

October 1, 2015

**MAJOR BUSINESS TERMS FOR THE
TRANSFORM 66 P3 PROJECT
IN THE COMMONWEALTH OF VIRGINIA**

DB-ATC DELIVERY METHOD

This Term Sheet (“Term Sheet”) provides a summary of major business terms to be provided to interested private parties (each a “Developer”) for the Transform 66 Project Outside the Beltway. The Commonwealth of Virginia (the “Commonwealth”) is providing this Term Sheet relating to the possible use of the design-build, with the inclusion of alternative technical concepts (“ATCs”) delivery method (“DB-ATC Delivery Method”) for the Transform 66 Project (the “Transform 66 P3 Project” or the “P3 Project”). For detailed information on the scope of the P3 Project, reference is made to the Request for Qualifications (“RFQ”) issued September 17, 2015, and the Procurement Reference Documents (see the Project Website (<http://www.transform66.org/>)).

It should be assumed that these major business terms will be mandatory requirements should the Commonwealth choose to procure this P3 Project under the provisions of the Public-Private Transportation Act of 1995, as amended, pursuant to the DB-ATC Delivery Method and would be included in any Comprehensive Agreement (“CA”) entered into for the Transform 66 P3 Project.

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<p>Summary of P3 Project Components</p>	<p>The DB-ATC Delivery Method includes the following improvements to the approximately 25 mile corridor on I-66 beginning near U.S. Route 15 in Prince William County and continuing to the Beltway in Fairfax County:</p> <ul style="list-style-type: none"> - the design, construction, ROW acquisition, and utility relocation of an ultimate section, including interchanges and bridges, that will result in two Express Lanes and three general purpose lanes in each direction; - the design and construction of access points and interchanges for the Express Lanes, including access ramps to P&R facilities; - relocation of certain elements of the Vienna and Dunn Loring Metro Stations including the design and construction of pedestrian bridges, certain electrical components, and other Metro infrastructure; - the design and construction of associated facilities, including P&R facilities, at strategic points along the corridor; - the design and installation of an open-road electronic toll collection system as necessary to allow for collection of tolls from users of the Express Lanes, and procurement of a contract for initial toll operation. <p><u>Major Scope Requirements</u></p> <p>Operation:</p> <p>As prescribed in Section 1.14 of the Draft Technical requirements, fullest operational use of both GP lanes and managed lanes is a requirement, not to be diminished by friction points or traffic weave in the Developer’s design. Current plans have been designed to minimize these. Innovative designs by the successful Developer shall improve on these designs to further reduce friction points and weave.</p> <p>As prescribed in Section 1.14 of the Draft Technical requirements, minimization and preferably full elimination of entrance and exit from GP lanes back and forth to HOT lanes to eliminate friction that does not allow full operational capacity. Exit and Entrance to HOT lanes will be by separate ramp, interchange, or other means achieving this end. Addition of friction points and weaving by the Developer will be non-compliant.</p>

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	<p>Extended Life Cycle (100 year design minimum):</p> <p>Construction is to extend life cycle and minimize future maintenance. Cost reduction at the expense of marginal material and quality costs will be considered non-compliant as opposed to innovative. Pavement designs will be exceptionally robust, potentially including additional large aggregate free draining layers. Plan sheet designs should be looked as the minimum.</p> <p>Minimum pavement sections have been prescribed in the Draft Technical Requirements Attachment 3.8 and shall not be modified under Alternative Technical Concepts unless improved upon.</p>
<p>Park and Ride Scope</p>	<p>Developer will be responsible for the design and construction of multiple park-and-ride (P&R) facilities along the P3 Project alignment providing access to/from the Express Lanes via new ramps, multimodal access to/from local street network, commuter parking spaces and accommodations for bus transit, kiss-and-ride areas, carpooling, vanpooling, local shuttles, and private buses, parking and transit service traveler information, bicycle accommodations, and supporting infrastructure.</p> <ul style="list-style-type: none"> • New P&R facilities at the following locations: <ul style="list-style-type: none"> – Haymarket (Antioch Road or similar location), minimum of 230 commuter spaces – Gainesville (University Boulevard), minimum of 1920 commuter spaces – Manassas (Balls Ford Road or similar location), minimum of 1300 commuter spaces • Reconfiguration of P&R facility at the following location: <ul style="list-style-type: none"> – Fair Lakes (Monument Drive/Fairfax County Government Center area), minimum of 630 commuter spaces (including the existing 170 commuter spaces) <p>Developer’s ROW acquisition obligations in respect of the P&R Facilities shall include ROW acquisition consistent with Developer’s designs for future P&R expansion, as set forth in the Draft Technical Requirements.</p> <p>The Department will be responsible for the operations and maintenance of the P&R Facilities at final acceptance of the P3 Project.</p>
<p>Tolling Responsibilities</p>	<p>Developer will be responsible for the design and installation of an open-road electronic toll (“ORT”) configuration with an all-electronic toll (“AET”) collection system to allow for collection of tolls from users of</p>

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	<p>the Express Lanes. At least eighteen months prior to final acceptance, Developer will be required to procure a contract for the initial integration of the tolling hardware and software into the P3 Project and tolling operations and maintenance for a period of five years, which contract will be subject to approval by the Department and shall be assigned to the Department on the P3 Project completion date.</p>
<p>Right of Way</p>	<p>Developer shall perform or cause to be performed and shall be responsible for all activities and services necessary for the acquisition, including the purchase, of all P3 Project right of way (“ROW”) necessary for development and operation of the P3 Project consistent with applicable law.</p> <p>The ROW impacts shown in the Procurement Reference Documents shall be considered the maximum allowable impacts under any CA unless the Department determines that any deviation is in the public interest.</p>
<p>Utility Relocation</p>	<p>Developer shall perform or cause to be performed and shall be responsible for all activities and services, including the cost, necessary for utility relocations or adjustments. The Department reasonably will assist Developer in obtaining the benefit of all rights the Department has under any utility easement, permit, or other right in real property relating to utility relocations.</p>
<p>Noise Walls</p>	<p>The Department will set a baseline quantity for noise walls to be constructed for the P3 project, as set forth in the Draft Technical Requirements. The Department will pay Developer per square foot of constructed noise wall that exceeds the baseline quantity and Developer shall credit the Department that same amount per square foot for any quantity of constructed noise wall that is less than the baseline quantity. The price per square foot shall be specified in the draft Technical Requirements.</p>
<p>Coordination with WMATA</p>	<p>The Department will be responsible for obtaining a Memorandum of Agreement (“MOA”) with WMATA prior to issuance of the Final Request for Proposals regarding design, construction and interaction with WMATA on their existing facilities within the P3 Project limits and with required operation and maintenance protocols and requirements during the term of the CA. Developer will be responsible, at its sole cost and expense, for obtaining all required WMATA permits in accordance with the VDOT/WMATA MOA during the term of the CA, including but not limited to a construction permit.</p>
<p>Department Efforts</p>	<p><u>WMATA</u></p> <p>The Department will develop the design plans for the relocation of Traction Power Sub Station (“TPSS”) and Tie Breaker Stations (“TBS”)</p>

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	<p>to a sufficient level to acquire approval from Fairfax County for the 2232/SE process or similar process and WMATA approvals for the design (to the extent developed) and location of these facilities.</p> <p>The Developer shall be responsible for the final design and construction and shall obtain all WMATA approvals.</p> <p><u>Northern Long Ear Bat</u></p> <p>The Department will conduct a survey for threatened and endangered bat species between May 15, 2016 and August 15, 2016 in accordance with the latest protocols to determine their presence or absence within the project corridor. The results of this survey will be provided to the Developer.</p>
Permits	<p>The Department will obtain required NEPA approvals, Commonwealth Transportation Board (“CTB”) approvals, and approvals by the Federal Highway Administration (“FHWA”) of the CA and Project management plan, as necessary. Developer will be responsible for obtaining all other permits and government approvals, and will be responsible for obtaining any required reevaluation of the NEPA approvals as a result of Developer’s ATCs, with the Department acting as an intermediary between Developer and FHWA.</p>
Due Diligence and Geotechnical Reports	<p>The Department will make available due diligence and geotechnical reports to Short-Listed RFQ Proposers. Developer will bear all cost and schedule risk related to geotechnical conditions.</p>
Performance and Development Security	<p>The Department will require security from Developer or its contractors related to Developer’s responsibilities under the CA, likely in the forms of letters of credit, bonds and/or guarantees by affiliates.</p>
Limited Notice to Proceed	<p>The Department intends to issue limited notices to proceed so Developer may begin work necessary for obtaining required permits and to meet the schedule, including coordination with WMATA. The limited notices to proceed will remain in place until all environmental permits are issued and Design Public Hearings are held.</p>
Warranties	<p>The CA will contain representations and warranties for each party that are customary for similar transactions.</p>
Insurance	<p>Developer shall obtain and maintain insurance coverages as required and as set forth in the CA.</p>
Civil Rights	<p>Developer shall use good faith efforts to achieve the goals for DBE and SWaM participation relating to Design-Build Contracting set forth in the CA. Failure to do so may result in increased Department oversight, disbarment or disqualification from participating in other State</p>

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	<p>procurements.</p> <p>Developer shall submit a Hiring Development Plan that includes, but is not limited to, the recruitment, hiring, training, and retention of veterans and local workers in accordance with a pilot program under a Special Experimental Project No. 14 under development by the Department and in accordance with the March 6, 2015 edition of the Federal Register by the U.S. Department of Transportation and relating to the DB Contract.</p>
Indemnification	Developer shall indemnify, defend, protect and hold harmless the Department against any claims or losses resulting or accruing from Developer's responsibilities and liabilities under the CA.
Delay Events	Delay Events will be listed in the CA and will be typical for projects of similar scope and purpose.
Force Majeure Events	Force majeure events will be listed in the CA and will be typical for projects of similar scope and purpose.
Compensation Events	The CA shall describe the procedural and claims submission process for administering compensation events and calculating damages. Compensation Events will be typical for projects of a similar scope and purpose.
Governing Law	Laws of the Commonwealth of Virginia.
Federal and State Law	Developer shall comply and require its contractors to comply with all federal and state laws and regulations applicable to transportation projects that receive federal or state funds. Federal or state requirements shall prevail, take precedence and be in force over and against any conflicting provisions in the CA.
Performance Measurement & Non-Compliance Points	The Department and toll integrator, if applicable, will use a performance measurement and non-compliance point system to monitor Developer's performance. The consequence for performance shortfalls may trigger increased oversight by the Department, the development and implementation of performance improvement plans by the toll integrator, and an integrator default.
Completion Deadlines	The CA will specify a required completion date beyond which Developer will be expected to pay liquidated damages, and a long stop date beyond which the CA can be terminated if completion is not achieved. The Department expects such final acceptance of the P3 Project by November 15, 2020. The Department will provide incentives for early completion up to 120 days prior to the completion deadline using a graduated per diem rate that will increase for each day the P3 Project reaches early completion, with a maximum total payment of \$50 million.

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Milestones	<p>The Department anticipates issuing notice to proceed once financial close has occurred and Section 401 and Section 404 NEPA permits are in hand. The Department may identify additional milestones for the P3 Project that will include incentives for early completion.</p> <p>The Department expects that the first milestone will require, in accordance with the Draft Technical Requirements, Developer to make available a minimum of 960 spaces at or near Balls Ford or Gainesville (University Boulevard) P&R lots within eighteen (18) months of Notice to Proceed to support the Transportation Management Plan during construction. Any temporary facility will be designed and constructed to support the transit, carpool, and vanpool strategies of the TMP. Developer will be responsible for operations and maintenance of the P&R lot until final acceptance of the P3 Project. The Department will assess liquidated damages if Developer has not completed this milestone within eighteen (18) months of Notice to Proceed.</p> <p>The Department expects that the second milestone will require, in accordance with the Draft Technical Requirements, Developer to make available improvements on Route 28 that eliminate four signals (at the EC Lawrence Park entrance, at the Braddock Road/Walney Road intersection, and two signals at the I-66/route 28 interchange). The Department will assess liquidated damages if Developer has not completed this milestone within twenty-four (24) months of Notice to Proceed.</p>
Termination	Termination Events will be listed in the CA, will be typical for projects of similar scope and purpose, and will include, among other things, termination for convenience of the Department.
Anticipated Exhibits	<p>The Department anticipates that some or all of the following exhibits will be included in the CA:</p> <ul style="list-style-type: none"> • Definitions • Scope of Work and Schedules • Technical Requirements • Form of Design-Build Contract • Form of Design-Build Work Guarantee • Form of Electronic Toll Collection Agreement • Toll Agreement, If Applicable • Public Funds Amount Payment Terms • Known Geotechnical Conditions

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	<ul style="list-style-type: none"> • Known Pre-Existing Hazardous Substances • Federal Requirements • Turnover Plan • Insurance Requirements • Labor, Employment and DBE/SWaM Related Matters • Toll Sections • Form of Escrow Agreement • TIFIA Requirements (if applicable)