee Sigel  
Division Administrator  
Pennsylvania Division  
Federal Highway Administration  
228 Walnut Street, Room 508  
Harrisburg, Pennsylvania 17101-1720  
Email: renee.sigel@dot.gov

**Re: Pennsylvania Department of Transportation “SEP-15” Request for Variances from 23 CFR 636.109(b)(6) and (7) in connection with the Pennsylvania Rapid Bridge Replacement Public-Private Partnership Project**

Dear Division Administrator Sigel:

## 1. INTRODUCTION

This letter constitutes an application to the Federal Highway Administration (**FHWA**) by the Pennsylvania Department of Transportation (**PennDOT**) for approval pursuant to “Special Experimental Project Number 15” (**SEP-15**) to deviate from portions of clause (6) and clause (7) of 23 CFR 636.109(b) regarding the involvement of a developer and consultants in preparing documentation required by the National Environmental Policy Act of 1969, as amended (**NEPA**). This application relates to the Pennsylvania Rapid Bridge Replacement Public-Private Partnership Project (the **Project**).

The Project will be the first “multi-asset” transportation project of its kind to be procured in the United States as a public-private partnership. If granted, the requested variance will enable PennDOT and FHWA to evaluate the efficiencies, if any, of using a single contractor for all phases of the Project, including the NEPA process. If shown to be an innovation of value to the Federal Aid Highway Program (and if and when duly codified by law or regulatory action), the approach may have application nationwide as a project delivery method for addressing the systemic problem of structurally deficient bridges in the United States.

PennDOT is procuring the Project in compliance with relevant federal regulations in order to qualify the Project for Federal assistance. The U.S. Department of Transportation (**USDOT**) has made a conditional allocation of private activity bonds (**PABs**) for the Project in the principal amount of \$1.2 billion.

## 2. SEP-15 AND PENNDOT’S APPROACH IN SUBMITTING THE APPLICATION

Pursuant to its authority set forth in 23 U.S.C. 502(b), FHWA established SEP-15 to encourage tests and experimentation in procurements of federal aid transportation projects. Among the specific objectives of SEP-15 is the promotion of project management flexibility, innovation, improved efficiency, and timely project implementation.

In connection with prior SEP-15 applications, FHWA has recognized that experimentation, by its nature, requires the assumption of risk and that, without the assumption of risk, the federal-aid highway program cannot receive the benefit of experimentation for which SEP-15 was established.

In Section 5 of this application, PennDOT sets forth a series of terms and conditions that eliminate, or mitigate, the risk of prejudicial actions for the Project. Such terms do not replicate the protections of clauses (6) and (7) completely, however, and deliberately so. The purpose of the experiment contemplated by this application is to evaluate whether certain limitations on the activities of design-builders and consultants can be modified to achieve efficiencies without compromising the objectives for which clauses (6) and (7) were promulgated. While it is the specific purpose of this application to deviate from FHWA policy, it should be fully understood that there is no intent to alter the required tasks associated with the NEPA process. It is on this basis that PennDOT respectfully submits this application.

### 3. PROJECT BACKGROUND

The Project encompasses the design, construction, financing, and lifecycle maintenance of approximately 559 bridges (each, a **Replacement Bridge**) that will replace structurally deficient bridges in the Commonwealth of Pennsylvania (the **Commonwealth**) through a public-private transportation partnership agreement (the **PPA**)<sup>1</sup> in order to accelerate the design and construction of the Replacement Bridges. The expected time required for design and construction is approximately 3.5 years. Additional details on the Project are included in **Exhibit 1** of this application.

From an environmental perspective, all Replacement Bridges included in the Project are scoped as a Categorical Exclusion (**CE**), and the majority of the bridges are generally classified as small bridges. Of these bridges, 376 are less than 50 feet in length, 142 are between 50 feet and 100 feet, and 41 are over 100 feet. PennDOT completed an initial screening of the Replacement Bridges and completed the initial scoping field view and scoping documentation. As a result of the scoping field views, the Replacement Bridges have been scoped as follows:

- (a) 464 Replacement Bridges are eligible for a “stipulated” categorical exclusion under the Bridge and Roadway Programmatic Agreement (BRPA)<sup>2</sup>; and
- (b) 95 Replacement Bridges are eligible for Level 1 CEs.

This request for a variance applies only to the “**Remaining Eligible Bridges**” as described in **Exhibit 1**.

### 4. PURPOSE AND EXPECTED VALUE OF THE EXPERIMENTAL FEATURE

#### 4.1 Purpose

PennDOT is requesting a variance of portions of clauses (6) and (7) of 23 CFR §636.109(b) in order to evaluate the efficiencies, if any, of a public-private partnership procurement involving bridge bundling—specifically streamlining the process, and accelerating the time, required to deliver a project which will result in a substantial reduction of project costs. To this end, PennDOT intends to have the Development Entity complete the required preliminary engineering, conduct NEPA studies, and prepare

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<sup>1</sup> The PPA is authorized by Act 88 (2012) of the Commonwealth (74 Pa. C.S. 9101 *et seq.*).

<sup>2</sup> The Bridge and Roadway Programmatic Agreement (BRPA) is an agreement between FHWA PA Division and PennDOT. The BRPA applies to a subset of projects that: (a) qualify as a CE Level 1; (b) are in the same approximate footprint; (c) modifications compared to the existing bridge do not exceed certain criteria; (d) ensure that wetland impacts do not exceed 0.05 acres; (e) have no adverse effects under Section 106; (f) “no conflict” or “no effect” for T&E species; and (g) do not require an individual Section 4(f) evaluation.

NEPA documentation for each of the Remaining Eligible Bridges. The Development Entity will select and contract with the consultant who completes the NEPA studies and the NEPA documentation. Clauses (6) and (7) of 23 CFR 636.109(b) are intended to prevent the developer of a project, whether in its capacity as the design-builder or a consultant, from prejudicing the NEPA analysis with respect to the Project. The requested variances are as follows:

- (a) *Clause (6): The design-builder must not prepare the NEPA document or have any decisionmaking responsibility with respect to the NEPA process.* PennDOT is requesting a waiver from the requirement that the design-builder not prepare the NEPA document, provided that decision-making responsibility will remain with PennDOT and FHWA, as applicable.
- (b) *Clause (7): Any consultants who prepare the NEPA document must be selected by and subject to the exclusive direction of the contracting agency.* PennDOT is requesting a waiver from the requirement that PennDOT select the consultant that prepares the NEPA document and retain exclusive control over the consultant.

In order to achieve the purpose of such clauses, PennDOT and FHWA, as applicable, will retain control over the design-builder's and consultant's Project deliverables by retaining full approval authority in the NEPA process consistent with the purposes of clause (6) and clause (7).<sup>3</sup> The difference between the arrangement contemplated by this application, on the one hand, and PennDOT's current practices, on the other, is that: (i) the design-builder will participate in the preparation of the NEPA documents, and (ii) the consultant will not be directly engaged by PennDOT nor under PennDOT's exclusive control but instead engaged by PennDOT's private partner under the PPA.

The **P3 Bridges Screening, Scoping, and NEPA Decision Annotated Flowchart** as provided in **Exhibit 2** describes the early project development actions performed by PennDOT along with the NEPA process that will be undertaken for this Project.

## 4.2 Expected Value

If permitted as an Experimental Feature and subject to the conditions described below in Section 5, the Development Entity's consultant participation in developing NEPA documentation will enable PennDOT to procure the Project under a public-private partnership procurement achieving efficiency in implementing the Project, project acceleration, and cost reductions while maintaining the objectives of clauses (6) and (7) of 23 CFR 636.109(b). The following are additional details on the benefits expected to be realized by transportation agencies and the public if the requested deviations are approved by FHWA:

- (a) Variance from clause (6) reduces the overall timeline of a typical design-build bridge project by approximately 8 months. Refer to **Exhibit 3** for a comparison of project timelines for a standard design-build process and a design-build process with the requested SEP 15 variances.
- (b) Variance from clause (6) & (7) eliminates the time and cost associated with procuring and managing separate consultant contracts to prepare the NEPA documents. Given PennDOT's regular program and the additional projects being advanced through its Decade of Investment program, if PennDOT has to prepare the documentation necessary for NEPA clearances, PennDOT will have to procure the services of another consultant.

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<sup>3</sup> Presently, PennDOT uses consultants to complete the NEPA process and documentation (which includes using the PennDOT CE Expert System).

- (c) Variance from clause (7) reduces costs by allowing the Development Entity to obtain the most appropriate and cost-effective professional services in preparing the NEPA documents for the individual bridges. PennDOT's standard practice for preparation of NEPA documents involves a consultant contract for services that includes the study of environmental variables that may or may not be fully definable in the early stage of the project. For this Project, the Development Entity will be able to structure the NEPA document development work tasks to bundle similar services and eliminate or minimize contingency tasks.
- (d) Variance from clause (6) allows earlier incorporation of innovative solutions because the Development Entity will be completing the preliminary design while considering the innovative concepts of an individual contractor or product supplier. Therefore the need to redesign a bridge in final design will be eliminated resulting in fewer re-evaluations, right-of-way revisions, and environmental impacts.
- (e) Variance from clauses (6) & (7) benefits environmental resource agencies by allowing the Development Entity to group similar projects and coordinate reviews to minimize the draw on staff resources.
- (f) Variance from clause (6) benefits PennDOT since the same entity will develop, design, and implement the mitigations approved by PennDOT and FHWA, as applicable, which will result in greater efficiencies and more successful mitigation with input from the construction personnel with regard to constructability and practicality issues surrounding the implementation of the mitigation.
- (g) Variance from clause (6) benefits PennDOT because prospective Development Entities will be able to price their proposals based on being able to determine when to build each specific bridge with reduced reliance on third parties having to perform work critical to advancement of the Project. This will enable the Development Entity to complete bridges at the lowest cost possible by coordinating the logistics of the design, supply, material, and construction components for each bridge within the structure of the overall Project so as to achieve maximum efficiency in delivery of the Project.
- (h) Variance from clauses (6) & (7) benefits the public because this streamlined process results in substantial time savings in delivering approximately 559 bridge replacements in a way that saves tax dollars and improves connectivity to the transportation network earlier than otherwise, which ultimately translates to time and cost savings to the traveling public by minimizing the disruption to daily travel caused by extended detours and navigating active work zones.

## **5. EXPERIMENTAL CONDITIONS**

As a condition of FHWA's authorization of the requested deviations, PennDOT will incorporate various controls into the Project that serve to ensure the Development Entity and its consultants perform the delegated NEPA process tasks to the quality and completeness expected and provided on PennDOT's regular projects. More specifically, PennDOT will require the Development Entity, in accordance with the PPA, to submit each categorical exclusion evaluation or other NEPA documentation to PennDOT for its substantive review and independent evaluation. PennDOT will undertake, pursuant to its Project Stewardship and Oversight Agreement with FHWA, to perform such reviews, and after independently evaluating the information will approve or disapprove each submittal of NEPA documentation in accordance with the terms of the PPA. In addition, the PPA and its Technical Provisions for the Project includes numerous safeguards to ensure that the integrity of the NEPA process is maintained.

- (a) **Use of Existing Systems.** The Development Entity will use PennDOT's standard systems such as the CE Expert System, Project Path<sup>4</sup>, and the Environmental Commitments and Mitigation Tracking System for the completion of the NEPA/Section 106 documents and to track the completion of the mitigation. PennDOT will use its access to these systems for purposes of reviewing and approving the NEPA documentation and assuring the completion of required mitigation. These systems have a formal quality control and approval process.
- (b) **Section 106 safeguards include:**
  - (i) The individual(s) proposed by the Development Entity must meet specific qualifications and must have successfully completed training with PennDOT, the Pennsylvania Historical and Museum Commission (the **SHPO**), and FHWA.
  - (ii) The use of Project Path, of which PennDOT will monitor.
  - (iii) A quality assurance program by SHPO, PennDOT, and FHWA to independently review a sample of projects completed on a monthly basis for the first 90 days, then at 3-month, 6-month, and 12-month intervals.
  - (iv) PennDOT's involvement in the dispute resolution process.
- (c) **NEPA Approval.** For approval delegated to PennDOT, PennDOT will substantively review and comment on and require revisions to documents submitted for approval. Documentation not meeting current submission standards or requirements will be returned to the Development Entity and shall be revised by the Development Entity to meet those standards. When reviewing NEPA documents, PennDOT will compare this document to the scoping form that was prepared by PennDOT. If there is an inconsistency, clarification will be required from the Development Entity. In addition, PennDOT and FHWA, as applicable, will independently review a sample of the projects approved on a monthly basis for the first 90 days, then at 3-month, 6-month, and 12 month intervals.
- (d) **Mitigation.** Any change in NEPA-related mitigation during final design, construction, or maintenance will require PennDOT, and as applicable FHWA, review and approval.
- (e) **Reporting.** The Development Entity is responsible for providing PennDOT the status of each bridge on a quarterly basis for the purpose of managing the progress of NEPA clearance and permitting process.
- (f) **No Final Design Prior to NEPA Approval.** The Development Entity is not permitted to commence final design activities—e.g., right-of-way acquisition—until receiving NEPA approval (which is also needed to receive Design Field View approval from PennDOT to move into Final Design).
- (g) **Public Involvement.** A PennDOT representative will attend public meetings held for the individual bridges to ensure that the proceedings are properly administered consistent with PennDOT's public involvement plan that has been approved by FHWA.

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<sup>4</sup> Project Path is a publically accessible tracking system for the Section 106 process, with document warehouse capability and automated notification via email. Project Path supports consulting party consultation and public involvement.

- (h) **Environmental Compliance Managers.** The Development Entity is required to designate a full-time Environmental Compliance Manager who will report all issues directly to PennDOT. The Environmental Compliance Manager will coordinate with PennDOT, the Development Entity's team, and appropriate regulatory agencies.

PennDOT will also designate its own Environmental Compliance Manager, who will be responsible for independent review of the Development Entity's compliance with the state and federal regulations during the NEPA process, design development, and construction.

- (i) **Permitting.** In addition to the monitoring conducted by the Environmental Compliance Manager, the Development Entity will submit to PennDOT a copy of the approved CEE, a report of the wetlands and stream impacts, and the mitigation proposed for the Chapter 105 and Section 404 permit requests prior to submitting the permit application to the agencies. PennDOT will compare the impacts to ensure that the impacts and mitigation reported in the NEPA document are being carried forward into the permit process.
- (j) **Replacement Bridge Process.** The PPA ensures that the Development Entity's management of the NEPA clearance process is undertaken impartially and without prejudice. This process will also ensure the avoidance of a conflict of interest for the Development Entity by eliminating certain pecuniary harm to the Development Entity for NEPA-related decisions by the relevant agencies. The following aspects of PPA are pertinent:
  - (i) Where a specific bridge becomes problematic for any reason related to the individual bridge, PennDOT, in its sole discretion, can remove that bridge from the Project provided that a new replacement bridge is designated via a change order. All change orders for the Project are subject to review and approval by FHWA.
  - (ii) The change order process used to affect the removal/replacement of a bridge will operate so as to ensure that the Development Entity is left in a position neither better nor worse as a result of the removal of the bridge. In other words, if the FHWA concurs, PennDOT will introduce an alternative bridge into the Project so as to maintain equilibrium of the Development Entity's financial interest in the Project.
  - (iii) All design documents and work developed for a bridge that is removed from the Project will be transferred to PennDOT for its unrestricted use. The Development Entity will be compensated for the work completed on the removed bridge via the change order.
  - (iv) Replacement bridges will be drawn from either a predetermined grouping of bridges or from bridges in our regular capital improvement program which currently includes about 800 bridges replacement bridges valued at over \$1.4 billion in the upcoming four years.
- (k) **Time of Completion:** The time to complete the Project from Commercial Close to completion of construction is 42 months. It is expected that 99 percent of the bridges will be completed within this time frame. Inherently, this allows for about 5 bridges to extend beyond the 42-month period. This time frame allows the Development Entity to schedule the bridges with minimal right of way and environmental actions earlier, and bridges with more complex design-related actions toward the end of the completion duration.

- (l) **Environment Mitigation as Compensation Event:** The Development Entity will receive no financial benefit and bear no financial risk not already priced in its proposal related to environmental mitigation or project delays resulting from environmental findings in the NEPA process. PennDOT will compensate the Development Entity separately for the cost of NEPA-related environmental mitigation actions. This includes final design and construction tasks such as wetland replacement, Phase III Archaeological data recovery excavations, associated interpretive materials, recordation of the historic bridge and associated historic district, and context sensitive design elements.

Given the process set forth in the flowchart attached as **Exhibit 2** and the above safeguards, there is no material increase in the risk that the NEPA process will be compromised when the NEPA studies and documents are completed by the same entity that completes final design and construction of the Replacement Bridges.

## 6. **WORK PLAN**

Critical to the success of the Experimental Feature and timely procurement of the Project is adherence by PennDOT and FHWA to a work plan and schedule that is consistent with the schedule for the procurement and execution of the PPA. PennDOT proposes the work plan and schedule for itself and FHWA set forth in **Exhibit 4** of this application.

## 7. **GOALS**

Having the Development Entity perform the preliminary engineering, the NEPA analysis and documentation, the final design, and construction for this Project as described herein will serve the following goals:

- (a) Expedite the delivery of each Replacement Bridge without compromising the intent of the applicable regulations under 23 CFR 636.109.
- (b) Decrease the cost of the design, construction, and maintenance of the Replacement Bridges to the taxpayer.
- (c) Encourage flexibility, innovation, and alternative approaches to completing preliminary design.

## 8. **MEASURES/EVALUATION**

8.1 This experiment will be evaluated on a range of factors, including time savings to PennDOT, cost savings to the public, risk allocation optimization, and time savings for the completion of the Project. Specifically, PennDOT will:

- (a) Track the time it takes for the replacement of bridges of a similar NEPA level of clearance state-wide outside of this Project, and compare these projects to the time it takes to complete the Replacement Bridges in this Project from the initiation of NEPA to the completion of construction to evaluate the benefits identified in Sections 4.2(a), (b), and (c).
- (b) Track the number of Replacement Bridges that need re-evaluations under NEPA due to design changes or late-discovered resources to evaluate the benefit identified in Section 4.2(d).

- (c) Obtain feedback from the reviewing agencies to determine if the grouping of projects had the effect of reduced review time and manpower and to determine the success of mitigation to evaluate the benefits identified in Sections 4.2(e) and (f).
- (d) Survey the Development Entity on costs expended for NEPA activities to evaluate the benefits identified in Sections 4.2(c), (g), and (h).

8.2 To evaluate the integrity of the NEPA process, PennDOT will:

- (a) Obtain feedback from the FHWA Division Office and the SHPO regarding the monitoring completed under the Section 106 process.
- (b) Track any follow-up needed with the Development Entity due to inconsistencies with the scoping documentation for the Replacement Bridges.
- (c) Track the number of bridge change orders related to the NEPA process and the reasons for the change orders.

## 9. REPORTING

PennDOT will transmit to FHWA an interim report on the Experiment within six months after initiation of preliminary design work on the Replacement Bridges. Additional interim reports will be transmitted at a maximum 6-month interval. A final draft project report containing all findings will be transmitted within 6 months of the completion of the construction of all Replacement Bridges under the PPA. The following information will be included in the reports:

- (a) Descriptions of any reaction by the industry to the use of the Experimental Feature as described herein.
- (b) Documentation of the NEPA submissions prepared by the Development Entity and approved by PennDOT, and the associated timeframes compared to similar bridge replacement projects completed outside this Project.
- (c) Descriptions of time-savings that result from the deviations requested herein as well as corresponding cost benefits.
- (d) Descriptions of the findings from the Section 106 and NEPA monitoring.
- (e) Listings of any bridges substituted for Replacement Bridges, with reasons for the substitutions.
- (f) Discussions of any major problems or issues that occur as a result of the Experimental Feature and how they were resolved.

Time is of the essence in obtaining approval of the experimental elements in order for PennDOT to proceed with procurement as planned for the Project. The final RFP had been scheduled for release on July 3, 2014, and the proposals are currently due on September 29, 2014. Without approval by the end of July, PennDOT will have to undertake undesirable actions to revise the RFP so as to fully comply with the CFR.

While there are several options at hand to comply, none are favourable to the Project. PennDOT expects the Project will be delayed up to 12 months and cost impacts of up to \$25 million or more are anticipated to the Commonwealth. Additionally, all available options transfer a multitude of technical tasks and managerial responsibilities back to PennDOT.



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We truly appreciate the cooperation and efforts from all staffs in your office as well as your headquarters and look forward to ongoing dialog to obtain a meaningful outcome to this request.

Please feel free to contact me at (717) 787-8765 as you review our application. In addition, please do not hesitate to request PennDOT's relevant staff to meet with your team or your colleagues in Washington, D.C., in order to provide any clarifications or further explanations that you think advisable.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Bryan Kendro". The signature is fluid and cursive, with the first name "Bryan" being more prominent than the last name "Kendro".

Bryan Kendro  
Director  
Office of Policy & Public-Private Partnerships

Enclosures

- Exhibit 1: Rapid Bridge Replacement Project: Description and Schedule
- Exhibit 2: P3 Bridges Screening, Scoping, and NEPA Decision Annotated Flow Chart
- Exhibit 3: Comparison of Design Build Processes
- Exhibit 4: Work Plan and Schedule for SEP-15 Variance

## EXHIBIT 1

### RAPID BRIDGE REPLACEMENT PROJECT: DESCRIPTION AND SCHEDULE

#### 1. PROJECT OVERVIEW

- (a) The Project involves the design, construction, financing and maintenance of approximately 559 Replacement Bridges.
- (b) The Project is expected to create efficiencies through economies of scale, innovation and optimal risk-allocation that will allow PennDOT to deliver more bridges faster at a lower whole-life cost than is possible when using a traditional “design, bid, build” procurement. The Project will also help improve the connectivity of the Commonwealth’s transportation network, while minimizing the impacts on the travelling public. The improved connectivity, including the removal or modification of certain weight restrictions on certain Replacement Bridges, will increase the efficiency of freight and commercial movements, which benefits the economy of the Commonwealth. PennDOT will seek innovative solutions from the Development Entity that is challenged with delivering quality bridges on a large scale as quickly as possible, while providing good value and minimal inconvenience to the public.

#### 2. SCOPE OF WORK

The Development Entity will design, build, finance and maintain the Project in return for Availability Payments and Milestone Payments.

##### 2.1 Early Completion Bridges

Approximately 92 of the Replacement Bridges are referred to as the Early Completion Bridges. In the interest of supporting accelerated delivery of the Early Completion Bridges, PennDOT will assume certain responsibilities and risks with respect to the environmental clearance and permitting of the Early Completion Bridges. The Early Completion Bridges are situated in two clusters: the first cluster being located in the northeast part of the Commonwealth (PennDOT Districts 3, 4, and 5) and the second cluster being located in the southwest part of the Commonwealth (PennDOT Districts 10, 11, and 12).

##### 2.2 Remaining Eligible Bridges

The remaining 467 replacement bridges are referred to as the Remaining Eligible Bridges. The Remaining Eligible Bridges are located throughout the Commonwealth.

##### 2.3 Early Project Development

PennDOT conducted the following activities as part of the early project development process for each bridge:

- (a) Initial Screening: PennDOT started with over 1,000 bridges as potential candidates for the Project. These bridges were evaluated using PennDOT’s Linking Planning and NEPA process consisting of 31 layers of data including wetland, agricultural lands, waste sites, cultural resource GIS, wild trout and stocked streams, and 6(f) resources. The initial screening process involved the following actions:
  - (i) Bridges that were known to be individually eligible resources were eliminated using the cultural resource GIS of known resources and coordination with the SHPO.

- (ii) The PA Department of Conservation and Natural Resources (DCNR) reviewed the bridges for potential Section 6(f) and state grant issues on publicly owned lands.
  - (iii) Most bridges that could potentially result in residential or commercial displacements were eliminated.
  - (iv) PennDOT held two workshops and various other meetings with the following resource agencies to discuss the implementation of the Project: USACE; USFWS; USEPA; SHPO; the PA Fish and Boat Commission; the PA Game Commission; the PA Department of Environmental Protection; and DCNR.
- (b) Scoping. PennDOT District offices conducted the initial scoping field view and scoping the bridges using PennDOT's standard scoping process.
- (i) An interdisciplinary team, including environmental staff, conducted field views to initially evaluate the potential resources in each of the bridge areas.
  - (ii) PennDOT conducted screening of bridges areas via a Threatened and Endangered database which is controlled by agencies with jurisdiction.
  - (iii) PennDOT's Cultural Resource Professionals performed site visits and checked data bases to evaluate the potential for historic and archaeological resources.
  - (iv) The scoping document completed by the PennDOT Districts indicates whether the Project has been scoped as qualifying under the Bridge and Roadway Programmatic Agreement (BRPA), a Level 1 CE, or a Level 2 CE. FHWA will be involved with field views in accordance with our standard practice. As a result of the scoping field views the remaining bridges have been scoped as follows: BRPA—464; CE Level 1—95.

These actions serve to ensure that the bridges selected for this project are eligible for a Categorical Exclusion Evaluation or PennDOT's Bridge and Programmatic Agreement (BRPA) and do not require and Environmental Assessment or Environmental Impact Statement. Additionally, the information in these actions provides substantial background information for the Development Entity's use in understanding the environmental features that may be encountered at the individual bridge sites.

## **2.4 Certain Environmental and Permitting Matters**

### **(a) Early Completion Bridges**

#### **(i) NEPA**

PennDOT will be responsible for qualifying, on or before March 31, 2015, each Early Completion Bridge for a categorical exclusion under NEPA (each, a CE) on the basis of the dimensions, characteristics, and impacts of the conceptual designs and "areas of potential effect" (APE) associated with each Early Completion Bridge.

#### **(ii) Other PennDOT Obtained Governmental Approvals**

PennDOT will be responsible for procuring, on or before March 31, 2015, all other PennDOT Obtained Governmental Approvals required for each Early Completion Bridge on the basis of the dimensions and characteristics of the conceptual designs and

APEs associated with each Early Completion Bridge. Such other PennDOT Obtained Governmental Approvals may include:

- (A) A Section 404 Permit and a Section 401 Permit from the Army Corps of Engineers (where applicable);
- (B) A determination of the potential presence of threatened and endangered species for review by the USFWS and certain state agencies;
- (C) A Section 106 review for purposes of the National Historic Preservation Act; and
- (D) Compliance with the Pennsylvania Dam Safety and Encroachments Act.

(b) Remaining Eligible Bridges

- (i) The Development Entity will be responsible for procuring, in conjunction with PennDOT:
  - (A) The NEPA clearance of each Remaining Eligible Bridge; and
  - (B) Any other PennDOT Obtained Governmental Approvals needed to undertake the Work with respect to each Remaining Eligible Bridge.
- (ii) The Development Entity will obtain the permits under Section 404, PA Chapter 105 (the state counterpart to the Section 404 permit program), and the NPDES permit (if required). The Development Entity qualifies, as a permittee under each of these permit programs, as an operator and the entity with primary responsibility for the bridge, especially given its responsibility to maintain the bridges for approximately 25 years after construction. PennDOT has coordinated with the U.S. Army Corps of Engineers (USACE) and the Pennsylvania Department of Environmental Protection (PaDEP) regarding the permitting of the bridge replacements and both agencies agree that the Development Entity is an acceptable and proper applicant.
- (iii) PennDOT will be involved with other Environmental issues:
  - (A) PennDOT will coordinate with FHWA when the CE requires FHWA approval.
  - (B) For any consultation required for federally listed T&E species, PennDOT will consult with FHWA and USFWS.
  - (C) Under Section 106, PennDOT will be involved in:
    - I. The training and approval of the delegated Cultural Resource Professionals;
    - II. The Elevation and Dispute Resolution process, in any coordination with FHWA, the SHPO, and tribes required to resolve adverse effects;
    - III. Tribal consultation;

- IV. The drafting of any required MOA/LOA and circulate the MOA/LOA for signature.
  - (D) For Section 4(f) resources, PennDOT and/or FHWA will approve any applicable checklist (i.e., Programmatic Agreements) and Individual Section 4(f) Evaluations.
  - (E) Public meetings held for the individual bridges to ensure that the proceedings are properly administered consistent with PennDOT's public involvement plan that has been approved by FHWA
- (iv) FHWA will:
- (A) Participate in scoping field views in accordance with our standard practice and will review and approve Level 2 CEEs.
  - (B) Participate in consultation associated with formal consultations for T&E impacts, and in consultation associated with the resolution of adverse impact under Section 106, including the review and execution of any required MOA/LOA.
  - (C) Be consulted regarding the selection of the Cultural Resource Professionals and will be involved in their training and monitoring.
  - (D) Approve any applicable checklist (required under existing joint policies) and individual Section 4(f) Evaluations.

### **3. REPLACEMENT BRIDGE PROCESS**

- (a) Where a specific Remaining Eligible Bridge becomes problematic for any reason PennDOT, in its sole discretion, can remove that bridge from the Project provided that a new replacement bridge is designated and introduced into the Project via a change order. All change orders for the Project are subject to review and approval by FHWA.
- (b) The change order process used to affect the removal/replacement of a bridge operates so as to ensure that the Development Entity is left in a position neither better nor worse as a result of the removal of the bridge. In other words, if the FHWA concurs, PennDOT will introduce an alternative bridge into the Project with substantially similar attributes. This will include initiation of a change order to offset any additional costs that may be associated with the new bridge, so as to maintain equilibrium of the Development Entity's financial interest in the Project.
- (c) All design documents and work developed for a bridge that is removed from the Project will be transmitted to PennDOT for its unrestricted use. The Development Entity will be compensated for the work completed on the removed bridge through a change order.
- (d) Replacement bridges will be established from either a predetermined grouping of bridges or from bridges under design in our regular capital improvement program.

### **4. INVESTIGATIONS OF PROJECT SITES**

For all bridges, PennDOT is conducting investigations of the Project Sites (scoping field views, geotechnical studies, and detour analysis). PennDOT will provide the preliminary results of such

investigations to the Proposers as Disclosed Information. For the avoidance of doubt, such results constitute Disclosed Information.

**5. UTILITIES**

The Development Entity will be responsible for coordinating and causing all Utility Adjustments necessary in order to comply with its obligations under the Project Documents.

**6. RIGHT OF WAY**

PennDOT will be responsible for acquiring at its own expense the right of way that comprises the Project Site of each Replacement Bridge.

**7. TIME OF COMPLETION**

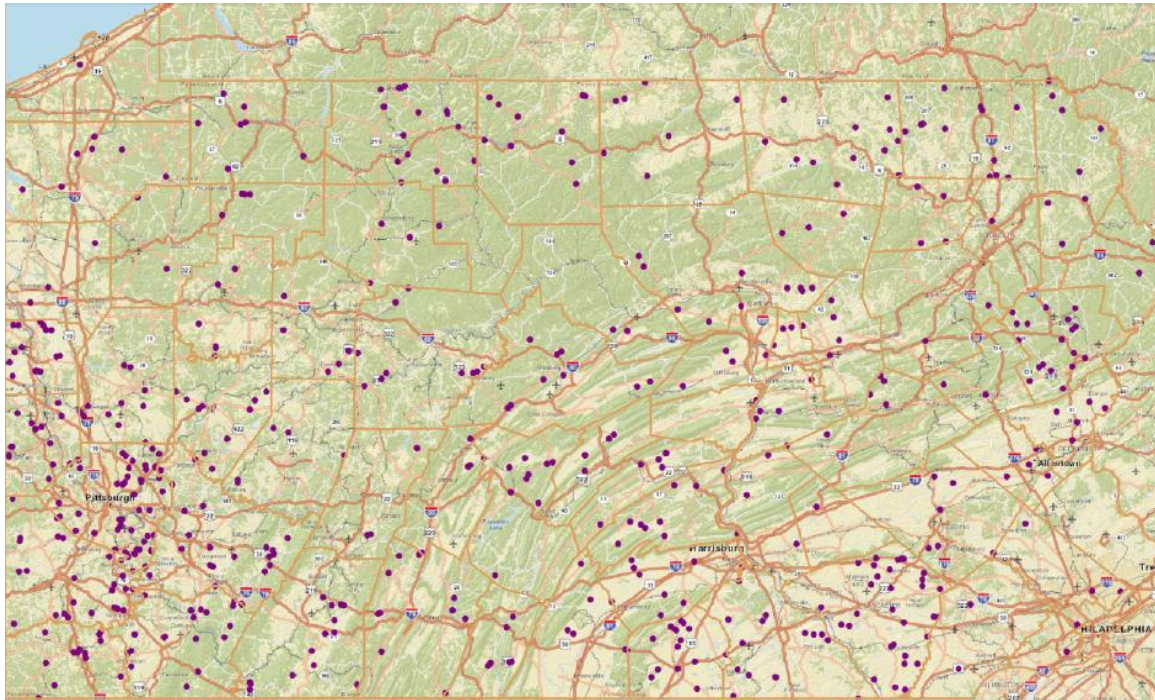
The time to complete the Project from Commercial Close to completion of construction is 42 months. It is expected that 99 percent of the bridges will be completed within this time frame. Inherently, this allows for about 5 bridges to extend beyond the 42-month period. The Development Entity is responsible for maintenance of the bridges for a period of 25 years after completion of the individual bridges.

**8. CERTAIN KEY DATES**

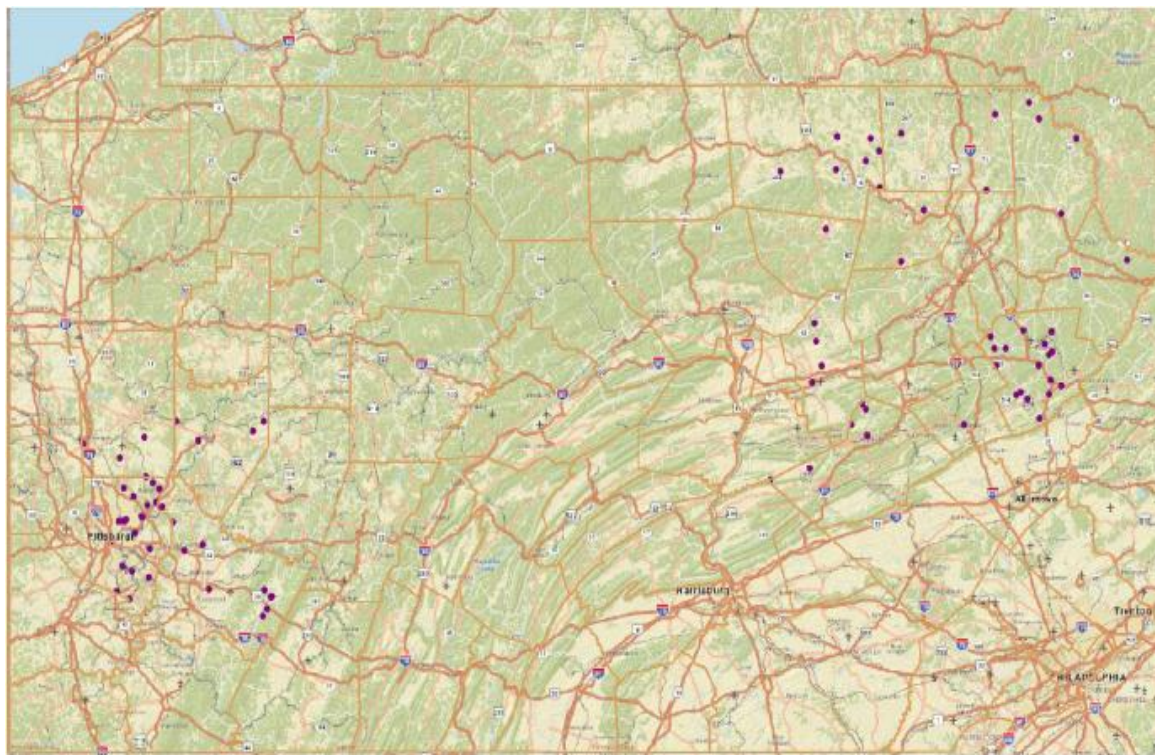
<b>EVENT</b>	<b>DATE</b>
Issuance of First Industry Review Draft of RFP Documents	April 4, 2014
Issuance of Second Industry Review Draft of RFP Documents	May 16, 2014
Issuance of Third Industry Review Draft of RFP Documents	June 3, 2014
Issuance of Fourth Industry Review Draft of RFP Documents	July 3, 2014
Issuance of Final Request for Proposals	End of July, 2014
Proposal Due Date	September 29, 2014
Anticipated Date of Announcement of Preferred Proposer	October 31, 2014
Anticipated Commercial Closing Deadline	December 16, 2014
Completion of Construction	42 months after Commercial Close
End of Maintenance	25 years after completion of construction of the individual bridge

## 9. REPLACEMENT BRIDGES

### 9.1 All Replacement Bridges Included in the Project

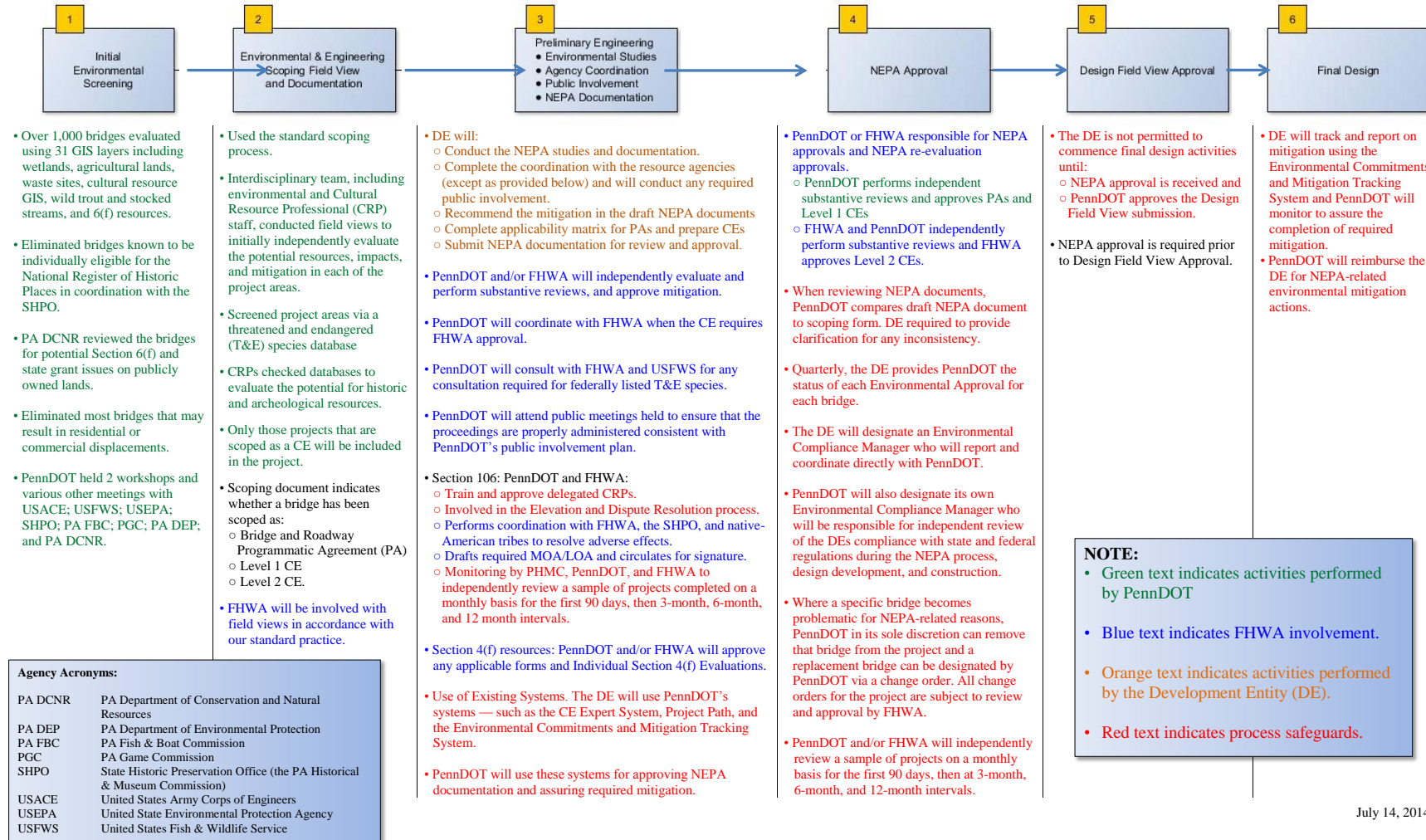


### 9.2 Early Completion Bridges



**EXHIBIT 2**

**P3 BRIDGES SCREENING, SCOPING, AND NEPA DECISION ANNOTATED FLOW CHART**

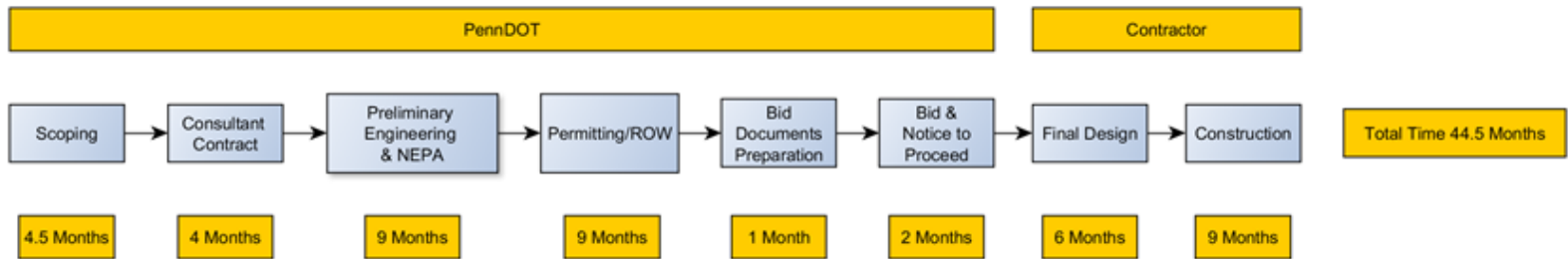




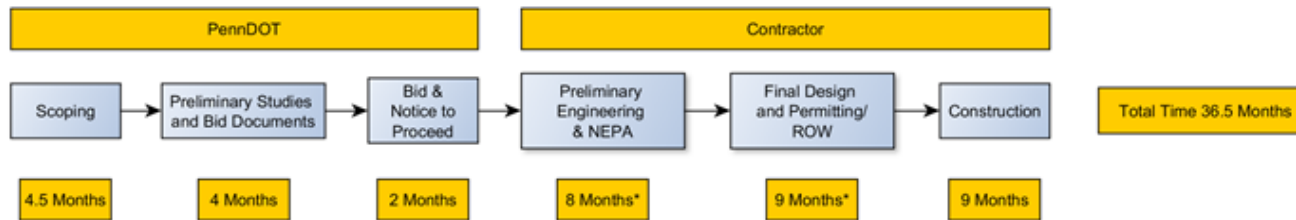
**EXHIBIT 3**

**COMPARISON OF DESIGN-BUILD PROCESSES**

**Standard PennDOT Design-Build Process**



**PennDOT Design-Build Process with SEP-15 Variances**



\* Time savings due to:

- Efficiencies from having a centralized design team
- A simplified set of build alternatives
- Bundling similar projects creates efficiencies

**EXHIBIT 4**

**WORK PLAN AND SCHEDULE FOR SEP 15 VARIATION  
PENNDOT RAPID BRIDGE REPLACEMENT PROJECT**

**Last Update: July 15, 2014**

<b>Date</b>	<b>Activity</b>	<b>Responsible Party(ies)</b>	<b>Comments/Status</b>
	<b>1. SEP 15 Process for Approval</b>		
4/16/2104	Submit Concept Paper to FHWA	PennDOT	Received feedback that submission needed more emphasis on the intent of experiment, benefits, and risks
5/30/2014 5/31/2014	Submit White Papers on Experimental Benefits and Risks to FHWA	PennDOT	Complete
6/6/2014	Video Conference with FHWA to discuss Concept Paper	PennDOT, FHWA	Received request to provide more information on the proposed NEPA approval process along with a NEPA Process Flowchart
6/11/2014	Submit letter providing more information on the proposed NEPA approval process along with a NEPA Process Flowchart to FHWA	PennDOT	Complete
6/13/2014	Feedback to PennDOT on 6/11/2014 letter	FHWA	Received feedback to complete and transmit the SEP 15 Application
6/16/2014	Submit Draft Final SEP 15 Application to FHWA	PennDOT	Complete
6/19/2014	Receive feedback to Draft Final SEP 15 Application	FHWA	Received feedback
6/20/2014	Submit SEP 15 Application to FHWA	PennDOT	Complete
6/26/2014	Receive feedback on Final SEP 15 Application	FHWA	Received feedback
7/01/2014	Submit Revised Final SEP 15 Application	PennDOT	Complete
7/9/2014	Receive feedback on Revised Final SEP 15 Application	FHWA	Received feedback
7/15/2014	Submit Revised Final SEP 15 Application	PennDOT	
7/25/2014	Approve SEP 15 Application	FHWA	
	Prepare and submit Draft Early Development Agreement (EDA) to PennDOT	FHWA	
	Conference Call to discuss Draft EDA	PennDOT, FHWA	
	Distribute Revised Draft EDA to PennDOT	FHWA	
	Submit final comments on Draft EDA	PennDOT	
	Conference Call to discuss revised Draft EDA	PennDOT, FHWA	
	Sign EDA	PennDOT, FHWA	