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Implementation Plan for Public-Private Partnerships



Prepared for:

Washington State Joint Transportation Committee



Contents

- 1.0 Introduction 1**
- 2.0 Implementation Tasks..... 2**
 - 2.1 Task 1: Perform Education and Stakeholder Outreach 3
 - 2.2 Task 2: Develop Rules and Policies..... 4
 - 2.3 Task 3: Secure Resources to Support the Program 6
- 3.0 National Best Practices 8**
 - 3.1 Outreach and Education..... 8
 - 3.2 Administrative Options..... 9
 - 3.3 Data and Analysis 10

Appendices

Appendix A - Washington State Laws & Rules

Appendix B - Sample P3 Contracts

Appendix C - Sample Administrative Rules, Regulations, and Policies to Implement State P3 Programs



1.0 Introduction

This document presents an implementation plan for the recommended public-private partnerships (P3) provisions developed by the Joint Transportation Committee’s working group in late 2023 and early 2024. The provisions developed by the JTC workgroup are integrated into both the draft legislation framework (separate document) and this implementation plan.

The implementation plan addresses several of the changes that would be made to current law, with the intent of streamlining the P3 project delivery process to reflect other project delivery methods utilized by the Washington State Department of Transportation (WSDOT).

This plan begins with an overview of three implementation tasks, followed by detailed descriptions of each one. It closes with a brief overview of national best practices in P3 implementation, including examples drawn from technical, administrative, and stakeholder engagement areas.

2.0 Implementation Tasks

The implementation plan features three high-level tasks, each of which is further developed through a series of subtasks. The three main tasks are presented chronologically as follows.

- The first task is to perform **education and stakeholder outreach** to better understand the potential P3 market, identifying issues and concerns from potential third-party partners and public sector leadership. This task will require a low-to-moderate level of effort as it involves in-depth engagement with various stakeholders, and a short-term timeframe (i.e., one year to complete).
- The second task is to conduct formal **rulemaking and other administrative proceedings** to define processes, roles and responsibilities, schedules, and other procedural details of the P3 program. This task will require a high level of effort, as it will require outlining and specifying foundational elements of the P3 program. A medium-to-long term timeframe (i.e., within one to two years to complete) can be expected.
- The final task is to **secure both internal and external resources** necessary to develop P3 projects from initial project identification to procurement and implementation. The anticipated effort for this task is high, and a long-term timeframe (i.e., two years to complete) should be expected, considering the various stages involved in procurement of external professional resources and internal staffing.

The implementation plan defines who, what, when, why, and how for each of the three primary tasks, as well as the anticipated resource needs. This approach allows for an at-a-glance reference to support the state as it responds to changing agency needs, legislative priorities, and economic conditions.

- **Who** will be responsible for which tasks?
- **What** will be the scope of their work?
- **When** does this work need to be completed?
- **Why** are specific tasks identified, and how does each task support the overall goals and objectives for the P3 program?
- **How** will each task owner move forward with establishing a program that has the necessary guardrails to reflect the legislation, while allowing flexibility to move projects forward without additional legislative changes?
- Which **resource requirements** will be needed to execute the task, including both internal (i.e., staffing) and external (i.e., professional services) resources?

Table 2.1 provides a summary of the implementation plan, including the three primary tasks, lead agency, schedule, and resource requirements.

Table 2.1 Implementation Action Summary Matrix

Task	Description	Lead Agency	Timeline	Funding Requirements
Task 1. Education and Stakeholder Outreach	Perform education and stakeholder outreach to better understand the potential P3 market	WSDOT	Short-term (i.e., one year to complete)	Modest one-time funding of approximately \$0.5M will be needed to pay a communications/outreach firm, as well as cover internal staff expenses.
Task 2. Develop Rules and Policies	Conduct formal rulemaking and other admin proceedings to define processes, roles, responsibilities, schedules, and other procedural details of the P3 program	WSDOT	Medium-to-long term (i.e., within one to two years to complete)	Moderate one-time funding of approximately \$1M will be needed for technical, legal, and financial expertise when developing policies and procedures for the P3 program.
Task 3: Secure Resources	Secure both internal and external resources necessary to develop P3 projects from initial project identification to procurement and implementation	WSDOT	Long-term (i.e., two years to complete)	Funding up to approximately \$4.5M per P3 contract will be required. This sum will pay for legal, technical, and financial advisors, which cost approximately \$1.5M per advisor per procurement. A typical contract term is three years.

2.1 Task 1: Perform Education and Stakeholder Outreach

Task 1 involves conducting educational initiatives and outreach to understand the state of the potential P3 market, discern issues and concerns from potential third-party partners, and inform public-sector leadership of key tradeoffs and decision points in developing a P3 program.

Who: WSDOT should lead this education and outreach effort in collaboration with the Treasurer’s Office, the Governor’s Office, legislators, and industry stakeholders. Within WSDOT, this effort is anticipated to be led by the Innovative Partnerships Office, in collaboration with the construction division, the development division, and executive leadership.

What: Education and stakeholder outreach should include fact sheets and Q&A documentation to describe the provisions and potential impacts of the new legislation. Private sector outreach (“market sounding”) should be performed to better understand private-sector interest in P3 opportunities in Washington. A temporary steering committee comprising the Governor’s Office, Treasurer’s Office, WSDOT, and legislators should be established to work through legal, financial, or technical issues related to initial implementation of the legislation. This group can also confirm the goals and objectives of the P3 process and articulate guiding principles for implementation of the legislation.

When: These actions should be implemented immediately upon enactment of new legislation. This task should be considered a near-term initiative. The task is expected to take approximately six to 12 months to complete the development and dissemination of educational materials, establish audiences for market sounding, convene a temporary steering committee, and conduct initial meetings of the temporary steering committee.

Why: This task will ensure that private and public sector stakeholders – such as the Governor’s Office, Treasurer’s Office, Capital Projects Advisory Review Board, WSDOT project delivery and executive

leadership, and legislators – are well-informed about the provisions of the new law and understand how it alters the P3 process in Washington. The task is crucial in aiding key decision-makers to better define their goals, objectives, challenges, and opportunities in the development of P3 projects. It is also intended to convey a signal to the private sector regarding the state’s interest and intentions with respect to P3s. This process may involve issuing a written affirmation that consideration of P3 alternatives will be given in the project development process.

How: This education and engagement effort should help WSDOT identify opportunities, resource requirements, tradeoffs, and items that may not be acceptable in Washington.

The identification of potential unacceptable items will help the program avoid negative outcomes as it is being designed. Below are two examples of items that public-sector agencies may find unacceptable:

- Example 1: Limiting sovereign immunity, which refers to the legal doctrine that protects the government from being sued without its consent. In the context of P3s, states typically retain immunity from certain legal actions that could be brought against them by a private partner.
- Example 2: Limiting the State’s ability to pursue other planned improvements, such as those listed in long-range transportation plans (L RTPs). In some P3 contracts, the state is precluded from developing projects that could “compete” with a concessionaire’s facility. However, the state may desire to reserve the right to develop projects—for example, any that are already in L RTPs (formal documents that outline a state’s vision for transportation or infrastructure development for an extended period). The state could specify that projects listed in L RTPs at the time of proposal submission will be deemed known and accounted for by the private partner. In that case, the private partner could not request compensation if the planned project implemented by the State were to impact revenues for a P3 project.

Resource requirements: The resource requirements for this task are relatively modest, approximately \$0.5 million during the start-up phase (one-time funding). This task will require agency staff time and may also require engaging an outreach and communications specialist to develop necessary materials and to facilitate meetings and interviews.

2.2 Task 2: Develop Rules and Policies

Task 2 involves the completion of rulemaking and additional administrative procedures and agency policies to more precisely outline the processes, roles, responsibilities, schedules, technical specifications, and other formal requirements of the P3 program.

Who: WSDOT should lead the development of rules and internal policies.

What: These rules and internal policies should aim to ensure effective consideration of P3s in accordance with the new law through the subtasks below.

- Update **Washington Administrative Code (chapter 468-600 WAC)**. At a minimum, this process should make corresponding revisions to the WACs to align with new legislation, including new roles and responsibilities of WSDOT, Washington State Transportation Commission (WSTC), the Office of the State Treasurer, the Governor’s Office, and the Legislature; rules related to the solicitation procedures for P3 projects; and references to policy goals of the P3 program. This process should also consider potential technical updates to this chapter necessary for the

effective management of funds, P3 legal agreements, insurance coverage requirements for private parties, and other risk mitigation requirements for P3 projects.

- **Update WSDOT, WSTC, and Office of the State Treasurer’s Policies and Processes.** For WSDOT, this includes defining a process to identify candidate P3 projects (considering aspects like unsolicited vs. solicited bids, performance metrics, and screening tools) and establishing processes to integrate P3 initiatives into existing statewide and metropolitan planning processes. This task also includes defining the roles and responsibilities across internal divisions within WSDOT and clarifying the functions of any staff or offices with roles in delivering the P3 program. WSTC will need to pare any processes or policies it established under the prior P3 statute, RCW 47.29, and align any policies to match the new P3 law. Given an enhanced role under a new P3 law for the Office of the State Treasurer (OST) to review a P3 project’s plan of finance before that plan advances for approval by the State Finance Committee, OST may need to enact new policies and procedures to reflect the new P3 law.
- **Update Terms and Provide Guidance on Technical Methodologies.** For example, the term “public interest” used in the proposed legislation will need to be defined more clearly, both in describing a proposed P3 project and in drafting agreements with third-party partners. Additionally, guidance on how to perform both quantitative and qualitative Value for Money (VfM) analysis is needed.
- **Create Tools for Project Screening and Delivery Method Selection.** Project screening tools could be used by WSDOT as a part of the pre-established screening process to identify potential P3 opportunities from the State’s existing capital improvement program. Additional tools would support the evaluation of proposed projects across various P3 delivery mechanisms. VfM analysis, for example, must be performed once a reasonably accurate scope, cost, and schedule have been defined for a project. Emphasizing the iterative nature of the screening process, projects may be refined or discontinued for P3 at various stages. Additionally, this subtask includes creating templates for main agreements and instructions to P3 proposers.
- **Develop and Implement a Lessons Learned Reporting Requirement.** Given WSDOT’s long hiatus since last delivering a P3 project, the agency can improve its expertise and continuously improve the P3 program by conducting a regimented “Lessons Learned” analysis and report. Pennsylvania’s P3 program has incorporated this as a regular practice and has stated that such practices haven proven valuable to the agency. In PennDOT’s case, they conduct their analysis and document their learnings to date as part of their regular project reviews. Most recently PennDOT completed a detailed “Lessons Learned” report for their Rapid Bridge Replacement P3 Project, which involved replacing 558 structurally deficient bridges. Their report highlights the efficiencies gained (e.g., mass production of common bridge components) and the innovative delivery methods that have contributed to time and cost savings for taxpayers.

When: This task is a medium- to long-term initiative that can be initiated following initial stakeholder engagement and market sounding. A timeframe of about 12-24 months should be expected to complete rulemaking, internal policymaking, and research and analysis.

Why: The objective of this task is to complete the required administrative steps to allow the new legislation to be actionable by state agencies, while creating clarity around the program and its operations for the benefit of agency staff as well as prospective private partners.

How: This step will be implemented through the existing administrative powers of state agencies, supported by research and analysis efforts including peer review of existing policies and tools used by other states. This task would reflect feedback obtained through the outreach conducted in Task 1.

Resource requirements: Moderate one-time funding of up to \$1 million should be expected during the first 12-24 months for this task. External technical or legal expertise may be necessary to update administrative codes and to update terms and provide guidance on technical methodologies, while external financial advisors may be needed to provide insight into financial consideration for development of project screening tools and delivery method selection. Project management experts may be useful to coordinate the overall task and ensure timely completion in alignment with P3 program goals.

2.3 Task 3: Secure Resources to Support the Program

In Task 3, WSDOT will obtain the internal and external resources required to support the full lifecycle of P3 projects, spanning from the initial identification of projects to their procurement and eventual implementation.

Who: Resource allocation and/or procurement will be completed by WSDOT. External resources would be secured by WSDOT using traditional procurement processes for professional services.

What: This task includes the procurement of both external and internal resources to support the P3 program.

- **Internal resources** include existing staff that support the P3 program and serve as points of contact to coordinate the project development process for P3s. These staff members would require diverse skillsets, including procurement, alternative contracting, finance, project delivery and controls, along with project-specific skillsets as needed (e.g., for projects related to Washington State Ferries). Executive leadership at WSDOT would determine the extent to which these duties would be filled by new staff or shared among existing staff across divisions.
- WSDOT executive leadership would also need to determine an appropriate place within the organization for this staff. A range of options is available, from establishing a standalone, dedicated public-private partnership office to coordinating and managing P3 project development and delivery resources across existing offices or divisions.
- The preferred approach may vary over time. For example, an initial approach of relying on the expertise of existing staff could allow for the P3 program to be launched at lower cost shortly after enactment of the legislation. As the P3 program matures over time, WSDOT could invest in a dedicated office with new staff to manage a larger portfolio of projects. This incremental approach would be similar to WSDOT's experience in standing up its statewide tolling division in the early 2000s.

- **External resources** include legal, technical, and financial advisors. These resources would be used to identify potential P3 projects, manage the proposal review process, develop and deploy tools and resources to evaluate proposals, review draft agreements, and provide other related services. Additionally, a public relations firm could be engaged to monitor news related to the new law, summarize information, and conduct preliminary data gathering and analysis of stakeholder concerns, issues, support, and skepticism.

When: This task should begin concurrently with Tasks 1 and 2 and continue after those tasks are completed. A longer timeline of approximately 18-24 months should be expected for completion of this task following the enactment of the new legislation, noting that a slower launch at lower cost could lead to a longer timeframe before a fully mature, standalone P3 office emerges.

Why: Specialized professional resources may be required to assist WSDOT in the initial development and ongoing management of a P3 program. These resources would augment existing staff resources across WSDOT and provide technical skillsets required to deliver a P3 program.

How: For internal resources, decisions about alignment and possible reallocation of existing staff would benefit from executive direction on how best to coordinate and organize among the several offices to carry out a P3 project, especially during the earliest start-up phase of a new P3 law. As internal roles, responsibilities, and resource requirements become more known, adding new staff to support implementation of P3s may be warranted. For external resources, this task would be completed through the conventional procurement of professional services.

Resource requirements: Moderate to significant resources would need to be provided as part of this task, totaling as much as \$4.5 million per proposed P3 project, which would be expended over three years. Internal resource requirements involve dedicated staffing to support the P3 program. This may necessitate the hiring of new staff or redistribution of duties among existing staff. As mentioned previously, a smaller-scale launch (for example, focused on specific projects or opportunities) could be less costly, with the development of full P3 office capabilities taking several years longer.

3.0 National Best Practices

This subsection provides examples of key implementation actions taken by other state DOTs to support P3 development. These three examples illustrate how other states and agencies have approached various components of P3 implementation, including approaches to outreach and education, the development of data and analysis, and administrative options. Sample contracts from other agencies are included in **Appendix B**.

3.1 Outreach and Education

The Colorado Transportation Investment Office (CTIO), a government-owned business entity within the Colorado Department of Transportation (CDOT), provides a strong outreach and engagement example. Its P3 Outreach Plan addresses program-level stakeholder engagement, public outreach strategies, and industry outreach strategies¹. Each is described below:

- The **program-level plan** includes several key components:
 - Key stakeholders for outreach efforts are identified, including elected officials and interest groups.
 - Outreach strategies for various needs are determined, such as public meetings, official briefings, written documents, website updates, and outreach on social media.
 - An implementation plan that includes initiatives along with their associated actors is developed and put into action.
 - Documentation throughout the enactment of the plan is kept including records of meetings held, attendees at events, questions and responses, and other feedback on the plan. This documentation is used to assess the outcomes of the plan and to determine updates for improved effectiveness moving forward.
- The **public outreach strategy** involves the identification of key groups, individuals, and specific geographic areas to prioritize. The outreach plan undergoes periodic evaluation assessments and updates based on feedback gathered from public outreach sessions. It identifies a range of outreach channels, ranging from briefing materials to in-person meetings to website or social media packages, and also requires the development of detailed schedules and careful recordkeeping of engagement activities.
- The **industry outreach plan** entails multiple strategies including industry forums, P3 conferences, and industry-requested meetings.

¹ *CDOT P3 Management Manual*. Colorado Department of Transportation, 2020. Accessed February 15, 2024. <https://www.codot.gov/programs/high-performance-transportation-enterprise-hpte/agenda-item-documents/2020-agenda-documents/november-2020/hpte-p3-management-manual-update-2020.pdf/@download/file/HPTE%20P3%20Management%20Manual%20Update%202020.pdf>

- Industry forums are aimed at sharing and gathering information to enhance the development of optimal P3 projects, delivery approaches, and processes for the state. These forums may involve general sessions, one-on-one meetings, and subsequent evaluations based on the feedback received. Additionally, the use of Requests for Letters of Interest (LOI) provides a mechanism to assess interest and gather specific industry comments.
- Participation in P3 conferences and national meetings serve as an avenue to share information about proposed P3 projects and seek informal feedback from the industry on project proposals and approaches. This engagement approach not only facilitates information sharing but also contributes to generating interest in the projects.
- Industry requested meetings with CTIO are common as potential projects become known. These meetings operate similar to one-on-one sessions conducted at industry forums.

CTIO serves as an example of outreach and education for several reasons:

- Employing diverse and strategic public outreach channels is crucial for engaging a broad spectrum of key stakeholders.
- The implementation of multiple strategies offers more opportunities for sharing and gathering information, contributing to the development of improved P3 projects.
- The inclusion of periodic evaluations and feedback loops represents an iterative process that maintains the effectiveness and responsiveness of outreach efforts to both public and industry needs.
- Effective outreach and education also have the potential to generate interest in future P3 projects, thereby enhancing a state's P3 program.

3.2 Administrative Options

The administrative choices for overseeing P3 programs can vary, spanning from assigning P3 responsibilities part-time to existing staff to the establishment of a dedicated standalone P3 office. This case study illustrates how a standalone Virginia Office of P3s (VAP3) manages all work related to P3 delivery. Key aspects of this case study include the following:

- VAP3 was established in 2010 and operates within the Virginia Department of Transportation (VDOT). It is led by a P3 Director, who reports to the Chief Financial Officer of the Department². The VAP3 team includes industry experts in the fields of law, finance, project development, environment, construction, and maintenance and operations. There are nine employees including the director, a deputy director, multiple project managers, and a business analyst. However, some of these roles are currently vacant.

² *Virginia Office of Public Private Partnerships*. Virginia Department of Transportation, 2024. Accessed February 15, 2024. <https://p3.virginia.gov/>.

- VAP3 relies on a series of on-call professional services contracts³. This arrangement allows staff to lead procurement-related tasks, but rely on outside assistance when necessary, e.g., when specific assignments demand extra resources or expertise beyond the capabilities of the core team, without increasing the headcount of the agency.
- VAP3 is responsible for identifying and screening potential projects for P3 delivery and ensuring that projects that do move on to the P3 development stage align with local and regional policies and programs⁴. The VAP3 team develops educational materials on P3 delivery, including manuals and guidelines on topics like Value for Money (VfM) analysis, risk management, and public engagement.

3.3 Data and Analysis

The Virginia Department of Transportation (VDOT) provides an example of the development of a project screening tool, with a particular emphasis on risk assessment. The VDOT P3 Office (VAP3) utilizes a two-part assessment process, both quantitative and qualitative, for project identification and screening:

- For unsolicited proposals, VAP3 initiates a qualitative policy review within 90 calendar days⁵. This is a high-level process that determines whether the project aligns with policy considerations and the state’s infrastructure goals. This concise assessment evaluates the proposal's concept and advantages, verifying its compliance with the Code of Virginia, the agency’s manual and guidelines, and congruence with the transportation policy objectives of the Commonwealth. Should the unsolicited proposal successfully clear this initial policy review, the subsequent phase involves gathering feedback from the public and local governments within 60 calendar days.

Solicited proposals undergo a similar process for qualitative project screening. Unlike unsolicited proposals, solicited proposals do not include public and local agency feedback at this step of the process.

Both solicited and unsolicited projects are subjected to quantitative project screening, which analyzes the technical and financial viability of a project. The VAP3 conducts quantitative risk analysis by two methodologies: a formula-based analysis and a Monte Carlo simulation.

- In a formula-based analysis, a formula is used to calculate the average risk impact for each identified risk. This involves considering the minimum, maximum, and most likely cost and schedule impacts.

³ Public-Private Partnership (P3) Procurement: A Guide for Public Owners. US Department of Transportation Federal Highway Administration, 2019. Accessed February 19, 2024.

https://www.fhwa.dot.gov/ipd/p3/toolkit/publications/other_guides/p3_procurement_guide_0319/ch_3.aspx.

⁴ *Successful Practices for P3s: A Review of What Works When Delivering Transportation via Public Private Partnerships*. US Department of Transportation, 2016. Accessed Feb 14, 2024.

https://www.transportation.gov/sites/dot.gov/files/docs/P3_Successful_Practices_Final_BAH.PDF.

⁵ *PPTA Implementation 2017 Manual and Guidelines for the Public Private Transportation Act of 1995 (As Amended)*. Virginia Department of Transportation, 2017. Accessed Feb 16, 2024. https://p3.virginia.gov/docs/2017-PPTA-Manual-and-Guidelines_FINAL.pdf.

- The Monte Carlo simulation leverages specialized software to simulate the expected cost and schedule impacts for each risk. This sophisticated approach yields a variety of aggregate risk values, accompanied by their corresponding probabilities.

The VAP3 prepares a Project Screening Report following qualitative and quantitative analysis, which advises on whether the project should advance as a P3 delivery. The VDOT Commissioner then makes a final choice on whether the project should advance to development.

- If a project is approved, it advances to the project development phase. Localities that will be affected by the project must be notified within five calendar days of the VDOT CEO's approval.
- If the Commissioner disagrees with the VAP3 team's recommendation and new information becomes available, projects can be re-submitted for a new decision.

Key takeaways from this case study are summarized below:

- It is important to integrate both qualitative and quantitative analysis, as this allows for an examination of alignment with both policies and goals as well as feasibility of technical aspects of projects.
- Defining a separate process to review unsolicited proposals is important, as they require additional screening.
- There is value in utilizing professional judgement and past experiences as part of the assessment process.
- A transparent decision-making process can help guide project screening, leading to a more efficient and effective process.
- Effective communication with local governments is essential when assessing unsolicited proposals, to both leverage stakeholder comments and to keep the public informed and involved.



Appendix A Washington State Laws & Rules

[Chapter 47.29 RCW](#)

[Chapter 468-600 WAC](#)



Appendix B Sample P3 Contracts

Four sample contracts from Pennsylvania and Virginia are provided to illustrate the range of approaches to structure a P3 agreement. The projects are listed below, with the contract documents appended beginning on the following page.

Pennsylvania Rapid Bridge Replacement Project: Public Private Transportation Partnership Agreement

- Dated: January 8, 2015
- Between: The Pennsylvania Department of Transportation and the Plenary Walsh Keystone Partners, LLC
- [Link](#) to website

The CNG Fueling for Transit Agencies Partnership Project: Public Private Transportation Partnership Agreement

- Dated June 16, 2016
- Between: The Pennsylvania Department of Transportation and the Trillium Transportation Fuels LLC
- [Link](#) to website

Downtown Tunnel/Midtown Tunnel/Martin Luther King Freeway Extension Project

- Dated December 5, 2011
- Between: The Virginia Department of Transportation and the Elizabeth River Crossing OPCO LLC
- [Link](#) to website

I-95/395 HOV/HOT Lanes Project

- Dated August 10, 2022
- Between: The Virginia Department of Transportation and 95 Express Lanes LLC
- [Link](#) to website

Should these links no longer work, please contact JTC staff for copies of the contract documents.



Appendix C Sample Administrative Rules, Regulations, and Policies to Implement State P3 Programs

- Maryland Administrative Code, Chapter 11.07.06 – Governing the Transportation Public-Private Partnership Program: <https://casetext.com/regulation/maryland-administrative-code/title-11-department-of-transportation/subtitle-07-maryland-transportation-authority/chapter-110706-transportation-public-private-partnership-program>
- Colorado Department of Transportation High-Performance Transportation Enterprise P3 Management Manual: <https://www.codot.gov/programs/ctio/procurement/2017-12-15-p3-manual-update-1.pdf>
- Texas Administrative Code, Title 43, Part 1, Chapter 27, Subchapter A (Comprehensive Development Agreements):
[https://texreg.sos.state.tx.us/public/readtac\\$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=27&sch=A&rl=Y](https://texreg.sos.state.tx.us/public/readtac$ext.ViewTAC?tac_view=5&ti=43&pt=1&ch=27&sch=A&rl=Y)