DRAFT
REQUEST FOR PROPOSALS
TO DEVELOP, DESIGN, CONSTRUCT, FINANCE, OPERATE AND MAINTAIN THE TRANSFORM 66 P3 PROJECT

UNDER THE
VIRGINIA PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995 (AS AMENDED)

VOLUME I
INSTRUCTIONS TO PROPOSERS

VIRGINIA DEPARTMENT OF TRANSPORTATION

FINAL RFP ISSUED JULY 29, 2016

KEY DATES

EVENT	DATE
Issue Date of Final RFP	July 29, 2016
Technical Proposal Due Date	September 7, 2016
Financial Proposal Due Date	October 4, 2016
Selection of Preferred Proposer	by October 20, 2016
Commercial Close	by December 8, 2016
Financial Close	by July 6, 2017
Start of Construction	by July 6, 2017

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REQUEST FOR PROPOSALS
VIRGINIA DEPARTMENT OF TRANSPORTATION
TRANSFORM 66 P3 PROJECT

INSTRUCTIONS TO PROPOSERS

SECTION 1 INTRODUCTION AND GENERAL PROVISIONS

1.1 Introduction

This document comprises the Instructions to Proposers, Volume I of the Request for Proposals ("RFP"), as may be amended, issued by the Virginia Department of Transportation (the "Department"), an agency of the Commonwealth of Virginia (the "Commonwealth"), to seek competitive detailed proposals (individually, a "Proposal" and collectively, "Proposals") for a public-private partnership for the Transform 66 P3 Project ("Transform 66 P3 Project" or the "P3 Project") pursuant to a Comprehensive Agreement as further described below. The Department issued a Request for Qualifications ("RFQ") seeking Statements of Qualifications (each, an "SOQ") and Conceptual Financial Proposals ("Conceptual Financial Proposals") for three possible delivery methods for the P3 Project: (1) design, build, finance, operate and maintain ("DBFOM"), (2) design, build, operate and maintain and (3) design-build with the inclusion of ATCs. Following the Department's evaluation of the SOQs and Conceptual Financial Proposals, the Commissioner of Highways determined to advance the procurement of the P3 Project under the DBFOM delivery method ("DBFOM Delivery Method"). This ITP is issued as part of an RFP relating to the DBFOM Delivery Method.

The Comprehensive Agreement included in the RFP defines work to be performed by the entity or entities identified in the Apparent Best Value Proposal (the "Developer") to develop, design, construct, finance, operate and maintain high occupancy/toll lanes ("Express Lanes") and associated facilities along the Interstate 66 ("I-66") corridor between U.S. Route 29 near Gainesville in Prince William County and Interstate 495 ("I-495" or the "Beltway") in Fairfax County. Pursuant to the RFP, the Department, acting as the Responsible Public Entity, is soliciting Proposals to enter into the Comprehensive Agreement with a Developer in accordance with the Public-Private Transportation Act of 1995, as amended, Va. Code Ann. § 33.2-1800 (the "PPTA" or the "Act").

The Transform 66 P3 Project, which also will include the design, construction, and financing of Park-and-Ride facilities at strategic points along the corridor and the funding of transit services, is an important component of the larger Transform 66 Project (Outside the Beltway) being undertaken concurrently by the Department and the Department of Rail and Public Transportation ("DRPT"). The Transform 66 Project (Outside the Beltway) includes related transit and Transportation Demand Management ("TDM") improvements to the I-66 corridor, including operation and maintenance of bus service and the operation and maintenance of Park-and-Ride facilities that will be procured separately from the Transform 66 P3 Project. The Transform 66 Project (Outside the Beltway) complements the separate project being undertaken inside of the Beltway, the Transform 66 Project (Inside the Beltway), which will include the conversion of the existing facility inside of the Beltway to an Express Lanes facility with dynamic tolling during peak periods. The Transform 66 Project (Inside the Beltway) is

anticipated to be developed under a design-bid-build delivery method and will be procured separately from the Transform 66 P3 Project.

The Department is issuing this RFP in accordance with the PPTA and the PPTA Manual and Guidelines (2014) (the "PPTA Manual") (available at: http://www.p3virginia.org/publications/) issued by the Virginia Office of Public-Private Partnerships ("VAP3") and adopted by the Department and DRPT. The PPTA Manual provides a project delivery framework to identify, evaluate, develop and deliver public-private partnership ("P3") projects in Virginia.

The Commonwealth Transportation Board (the "CTB") is the Oversight Board for the Department. The Department will work with VAP3 to keep the CTB informed of developments with this procurement and the P3 Project. A copy of the CTB's policies can be found at http://www.ctb.virginia.gov/policies.asp.

The form of the Comprehensive Agreement is included in Volume II of the RFP. The Technical Requirements are included as Volume III of the RFP.

The Department is issuing the RFP to those Proposers determined to be Qualified Proposers based on the Department's evaluation of SOQs delivered to the Department on or before October 1, 2015, and Conceptual Financial Proposals delivered on or before December 1, 2015, in response to the RFQ for the P3 Project issued on September 17, 2015, as amended.

Proposers must comply with this ITP during the procurement and in their responses to the RFP. In drafting their Proposals, Proposers also shall take into consideration the P3 Project objectives identified in Section 1.2.

All forms identified in this ITP are found in Exhibit E unless otherwise noted. All times in this RFP are prevailing Richmond, Virginia time.

1.2 P3 Project Objectives

Among other objectives, the Department seeks to achieve the following:

Transform 66 Project (Outside the Beltway) Objectives:

i. Improving multimodal mobility along the I-66 corridor by providing diverse travel choices through an efficient network of Park-and-Ride, HOV, transit, and express lane opportunities in a cost-effective and timely manner;
ii. Enhancing person-throughput capacity; and
iii. Enhancing corridor-wide transportation safety and travel reliability.

P3 Project Objectives:

i. Minimizing ROW impacts while providing flexibility for future median running transit improvements;
ii. Encouraging the Developer to achieve early completion of the P3 Project, including the interim milestones;
iii. Achieving transparency in the project development process and maintaining competition during procurement to achieve the Best Value for the Commonwealth;

iv. Leveraging available local, regional, state, and federal funds and toll revenue to enhance the financial feasibility of the P3 Project;
v. Proactively aligning the interests of the Department and the Developer to resolve disputes, engage stakeholders, increase customer satisfaction and facilitate partnering and open communication;
vi. Maximizing Value for Money through an optimal transfer of risks and rewards and minimizing the required public contribution;
vii. Securing quality design and construction in order to optimize life cycle performance and obtaining high quality operation and maintenance meeting or bettering P3 Project requirements and expectations;
viii. Minimizing impacts to the traveling public during construction through efficient delivery of key sections of the P3 Project and keeping the traveling public well-informed about construction activities;
ix. Implementing safe construction and operation and maintenance activities while managing mobility and safety of the traveling public within the P3 Project work zone during construction of the P3 Project; and
x. Facilitating participation by DBEs and SWaMs, veterans and local hires.

The Developer will be expected to bring the necessary resources and expertise to deliver the P3 Project efficiently, effectively, and with a high level of quality to achieve the objectives described above. The Department anticipates reaching Commercial Close in December 2016 and reaching completion of construction and Service Commencement of the P3 Project in advance of a Long-Stop Date of May 8, 2023.

1.3 P3 Project Description

1.3.1 General P3 Project Description

The Department, in cooperation with DRPT and local and regional Stakeholders, has determined that the P3 Project will require the Developer to perform the following activities, in each case subject to the terms of the Comprehensive Agreement, with respect to the approximately 25 mile corridor on I-66 between U.S. Route 29 near Gainesville in Prince William County and the Beltway in Fairfax County:

- the design, construction, ROW acquisition, and utility relocation of a configuration consistent with the Phase 1 Scope as set forth in Exhibit B of the Comprehensive Agreement, including interchanges and bridges, that will result in two Express Lanes and three general purpose lanes in each direction and auxiliary lanes between interchanges;

- the design and construction of access points and interchanges for the Express Lanes, including access ramps to Park-and-Ride facilities;

- relocation of certain elements of the Vienna and Dunn Loring Metro Stations in the course of P3 Project construction, potentially including the design and

construction of pedestrian bridges, certain electrical components, and other Metro infrastructure;

- the design, construction, and transfer at Project Completion of Transferred Project Assets, including Park-and-Ride facilities, at strategic points along the corridor;

- the allocation of funding to support transit services;

- the operation and maintenance of the Express Lanes, except for snow/ice removal, which will be performed by the Department;

- the design, installation and operation of an open-road electronic toll collection system as necessary to allow for collection of tolls from users of the Express Lanes, with back office functions being performed by the Department; and

- certain Early Work prior to Financial Close pursuant to a Limited Notice to Proceed.

1.3.2 Scope of Developer's Obligations

The scope of the Developer's obligations for the P3 Project will include the development, design, construction, financing, maintenance and operation of the P3 Project under the terms set forth in the Comprehensive Agreement. The improvements to be completed by the Developer include those described in Section 1.3.1 of this ITP and as required by the Comprehensive Agreement and the Technical Requirements. The maintenance and operation responsibilities within the P3 Project limits after the Project Completion Date are shared with the Department as identified in Article 9 of the Comprehensive Agreement.

1.3.3 Environmental Status

The CTB issued a resolution dated May 15, 2013, and revised on July 17, 2013, that endorsed 10 "improvement concepts to be advanced for further consideration and for detailed study in subsequent Tier 2 studies." This resolution authorized an Environmental Assessment to be prepared under the National Environmental Policy Act ("NEPA"). These concepts were submitted to the Federal Highway Administration (the "FHWA") for review. The Final Environmental Impact Statement and Tier 1 Record of Decision were approved in November 2013, and identified all 10 improvement concepts as concepts that can be further analyzed under a Tier 2 Environmental Assessment, either jointly or separately. The Record of Decision is available at http://transform66.org (the "Project Website").

In July 2014, a Tier 2 Environmental Assessment began, based on the following assumptions:

- the current number of regular lanes will be maintained during peak periods;

- bus service will be advanced along with other bus service recommendations from the 2009 I-66 Transit / TDM Study;

- safety and operational improvements can move forward independently or in conjunction with capacity improvements

- other concepts, including the consideration of a Metrorail extension or other transit alternatives in the existing ROW, will not be precluded; and

- viable options must be feasible to implement in a reasonable time frame.

The Tier 2 Environmental Assessment is a study of a combination of improvement concepts from the Tier 1 EIS including: two express lanes, three general purpose lanes and bus service, in addition to other safety and operational improvements. The Department conducted public information meetings related to the Transform 66 Project (Outside the Beltway) on January 28-29, and February 3 and 5, 2015. The Tier 2 Environmental Assessment is available on the Project Website. NEPA public hearings were held on May 28-29 and June 2-3 of 2015. On October 27, 2015, the design concept identified as the preferred alternative was approved by the CTB.

The Tier 2 Environmental Assessment has been approved by FHWA, and a Tier 2 Finding of No Significant Impact ("FONSI") was issued by FHWA on June 22, 2016. Notice of the issuance of the FONSI was published in the Federal Register on July 6, 2016. The FONSI is available on the Project Website.

1.3.4 Funding and Financing; Early Work

Funding and Financing

The principal source of revenue that will be available to the Developer is expected to be toll revenue from users of the Express Lanes. The Department also anticipates a maximum of $600 million of public contribution to the P3 Project by the Commonwealth, with a focus on the Developer bringing the greatest value with the least public contribution of funds.

The Developer will be responsible for raising financing for the P3 Project. The Department has applied for a provisional Private Activity Bonds ("PABs") allocation and has submitted a letter of interest for a Transportation Infrastructure Finance and Innovation Act ("TIFIA") loan. Use of PABs and/or TIFIA is at the discretion of Proposers. If the Apparent Best Value Proposer elects to use TIFIA, the Proposer shall be required to submit a final application.

The Public Funds Amount will be paid to the Developer in accordance with Section 7.05 of the Comprehensive Agreement.

Funding for Early Work

Following the fulfillment by the Developer of the conditions precedent to Early Work, the Department will issue one or more LNTP authorizing the Developer to commence the Early Work, as defined in the Comprehensive Agreement. Each Proposer shall include in its Proposal (as set forth in Exhibit C, Section 7.1) the cost of completing the Early Work, not to exceed the maximum amount of $75 million. As set forth in Section 7.06(d) and Section 8.02(e) of the

Comprehensive Agreement, the Department intends to assist the Developer in funding the Early Work. Available Early Work funding consists of a no-interest SIB Loan of up to $25 million and, only to the extent the maximum SIB Loan has been fully utilized, up to $50 million of additional Early Work Department Funding. As set forth in Section 7.06(e)(ii) of the Comprehensive Agreement, at Financial Close, the Developer shall be responsible for repaying the Department for the outstanding amount of the SIB Loan and for reimbursing the Department for any Early Work Department Funding advanced to the Developer.

1.3.5 Other Elements of the Transform 66 Project (Outside the Beltway)

The Transform 66 P3 Project represents an important portion of the overall Transform 66 Project (Outside the Beltway). The Department and DRPT anticipate delivering other elements of the Transform 66 Project (Outside the Beltway) in addition to but separately from the P3 Project, including the operation and maintenance of Park-and-Ride facilities and coordination with existing transit providers to implement enhanced commuter bus services and establish new bus services.

1.3.6 Transform 66 Project (Inside the Beltway)

In order to address traffic concerns inside the Beltway, the Department and DRPT intend to undertake separate I-66 multimodal improvements without the participation of a private sector concessionaire or a procurement under the PPTA. The Transform 66 Project (Inside the Beltway) is intended to (i) convert the existing I-66 facility inside the Beltway to an Express Lanes facility with dynamic tolling; (ii) permit use of the facility by HOV vehicles, including allowing transit vehicles and any other vehicles exempt from tolls by Law, to ride free at all times; (iii) permit use of the facility by all vehicles to ride free during off-peak periods; and (iv) prohibit heavy trucks.

The Transform 66 Project (Inside the Beltway) also may contain, at the Department's discretion, any of the following: (i) enhanced bus service; (ii) the completion of elements of the bicycle and pedestrian network; (iii) the addition and enhancement of existing operational strategies to maximize the use, operations, and safety of the multimodal network within the corridor; (iv) additions and enhancements of TDM programs, and (v) the widening of selected portions of I-66.

The development, procurement and construction of the Transform 66 Project (Inside the Beltway) is anticipated to take place in 2016, with tolling operations commencing in 2017. The Department is currently developing design plans to widen I-66 eastbound from the Dulles Connector Road to Ballston. Construction of the widening project is expected to start in 2018 and is expected to be available for traffic use in 2020.

1.3.7 ATM System

The Department has implemented an Active Traffic Management System (the "ATM System") along portions of I-66 that overlap with the P3 Project. During construction, the Developer shall maintain operation of the ATM System for as long as practical, and shall maintain continuous operation of certain elements as specified in the Technical Requirements.

1.3.8 495 Express Lanes

The 495 Express Lanes Project became operational in 2012. It includes two HOV-3 high-occupancy toll express lanes in each direction in the 14-mile segment of the Beltway from the Springfield Interchange to just north of the Dulles Toll Road. The 495 Express Lanes Project uses dynamic tolling. Pursuant to the terms of the Comprehensive Agreement, the Developer will be required to coordinate with CBE, the concessionaire under the Capital Beltway Comprehensive Agreement, to minimize the disruption of CBE's operation and maintenance of the Capital Beltway HOT Lanes Project.

1.4 Documents in the Request for Proposals

The RFP consists of the following volumes that may be updated and revised at the Department's discretion at any time:

(a) Volume I - this ITP (including exhibits and forms),

(b) Volume II - the Comprehensive Agreement (including exhibits and forms), and

(c) Volume III - the Technical Requirements (including attachments).

All documents related to the RFP (the "RFP Reference Documents"), both those publicly available and those that are determined to be confidential, will be posted to the RFP Website, as described further in Section 2.2 below.

The RFP Reference Documents and references to any website in this RFP are provided for reference and background information only. The information contained in such RFP Reference Documents reflects information as of any date or time identified therein. The Department intends to provide accurate and complete information to the extent possible, but cannot guarantee the accuracy or completeness of any of the information on the RFP Website. To the extent that any information on the RFP Website is inconsistent with the RFP, Proposers should rely on the information contained in the RFP. At any time during the procurement process, the need to supplement or revise the RFP Reference Documents may arise following interaction with the industry or in the event the underlying conditions of the P3 Project change or more information becomes available. Proposers are encouraged to check the RFP Website frequently before submitting their Proposals.

The statements made in the RFP Reference Documents or in any referenced website, including the RFP Website, that are not purely historical are forward-looking statements, including the Department's expectations, intentions or strategies regarding the future. These statements are based on information currently available to the Department. The Department assumes no obligation to update any such forward-looking statements.

1.5 Construction and Interpretation of this ITP

1.5.1 Definitions and Acronyms

Capitalized terms and acronyms not defined in this Section 1.5.1 are defined in either Exhibit A of the Comprehensive Agreement or in the PPTA Manual.

"**Active Traffic Management System**" or "**ATM System**" has the meaning set forth in Section 1.3.7.

"**Alternative Technical Concepts**" or "**ATCs**" means the concepts described in Section 3.1.

"**Assumptions Book**" means the data book Proposers must submit with their Financial Models, pursuant to Section 6.4 of Exhibit C, which must fully describe all assumptions underlying the financial projections within the Financial Model.

"**Base Scope**" means the transportation facilities and all related structures and improvements to be financed, developed, designed or constructed pursuant to the terms of the Comprehensive Agreement, as more particularly described in Exhibit B-1 to the Comprehensive Agreement.

"**Benchmark Rate(s)**" has the meaning set forth in Section 5.12.4.1.

"**Commercial Close**" means the date on which the Department counter-executes the Comprehensive Agreement between the Department and the Developer, in accordance with the time frames specified in Section 6.1.3.

"**Commercial Close Date**" means the date on which the Department and the Developer execute the Comprehensive Agreement, as set forth in Section 1.6.1.

"**Cost and Pricing Data**" has the meaning set forth in Section 6.7 of Exhibit C.

"**DBFOM Delivery Method**" has the meaning set forth in Section 1.1.

"**Draft RFP**" means the first draft of the RFP issued on the date hereof by the Department, in coordination with VAP3 and DRPT.

"**Executive Scoring Panel**" means the committee that will review and evaluate the Proposals and make a recommendation to the Commissioner of Highways as set forth in SECTION 5.

"**Executive Summary**" has the meaning set forth in Exhibit B, Section 3.1.

"**Financial Model**" means the tool described at Section 6 of Exhibit C that a Proposer shall use to calculate projections in support of its Financial Proposal.

"**Financial Model Audit**" has the meaning set forth in Section 5.12.3.

"**Financial Model Auditor**" has the meaning set forth in Section 5.12.3.

"**Financial Proposal**" means the portion of the Proposal described in Exhibit C.

"**Financial Proposal Due Date**" means the deadline for submission of the Financial Proposal to the Department, as set forth in Section 1.6.1.

"**Financially Responsible Party**" has the meaning set forth in Exhibit C, Section 4.1.

"**Financing Plan**" means the information that Proposers must provide pursuant to Section 5 of Exhibit C.

"**Indicative Rating Base Case**" means the base case that produces the more conservative debt sizing profile, as prepared by a Rating Agency that is utilized to established the indicative rating for the Senior Developer Debt and the TIFIA loan.

"**Indicative Rating Case"** means the low case that produces the more conservative debt sizing profile, as prepared by a Rating Agency that is utilized to establish the indicative rating for the Senior Developer Debt and the TIFIA loan.

"**Indicative TIFIA Term Sheet**" has the meaning set forth in Section 1.8.2(a).

"**Innovative Financial Concepts**" or "**IFCs**" means the concepts described in Section 3.5.

"**Instructions to Proposers**" or "**ITP**" means the documents and information contained in Volume I and described in this ITP.

"**Key Personnel**" means the individuals designated by a Proposer pursuant to Exhibit B, Section 3.2.5.

"**Lead Underwriter**" has the meaning set forth in Section 1.8.2(b).

"Lenders' Case" means the base case prepared by the Lender's Traffic Advisor in connection with the underwriting of the initial Senior Developer Debt.

"Lenders' Low Case" means the low case at P90 prepared by the Lender's Traffic Advisor in connection with the underwriting of the initial Senior Developer Debt.

"**Major Participant**" means each Equity Member and each member of Proposer's organization with: (a) primary responsibility for design; (b) primary responsibility for construction; (c) primary responsibility for providing and/or arranging P3 Project finance; (d) primary responsibility for operations; (e) primary responsibility for maintenance; (f) primary responsibility for designing toll collection systems, ETTM, and software; or (g) a proposed subcontract with a value greater than or equal to $80 million (excluding subcontracts with Suppliers).

"**Major Professional Services Firm**" has the meaning set forth in Section 3.2.2 of Exhibit B.

"**Mobilization Costs**" means the costs to be incurred by the Developer to perform certain preparatory operations necessary to allow the Design-Build Work to begin, including but not

limited to: required insurance, bonds, permits, movement of personnel, equipment, supplies, and incidentals to the Project site, survey, geotechnical investigations and utility coordination, preparation of a construction schedule, furnishing and erecting field offices, laboratory, batch plants and other facilities necessary to undertake the Design-Build Work, security, badging and certification requirements, initial site personnel, sanitary facilities, development of site material and equipment requirements, preparing requisitions for all items and preparation of the procurement program; provided, the following costs shall not be considered Mobilization Costs for purposes of the $50 million limitation set forth in Exhibit C, Section 6.7: (i) costs of furnishing Project-specific insurance and (ii) costs of furnishing Design-Build Performance Security.

"**P3 Project Development Plan**" has the meaning set forth in Section 1.7.1(a).

"**PPTA Manual**" has the meaning set forth in Section 1.1.

"**Pre-Proposal Submittal**" means each submittal required or otherwise permitted prior to the Technical Proposal Due Date and the Financial Proposal Due Date as identified in Section 1.6.1.

"**Proposal Revision**" has the meaning set forth in Section 5.8.

"**Proposal Schedule**" has the meaning given in Section 4.1.2(e) of Exhibit B.

"**Proposal Security**" means the letter of credit as described in Section 4.8.1.

"**Proposal Validity Period**" has the meaning set forth in Section 4.7.2.

"**Public Funds Amount**" has the meaning given in Exhibit C, Section 7.1.

"**Revised Draft RFP**" means supplemental additions, deletions, and modifications to the provisions of the Draft RFP after the release date of the Draft RFP.

"**RFP Reference Documents**" means the documents and information included in Volume III and described in Section 1.4.

"**Request for Qualifications**" or "**RFQ**" means the Department's Request for Qualifications issued on September 17, 2015, as amended.

"**Request for Proposals**" or "**RFP**" means the set of documents identifying the P3 Project and its Work to be performed and materials to be furnished in response to which a Proposal may be submitted by a Proposer. The RFP is issued only to Proposers that have been determined to be Qualified Proposers following SOQ and Conceptual Financial Proposal review.

"**ROW**" means right of way.

"**RFP Website**" has the meaning set forth in Section 2.2.

"**Stakeholders**" means parties that may have a stake in the P3 Project by virtue of their location or funding, including cities, counties, United States Department of Transportation, and FHWA and their officers, directors, and employees.

"**Statement of Qualifications**" or "**SOQ**" means the submission made by a Proposer in response to Part 1 of the RFQ, including all clarifications thereto submitted in response to requests by the Department.

"**Statutory Audit**" has the meaning set forth in Section 5.12.2.

"**Technical Proposal**" means the portion of the Proposal described in Exhibit B.

"**Technical Proposal Due Date**" means the deadline for submission of the Technical Proposal to the Department, set forth in Section 1.6.1.

"**TIFIA JPO**" has the meaning set forth in Section 1.8.2(a).

"**VFOIA**" has the meaning set forth in Section 1.7.4.

1.5.2 Number and Gender

In this ITP, terms defined in the singular have the corresponding plural meaning when used in the plural and vice versa, and words in one gender include all genders.

1.5.3 Headings

The division of this ITP into sections and other subdivisions is for convenience of reference only and shall not affect the construction or interpretation of this ITP. The headings in this ITP are not intended to be full or precise descriptions of the text to which they refer and shall not be considered part of this ITP.

1.5.4 References to this ITP

The words "herein", "hereby", "hereof", "hereto" and "hereunder" and words of similar import refer to this ITP as a whole and not to any particular portion of it. The words "Section", "paragraph", "sentence", "clause" and "Exhibit" mean and refer to the specified article, section, paragraph, sentence, clause or exhibit of, or to, this ITP. A reference to a subsection or clause "above" or "below" refers to the denoted subsection or clause within the Section in which the reference appears.

1.5.5 References to Agreements and Other Documents

Unless specified otherwise, a reference to an agreement or other document is considered to be a reference to such agreement or other document (including any schedules or exhibits thereto) as it may be amended, modified or supplemented from time to time in accordance with its terms.

1.5.6 References to Any Person

A reference in this ITP to any Person at any time refers to such Person's permitted successors and assigns.

1.5.7 Meaning of Including

In this ITP, the word "including" (or "include" or "includes") means "including without limitation" and shall not be considered to set forth an exhaustive list.

1.5.8 Meaning of Discretion

In this ITP, the word "discretion" with respect to any Person means the sole and absolute discretion of such Person, unless otherwise qualified.

1.5.9 Notice, Approval, Etc., in Writing

Whenever the RFP Documents require or provide for any notice, approval, consent, acceptance, determination, decision, certificate, order, waiver, explanation, policy, information or the like, the same and any request therefor must be in writing (unless otherwise waived in writing by the other Party).

1.5.10 Meaning of Promptly

In this ITP, the word "promptly" means as soon as reasonably practicable in light of then-prevailing circumstances.

1.5.11 Trade Meanings

Unless otherwise defined herein, words or abbreviations that have well-known trade meanings are used herein in accordance with those meanings.

1.5.12 Laws

Unless specified otherwise, a reference to a Law is considered to be a reference to (a) such Law as it may be amended, modified or supplemented from time to time, (b) all regulations and rules pertaining to or promulgated pursuant to such Law, (c) the successor to the Law resulting from recodification or similar reorganizing of Laws and (d) all future Laws pertaining to the same or similar subject matter.

1.5.13 Currency

Unless specified otherwise, all statements of or references to dollar amounts or money in this Agreement are to the lawful currency of the United States of America.

1.6 Procurement Schedule and Financial Close Deadline

1.6.1 Procurement Schedule

The following represents the current schedule for the procurement.

EVENT	DATE and TIME
Issuance of Draft RFP	December 17, 2015
Release of First Revised Draft RFP (including Forms accompanying the Instructions to Proposers and Exhibits to the Comprehensive Agreement)	January 4, 2016
Deadline to submit comments on First Revised Draft RFP	January 11, 2016
First Round One-on-one meetings	January 20-21, 2016
Release of Second Revised Draft RFP	February 3, 2016
First Round ATC meetings	February 18-19, 2016
Deadline to submit comments on Second Revised Draft RFP	February 19, 2016
First day to submit ATCs	February 29, 2016
Second Round One-on-one meetings: Technical Requirements	February 29-March 1, 2016
Second Round One-on-one meetings: Commercial and Financial	March 3-4, 2016
Release of Third Revised Draft RFP	March 14, 2016
Second Round ATC meetings	March 17, 2016
First Round IFC meetings	March 18, 2016
Deadline to submit comments on Third Revised Draft RFP	March 28, 2016
Third Round ATC meetings	March 30, 2016
Facilitated meeting with TIFIA office	April 4-8, 2016
Facilitated meeting with stakeholders	April 4-8, 2016
Third Round One-on-one meetings	April 15 and 18, 2016
Fourth Round ATC meetings	April 21, 2016
Deadline to submit proposed underwriters for pre-approval	April 25, 2016
Second Round IFC Meetings (if needed)	April 26, 2016
DBE/SWaM meetings	May 9, 2016
Department to release draft Indicative TIFIA term sheet	May 12, 2016
Release of Fourth Revised Draft RFP	May 13, 2016

EVENT	DATE and TIME
Department submits Fourth Revised Draft RFP to FHWA for review and comment	May 13, 2016
Department response regarding proposed underwriters	May 13, 2016
Deadline to submit questions on draft Indicative TIFIA term sheet	May 16, 2016
Second round facilitated meeting with stakeholders	May 23, 2016
Public Meeting on Draft RFP	May 23, 24 and 25, 2016
Fifth round ATC meetings (Q/A session)	May 24, 2016
Deadline to submit comments on Fourth Revised Draft RFP	May 25, 2016
Facilitated meetings with TIFIA JPO	May 27, 2016
Fourth Round One-on-one meetings	May 31, 2016
Department submits Revised Draft RFP to FHWA for final review and approval	June 9, 2016
Fifth Round One-on-one meetings	June 14-15, 2016
Deadline to submit ATCs for consideration	July 13, 2016
Deadline to submit IFCs for consideration	July 13, 2016
Sixth round ATC meetings (Q/A session)	July 20, 2016
Release of final RFP	July 29, 2016
Department Responses to outstanding IFCs	August 1, 2016
Department Responses to outstanding ATCs	August 1, 2016
Deadline to submit requests for changes in Proposer's organization	August 1, 2016
Deadline to submit requests for changes in Key Personnel	August 1, 2016
Deadline to submit proposed model auditors for pre-approval	August 1, 2016
Department response regarding model auditors	August 8, 2016
Latest date to submit Draft Submittal – Any capital markets financing that requires approval and Benchmark Rates and credit spreads for pre-approval	August 17, 2016
Latest date to submit form of Proposal Security for pre-approval	August 17, 2016
Department response regarding Draft Submittal - Any capital markets financing that requires approval and Benchmark Rates and credit spreads for pre-approval	August 24, 2016
Department response regarding form of Proposal Security	August 24, 2016

EVENT	DATE and TIME
Technical Proposal Due Date	September 7, 2016, 2:00 PM
Deadline to submit the Proposal Schedule	September 21, 2016
Submittal of Benchmark Rates and credit spreads for approval	September 21, 2016
Department response regarding Benchmark Rates and credit spreads	September 27, 2016
Financial Proposal Due Date	October 4, 2016, 2:00 PM
Selection of Preferred Proposer	Week of October 17, 2016
Deadline for delivery by the Preferred Proposer of the Financial Close Security	Five Business Days following selection of the Preferred Proposer
Deadline for delivery by Preferred Proposer of executed Comprehensive Agreement and the documents required by ITP Section 6.1.4.	Not later than December 8, 2016
Commercial Close Deadline	Not later than December 8, 2016
Financial Close Deadline	210 days after the Commercial Close Date

Where the RFP provides a deadline or due date for submission of documents, correspondence or other materials to VAP3, on behalf of the Department, the submission will be considered timely only if VAP3 receives the submission by the date and, if applicable, the time identified therein (which will be based on prevailing Richmond, Virginia time). All dates set forth above and elsewhere in the RFP are subject to change, in the Department's discretion, by notice to Proposers.

1.6.2 Selection of Preferred Proposer and Deadline for Comprehensive Agreement Execution

The Department, in coordination with VAP3 and DRPT, will select the Preferred Proposer on the date indicated in Section 1.6.1. Upon selection of the Preferred Proposer, the Department may, in its discretion, initiate limited negotiations as described herein or recommend execution of the Comprehensive Agreement without negotiations. For the avoidance of doubt, by submitting a proposal in response to this RFP, Proposer commits to enter into the Comprehensive Agreement in the form included in the RFP, without negotiation or variation, except as necessary to fill in the blanks and include information that the form of the Comprehensive Agreement indicates is required from the Preferred Proposer's Proposal. Subject to the requirements for execution and delivery of the Comprehensive Agreement as provided in Section 6.1.3 and Section 4.7.2, with respect to the period of Proposal validity, the Preferred Proposer shall deliver to the Department executed copies of the Comprehensive Agreement and the documents required under Section 6.1.4 by the deadline specified in Section 1.6.1 for counter-execution by the Department.

1.6.3 Financial Close Deadline

If selection of a Preferred Proposer is made and a Comprehensive Agreement is executed and delivered (as specified in Section 1.6.1), the Preferred Proposer shall be required to achieve Financial Close on or before 210 days after the Commercial Close Date (subject to Section

7.06(c) of the Comprehensive Agreement and any extensions of such deadline in accordance with the Comprehensive Agreement) (the "Financial Close Deadline").

1.7 General Provisions Regarding Proposals

1.7.1 Proposal Contents

As used in this procurement, the term "Proposal" means a Proposer's complete response to the RFP, including:

(a) a Technical Proposal, including a development plan for the Work (the "P3 Project Development Plan");

(b) a Financial Proposal; and

(c) properly completed Proposal forms.

The instructions and requirements for the Technical Proposal (including the P3 Project Development Plan) and the Financial Proposal are set forth in Exhibits B and C, respectively, and a checklist showing the required contents of the entire Proposal is found in Exhibit D. The Proposal shall be organized in the order listed in Exhibit D and shall be clearly indexed. Each Proposal component shall be clearly titled and identified and shall be submitted without reservations, qualifications, conditions or assumptions. Any failure to provide all the information and all completed forms (Exhibit E) in the format specified, or submittal of a Proposal subject to any reservations, qualifications, conditions or assumptions, may result in the Department rejecting the Proposal or giving it a lower rating (except for such reservations, qualifications, conditions or assumptions contemplated in this RFP). All blank spaces in the Proposal forms must be filled in as appropriate. No substantive change shall be made in the Proposal forms.

1.7.2 Inclusion of Proposal in Comprehensive Agreement

Portions of the Apparent Best Value Proposal will become part of the Comprehensive Agreement, as applicable and to the extent specified in the Comprehensive Agreement. All other information is for evaluation purposes only and will not become part of the Comprehensive Agreement.

1.7.3 Commitments in the Proposal

The verbiage used in each Proposal will be interpreted and evaluated based on the level of commitment provided by the Proposer. Subject to Exhibit C, Section 5.2, tentative commitments will be given no consideration. For example, phrases such as "we may" or "we are considering" will be given no consideration in the evaluation process since they do not indicate a firm commitment.

1.7.4 Ownership of Proposal and the Virginia Freedom of Information Act

Subject to the exceptions specified herein, all written and electronic correspondence, exhibits, photographs, reports, printed material, tapes, disks, designs and other graphic and visual aids submitted to the Department during this procurement process, whether included in the Proposal or otherwise submitted, become the property of the Commonwealth of Virginia upon delivery to the Department and will not be returned to the submitting parties. Consequently, all such items will be subject to the provisions of the PPTA and the Virginia Freedom of Information Act ("VFOIA") (Va. Code Ann. § 2.2—3700 *et seq.*). Proposers should familiarize themselves with the provisions of the PPTA and VFOIA that require disclosure of public information and exceptions thereto. In no event shall the Commonwealth of Virginia, the Department, or any of their agents, representatives, consultants, directors, officers or employees be liable to a Proposer or Proposer team member for the disclosure of any materials or information submitted in response to the RFP. See also Section 2.6.

1.8 Federal Requirements and Funding

In order to preserve the ability of the parties to use federal funding and federal credit assistance for the P3 Project, the procurement process and the Comprehensive Agreement must comply with applicable federal Laws and regulations. The Department reserves the right to modify the RFP to address any concerns, conditions or requirements of FHWA. Proposers shall be notified on the RFP Website of any such modifications.

1.8.1 Civil Rights Requirements

The Department has determined that DBE and SWaM requirements apply to the P3 Project under the Comprehensive Agreement and has adopted a DBE/SWaM Program to provide DBEs and SWaMs opportunities to participate in the business activities of the Department as service providers, vendors, contractors, subcontractors, advisors and consultants. The Department has adopted the definition of DBEs set forth in 49 CFR § 26.5. Proposer's DBE compliance obligations shall be governed by all applicable federal DBE regulations, including Title 49 CFR Part 26, as well as applicable requirements set forth in the Comprehensive Agreement and the Department's Special Provision 107.09. Regulations regarding the registration of SWaM businesses pursuant to Chapter 14 (§ 2.2-1400 *et seq.*) of Title 2.2 of the Code of Virginia can be found in 7VAC10-21 of the Virginia Administrative Code. The parties recognize the importance of pursuing, inviting and developing the participation of minority, women-owned and small businesses through the SWaM program, where applicable. If selected as the Preferred Proposer, pursuant to the Comprehensive Agreement Section 24.04, the Developer shall not and will not permit its Contractors to discriminate on the basis of race, color, national origin, or sex, sexual orientation or gender identity in the performance of work on the P3 Project.

The Department's DBE/SWaM requirements applicable to the Comprehensive Agreement and the Department's DBE/SWaM Program adopted pursuant to Title 49 CFR Part 26, are set forth and provided in the Comprehensive Agreement. During performance of the Design-Build Work, in an effort to comply with 49 CFR Part 26, the Department has established a goal of 15% for DBE participation. The annual and long-term participation DBE goals for the Developer in contracting for the O&M Work is 15%. During performance of the Design-Build Work, in an

effort to support Executive Order 33 (2006), the Department has established a goal of 27% for SWaM participation. The annual and long-term participation SWaM goal for the Developer in contracting for the O&M Work is 27%.

During performance of the Design-Build Work, the Department has established a goal of 75% for veteran new hire and local new hire participation. The annual and long-term goals for the Developer in contracting for the O&M Work is 75% for veterans and local worker new hires.

1.8.2 Federal Assistance

(a) TIFIA Credit Assistance

The TIFIA loan program is a potential source of financing for the P3 Project subject to federal requirements and availability. The Department submitted a Letter of Interest for the P3 Project to the TIFIA Joint Program Office ("TIFIA JPO") on September 1, 2015, seeking a TIFIA loan of up to $800 million for the P3 Project. The TIFIA JPO has advanced the P3 Project to the TIFIA creditworthiness review stage, and the Department and the TIFIA JPO have been in discussions regarding additional information requests since that decision. The Department may facilitate communication between the Proposers and the TIFIA JPO prior to the Financial Proposal Due Date.

Should the Proposer elect to include TIFIA in its Financial Proposal, the Proposer must incorporate into its Proposal terms consistent with Attachment 1 to Exhibit C ("Indicative TIFIA Term Sheet"), unless the Department has approved a deviation therefrom through the IFC process. The Department will be the sole channel of communication with the FHWA and the TIFIA JPO on the Project and the proposed TIFIA loan until selection of the Preferred Proposer. To the extent the Preferred Proposer has assumed the use of TIFIA in its Financial Proposal, the Preferred Proposer shall provide periodic notice to the Department of the progress of its efforts to negotiate and close the TIFIA loan, in accordance with Section 5.12.5. The Department reserves the right to participate in further negotiations between the Preferred Proposer and TIFIA.

If the Preferred Proposer has elected to use TIFIA financing as part of its Financial Proposal, it shall be responsible for reaching Financial Close with respect to TIFIA.

(b) Private Activity Bonds

In January 2015, the Department submitted an application for a provisional PABs allocation in the amount of $946 million. Each Proposer may, but is not obligated to, use the PABs allocation in its Financial Proposal. In connection with the Department's application for a provisional PABs allocation, the Department obtained from the Virginia Small Business Financing Authority ("VSBFA") its preliminary approval of the issuance of up to $950 million of PABs, with the issuance of any PABs being subject to certain conditions including the filing of an application with VSBFA for financing assistance and the approval by VSBFA of all financing documentation related to the PABs, among others. A summary of the VSBFA's financing process is attached hereto as Exhibit A, and a copy of the VSBFA's approving resolution is attached as Exhibit A-1.

Each Proposer may use the VSBFA, or any other entity with the power under State Law to issue PABs that the Proposer may identify, as the conduit issuer of the PABs (the "PABs Issuer"). The Developer shall be responsible for negotiating and documenting the role of any PABs Issuer in such Proposer's financial plan, and shall be responsible for all of the PABs Issuer's costs associated with the issuance of the PABs, including attorneys' fees associated with obtaining bond counsel opinions. The Department reserves the right to participate in the PABs Issuer process.

A Proposer wishing to use PABs shall be solely responsible for obtaining ratings, bond counsel opinions and credit enhancement, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of state and federal tax and securities laws.

The Department will make the PABs allocation available to provide for a portion of the financing for the P3 Project as set forth in the Developer's Financial Proposal. The Department's approach to the possible use of PABs has been developed as an accommodation to the Proposers in order to attempt to facilitate the use of PABs by Proposers. The Department makes no representation about, and no guarantee of the amount, if any, of PABs that can be issued for the P3 Project or the use of proceeds of PABs to finance the P3 Project as a matter of federal tax law. Proposers should seek advice from their own tax consultants. If a Proposer elects to include PABs in its Financial Proposal, it does so at its own risk and cost, and the Department will have no liability with respect thereto, except as set forth in the Comprehensive Agreement and this ITP.

If any Proposer elects to use PABs financing as part of its Financial Proposal, such Proposer's lead underwriter(s) (each a "Lead Underwriter") must be a nationally recognized firm with experience in transportation infrastructure finance, including experience in PABs financings of transportation infrastructure. The Proposer must obtain the Department's approval of its Lead Underwriter(s) prior to the date set in Section 1.6.1. To obtain Department approval, the Proposer shall provide an original and two copies of all information necessary for the Department to assess the qualifications of the Lead Underwriter(s), including information regarding the experience of the Lead Underwriter(s) with PABs and transportation infrastructure finance.

If the Preferred Proposer has elected to use PABs as a part of its Financial Proposal, it shall be responsible for reaching Financial Close with respect to PABs.

(c) Major Project

The P3 Project meets the definition of a "major project" under 23 U.S.C. § 106, and accordingly requires (i) a "major project review" by FHWA prior to the award of the Comprehensive Agreement and (ii) submission of annual reports to the FHWA concerning the P3 Project. Section 25.12 of the Comprehensive Agreement sets forth certain obligations of the Developer concerning assistance in preparation of such reports.

SECTION 2 PROCUREMENT PROCESS

2.1 Procurement Method

The RFP is issued by the Department pursuant to the PPTA, the PPTA Manual, and other state and federal Law, in collaboration with VAP3 and DRPT.

If a selection will be made, the Department, in coordination with VAP3 and DRPT, will select as the Preferred Proposer the Proposer that delivers the Apparent Best Value Proposal, which is determined by the Department, working with VAP3, through evaluation based upon the criteria set forth in the RFP in accordance with the above Laws and regulations. For the Department to execute a Comprehensive Agreement with the Preferred Proposer, the Commissioner of Highways (the "Commissioner") will certify that entering into a Comprehensive Agreement with the Preferred Proposer serves the public purposes of the PPTA. The Commissioner may so certify if: (1) there is a public need for the transportation facility or facilities the private entity proposes to develop and/or operate as a qualifying transportation facility; (2) the transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the private entity's plans for development and/or operation of the qualifying transportation facility or facilities, are, in the opinion of the responsible public entity, reasonable and will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof; (3) the estimated cost of developing and/or operating the transportation facility or facilities is reasonable in relation to similar facilities; and (4) the private entity's plans will result in the timely development and/or operation of the transportation facility or facilities or their more efficient operation.

VAP3, on behalf of the Department, will accept Proposals for the P3 Project only from those Proposers the Department has determined to be Qualified Proposers. The Department will not review or consider unsolicited or nonconforming proposals related to this procurement (except for pre-approved ATCs and IFCs, as described herein).

2.2 Receipt of the Request for Proposal Documents, Communications and Other Information

The RFP and the RFP Reference Documents will be available to Proposers on the secure file transfer and sharing site for the P3 Project (the "RFP Website"). The RFP Website is distinct from the Project Website. Access to the RFP Website will be granted only to Qualified Proposers.

VAP3 has provided each Qualified Proposer with the address of the RFP Website along with a username and password unique to that Qualified Proposer. Each Qualified Proposer is required to treat the username and password as confidential information and to check the RFP Website regularly for amendments to this RFP, confidential RFP Reference Documents and for other procurement related information.

Other information related to the procurement may, at the Department's discretion, be made available to the public on the Project Website.

2.2.1 Department Representative

In order to facilitate receipt, processing and response, Proposers must submit all questions and requests for clarification regarding this procurement in writing to the VAP3 contact acting as the Department's representative, Dr. Morteza Farajian, at the following address:

Virginia Office of Public-Private Partnerships
1401 E. Broad Street, Suite 1306
Richmond, VA 23219
Attn: Dr. Morteza Farajian
E-mail: Morteza.Farajian@P3.Virginia.gov

From time to time during the procurement process, the Department may designate another representative or representatives to carry out some or all of the Department's obligations pertaining to this procurement (Dr. Farajian, and any such representative or representatives, hereafter will be referred to as the "Department Representative").

Proposers are responsible for ensuring that any written communications clearly indicate on the first page or in the subject line, as applicable, that the material relates to the P3 Project.

2.2.2 Identification of Proposer Designated Representative

Each Proposer's designated representative initially shall be the person identified in the SOQ as the single point of contact for the Proposer. If a Proposer changes its designated representative at any time, including subsequent to its submission of its Proposal, the Proposer shall provide the Department Representative with the name and address of such new designated representative. A Proposer's failure to identify a designated representative in writing may result in the Proposer not receiving important communications from the Department. The Department is not responsible for any such failure.

2.2.3 Rules of Contact

From the date of issuance of the RFQ (September 17, 2015) until December 17, 2015, the rules of contact provisions in the RFQ were applicable to this procurement. Starting on the date this RFP was issued in draft form, and ending on the earliest of (i) the execution and delivery of the Comprehensive Agreement, (ii) rejection of all Proposals by the Department or (iii) cancellation of the procurement, the following rules of contact shall apply. These rules are designed to promote a fair and unbiased procurement process. For purposes of this Section 2.2.3, "contact" means communication, including by face-to-face, telephone, facsimile, electronic-mail (e-mail), social media, instant messages, text messages or formal written communication.

The specific rules of contact are as follows:

(a) No Proposer or any of its team members may have contact with another Proposer or its team members with regard to the RFP or either team's Proposal, except that team members that are shared between two or more Proposer teams may have contact with their respective team members so long as those Proposers establish a

protocol to ensure that the team members will not act as a conduit of information between the teams (contact among Proposer organizations is allowed during the Department-sponsored informational meetings);

(b) The Proposers shall correspond with the Department or VAP3 regarding the RFP only through the Department Representative and the Proposer's designated representative (except at one-on-one meetings or other group discussions with either or both of the Department and VAP3);

(c) Except as otherwise contemplated herein, no Proposer or representative thereof shall have any contact regarding the RFP or the procurement described herein with any member of CTB, any VAP3 staff, DRPT staff or any Department staff, advisors, contractors or consultants involved with the procurement or P3 Project. This limitation on contact shall not apply to contact with the Department consultants who have completed their services for the P3 Project and have obtained written release from the Department, contact expressly permitted by the RFP, or contact approved in advance by the Department, in its sole discretion. The foregoing restriction shall not preclude or restrict contact with regard to matters unrelated to the RFP or the procurement or from participating in public meetings of the Department or any public or Proposer workshop related to this RFP. Any Proposer engaging in such prohibited contact may be disqualified at the sole discretion of the Department;

(d) The Proposers shall not contact Stakeholders regarding the P3 Project, including employees, representatives and members of the entities listed below, except as specifically approved in advance by the Department in writing or as set forth in this Section 2.2.3:

i. Prince William County

ii. Fairfax County

iii. Northern Virginia Transportation Authority ("NVTA")

iv. WMATA

v. VAP3 (except as provided herein)

vi. Any political subdivision of the Commonwealth or local government body or locality within the Commonwealth that, in each case, has an interest in the P3 Project, with the exception of VSBFA

vii. DRPT

viii. FHWA

ix. USDOT

x. the TIFIA Office (unless such communication is facilitated by the Department)

xi. the Department (except as provided herein)

(e) Any communications determined by the Department to be improper, at the sole discretion of the Department, may result in disqualification;

(f) Any official information regarding the P3 Project will be disseminated from the Department on the Department letterhead or by VAP3 on VAP3 letterhead. Any official correspondence will be in writing and signed by the Department Representative; and

(g) Neither the Department nor VAP3 will be responsible for any oral exchange or any other information or exchange that occurs outside the official process specified herein.

Proposers shall note that no correspondence or information from the Department regarding the RFP or as the Proposal process in general shall have any effect unless it complies with Section 2.2.3(f).

2.2.4 Language Requirement

All correspondence regarding the RFP, ATCs and IFCs, the Proposal, the Comprehensive Agreement and all other matters pertaining to this Procurement are to be in the English language. If any original documents required for the Proposal are in any other language, Proposer shall provide a certified English translation, which shall take precedence in the event of conflict with the original language.

2.3 Questions and Response Process; Revised Draft RFPs

2.3.1 Questions and Responses Regarding the RFP

Proposers shall be responsible for reviewing the RFP in each of its revised forms issued by the Department prior to the Technical and Financial Proposal Due Dates and for requesting written clarification or interpretation of any perceived mistake, discrepancy, deficiency, ambiguity, error or omission contained therein, or of any provision that a Proposer fails to understand. Failure of a Proposer to so examine and inform itself shall be at its sole risk, and no relief for error or omission will be provided by the Department. Proposers shall submit to the Department Representative, and VAP3, in coordination with the Department and DRPT, requests for written clarification using Form S in accordance with this Section 2.3.1. To the extent responses are provided, they will not be considered part of the Comprehensive Agreement nor will they be relevant in interpreting the Comprehensive Agreement, except as expressly set forth in the Comprehensive Agreement.

The Department will only consider comments or questions regarding the RFP, including requests for clarification and requests to correct errors, if submitted by a Qualified Proposer within the

appropriate time periods specified in Section 1.6.1 to the P3 Project e-mail address: i66ppta@vdot.virginia.gov.

Such comments or questions may be submitted at any time prior to the applicable last date specified in Section 1.6.1 or such later date as may be specified in any Revised Draft RFP and shall be listed in order of importance and labeled as follows: (1) the comment or question relates to a "go/no-go" issue that, if not resolved in an acceptable fashion, may preclude the Proposer from submitting a Proposal, (2) the comment or question has a material impact on the value of the transaction, or (3) all other comments or questions, with 1 being highest priority and 3 being lowest priority. Additionally, the comments or questions shall (i) identify the document (e.g., the Comprehensive Agreement, Technical Requirements, etc.); (ii) identify the relevant section number, if applicable; and (iii) indicate whether the Proposer believes the question contains confidential or proprietary information relating to Proposer's Proposal, ATCs or IFCs. To the extent the Department makes a determination, in accordance with Section 2.6, that a question submitted as confidential does not qualify as confidential, the Proposer will have the opportunity to revise or withdraw its question. With respect to comments on the RFP Documents generally, suggested revisions to language in the appropriate RFP Documents are encouraged.

Except during one-on-one meetings, no telephone or oral requests will be considered. Questions may be submitted only by a Proposer's designated representative.

The questions and the Department's responses will be in writing and will be delivered to all Proposers, except that the Department intends to respond individually to those questions identified by a Proposer as containing confidential or proprietary information relating to a Proposer's Proposal, ATCs or IFCs. The Department reserves the right to disagree with a Proposer's assessment regarding confidentiality of information in the interest of maintaining a fair process or complying with applicable Law. Under such circumstances, the Department will inform the Proposer and may allow it to withdraw the question, rephrase the question, or have the question answered non-confidentially. The Department may rephrase questions as it deems appropriate and may consolidate similar questions. The Department contemplates issuing multiple sets of responses at different times during the procurement process.

2.3.2 Revised Draft RFPs

The Department reserves the right, in its discretion, to revise, modify or change the RFP and/or procurement process at any time. Any such revisions will be implemented through issuance of a revised Draft RFP ("Revised Draft RFP"). Any Revised Draft RFPs will be posted on the Project Website, and Proposers will be notified of the issuance of such revisions. If any revision significantly impacts the RFP, as determined in the Department's discretion, the Department may change the Technical Proposal Due Date or the Financial Proposal Due Date. The announcement of such new date will be included in the Revised Draft RFP. In addition, if the last date for Proposers to submit questions regarding the RFP has occurred or has changed, the Revised Draft RFP will indicate the latest date for submittal of any permitted clarification requests concerning the Revised Draft RFP.

A Proposer shall acknowledge in each of its Proposal Letters (*see* Form A-1 and Form A-2) receipt of all Revised Draft RFPs and question and answer responses. Failure to acknowledge

such receipt may cause the Proposal to be deemed non-responsive and be rejected. VAP3, in coordination with the Department and DRPT, reserves the right to hold group meetings with Proposers and/or one-on-one meetings with each Proposer to discuss any Revised Draft RFPs or response to requests for clarifications.

The Department does not anticipate issuing addenda to the Final RFP later than 15 Business Days prior to the Technical Proposal Due Date. If the need arises, the Department reserves the right to issue addenda to the Final RFP after such date. If the Department finds it necessary to issue addenda, then any relevant processes or response times necessitated by the revisions will be set forth in a cover letter to that specific addendum, and the Proposers will have a right to withdraw their Proposals without any penalty, payment or draw on their Proposal Security (except that such withdrawal will preclude Proposers from receipt of a stipend pursuant to Section 6.3).

2.4 Pre-Proposal Submittals

Pre-Proposal Submittals are required as provided in Section 1.8.2(b) (regarding Lead Underwriters); Section 2.11 (regarding changes in a Proposer's organization), Section 2.13 (regarding changes in and new additions to Key Personnel), Section 4.8.1 (regarding form of Proposal Security); Section 5.12.3 (regarding the Financial Model Auditor), and Section 5.12.4 (regarding Benchmark Rates and credit spreads). Any Proposer that wishes to submit an ATC pursuant to Section 3.2 or an IFC pursuant to Section 3.5 must make a Pre-Proposal Submittal as described therein.

2.5 Pre-Proposal Meetings

2.5.1 Informational Meetings

VAP3, in coordination with the Department and DRPT, may hold joint informational meetings with all Proposers at any time prior to the Financial Proposal Due Date. VAP3 may hold separate meetings in the form of: meetings to address the ITP and Comprehensive Agreement, technical workshops, and financial workshops, among others. VAP3, in its discretion, may consolidate meetings or elect to hold general informational meetings. Informational meetings may be held either in person or by telephonic or electronic means. If held telephonically or electronically, the meeting will permit interactive communication between each Proposer and VAP3. Notice of any informational meetings will be sent to all Proposers. If the meeting is conducted by telephonic or electronic means, the notice will inform Proposers of the manner of the meeting.

If any informational meeting is held, each Proposer will be expected to attend with appropriate members of its proposed key management personnel and, if required by VAP3, senior representatives of proposed team members identified by VAP3.

2.5.2 One-on-One Meetings

As permitted under the PPTA Manual, the Department intends to conduct in-person one-on-one meetings with each Proposer on the dates set forth in Section 1.6.1 herein, and on such other

dates designated by the Department in writing to Proposers, to solicit feedback regarding the RFP and discuss Proposer's ATCs and/or IFCs. The Department reserves the right to disclose to all Proposers any issues raised during the one-on-one meetings, except to the extent that the Department determines, in its discretion, such disclosure would impair the confidentiality of an ATC or IFC, or would reveal a Proposer's confidential business strategies. The FHWA also may participate in all one-on-one meetings.

The one-on-one meetings are subject to the following:

(a) The meetings are intended to provide Proposers with a better understanding of the RFP.

(b) The Department will not discuss with any Proposer any Proposal, ATC or IFC other than Proposer's own.

(c) Proposers shall not seek to obtain commitments from the Department in the meetings or otherwise seek to obtain an unfair competitive advantage over any other Proposer.

(d) No aspect of these meetings is intended to provide any Proposer with access to information that is not similarly available to other Proposers, and no part of the evaluation of Proposals will be based on the conduct or discussions that occur during these meetings.

Proposers that have scheduled one-on-one meetings must submit to the Department Representative at least seven days in advance of the meeting an agenda for the meeting and a list of persons, and their respective affiliations, who will attend the meeting. The Department will determine the maximum amount of individuals from each Proposer team permitted to attend the one-on-one meetings. Persons attending the one-on-one meetings will be required to sign an acknowledgment of the foregoing provisions and to identify all participants from Proposer.

2.5.3 Questions and Responses During One-on-One Meetings

During one-on-one meetings, Proposers may ask questions and the Department may provide responses. However, any responses provided by the Department during one-on-one meetings may not be relied upon unless questions were submitted in writing and the Department provided written responses in accordance with Section 2.3.1 and Section 2.2.3(f).

2.5.4 Statements at Meetings

Nothing stated at any pre-Proposal meeting or included in a written record or summary of a meeting will modify this ITP or any other part of the RFP unless it is incorporated in a Revised Draft RFP or in the Final RFP (or any addenda thereto), in each case issued pursuant to Section 2.3.2.

2.6 Virginia Freedom of Information Act/Confidentiality

2.6.1 Disclosure Waiver

All Proposals submitted to the Department become the property of the Commonwealth of Virginia and are subject to the disclosure requirements of Va. Code Ann. § 2.2-4342 of the VFOIA. Proposers are advised to familiarize themselves with the provisions of the VFOIA to ensure that documents identified as confidential will not be subject to disclosure under VFOIA. In no event shall the Commonwealth, VAP3, DRPT or the Department be liable to a Proposer for the disclosure of all or a portion of a Proposal submitted pursuant to this RFP.

2.6.2 Claimed Exemptions to Disclosure

If a responding Proposer has special concerns about information it desires to make available to the Department but which it believes constitutes a trade secret, proprietary information or other confidential information exempted from disclosure, such responding Proposer specifically and conspicuously should designate that information as such in its Proposal and state in writing why protection of that information is needed. The Proposer also should make a written request to the Department. The written request shall:

1. Invoke such exemption upon the submission of the materials for which protection is sought.

2. Identify the specific data or other materials for which the protection is sought.

3. State the reasons why the protection is necessary.

4. Indicate that a similar process with the appropriate officials of the affected local jurisdictions is or will be conducted. Failure to take such precautions prior to submission of a Proposal may subject confidential information to disclosure under the VFOIA.

Blanket designations that do not identify the specific information will not be acceptable and may be cause for the Department to treat the entire Proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on the Department by applicable Law, and the applicable Law(s) shall control in the event of a conflict between the procedures described above and any applicable Law(s).

Proposers are on notice that the Department will post on its webpage all responsive Proposals and other relevant information and agreements, in accordance with applicable Laws.

Where interpretation of the applicable statutes is required, the policy goals of transparency and accountability in the PPTA Manual shall prevail.

All Proposers should obtain and thoroughly familiarize themselves with the VFOIA, the PPTA, the PPTA Manual and any information in this RFP applicable to the issue of confidentiality and public information. The Department will not advise a Proposer as to the nature or content of

documents entitled to protection from disclosure under the VFOIA, the PPTA or other Virginia Laws, as to the interpretation of the VFOIA, or as to the definition of trade secret. Proposer shall be solely responsible for all determinations made by it concerning the VFOIA. Each Proposer is advised to contact its own legal counsel concerning the effect of the VFOIA to that Proposer's own circumstances.

2.6.3 Observers During Evaluation

Proposers are advised that observers from federal or other agencies, including representatives of local agencies and municipalities, may observe the Proposal evaluation process and will have the opportunity to review the Technical and Financial Proposals after their respective due dates. The Department has agreed to allow FHWA officials and their outside advisors to participate in the procurement process, which includes access to the Technical and Financial Proposals and one-on-one meetings. Outside observers, other than FHWA officials, will be required to sign the Department's standard confidentiality agreement.

2.7 Department Studies and Investigations

The Department has provided site investigation and traffic study information in the RFP Reference Documents. To the extent the Department undertakes any additional investigative activities or studies, the information obtained by the Department from such activities or studies may be made available to Proposers in the RFP Reference Documents. All information provided by the Department will be subject to the same limitations applicable to similar information furnished in the RFP Reference Documents. The Department makes no representation or warranty as to the accuracy, completeness or suitability of the additional information.

2.8 Examination of RFP and Site Access

2.8.1 Examination of RFP

Each Proposer shall be solely responsible for examining, with appropriate care and diligence, the RFP, including RFP Reference Documents, any Revised Draft RFPs, the Final RFP, and any addenda and material posted on the Project Website and the RFP Website, and for informing itself with respect to any and all conditions that may in any way affect the amount or nature of its Proposal or the performance of each of the Developer's obligations under the Comprehensive Agreement with the Department. The Proposal Letters (Form A-1 and Form A-2) include an acknowledgment that Proposer has received and reviewed all materials posted to the Project Website and the RFP Website. Failure of Proposer to so examine and inform itself shall be at its sole risk, and the Department will provide no relief for any error or omission.

Subject to Section 2.8.2, each Proposer is responsible for conducting such investigations as it deems appropriate in connection with its Proposal, regarding the condition of existing facilities and Site conditions, including Hazardous Materials, and permanent and temporary Utility appurtenances, area population, traffic patterns and driver preferences, keeping in mind the provisions of the Comprehensive Agreement regarding assumption of liability by Proposer. Proposer's receipt of the Department-furnished information does not relieve Proposer of such responsibility.

The submission of a Proposal shall be considered prima facie evidence that Proposer has made the above-described examination and is satisfied as to the conditions to be encountered in performing the Work and as to the requirements of the Comprehensive Agreement.

2.8.2 Site Access

Subject to this Section 2.8.2 and subject to Proposer obtaining any required administrative or governmental approvals, each Proposer will be permitted to conduct data mining studies and investigations for purposes of obtaining additional traffic and revenue information and site condition information that the Proposer deems necessary; *provided, however*, that the Proposer shall not (a) interrupt or impede traffic flow; (b) stop traffic at cross-streets or intersections or otherwise to solicit information; and/or (c) request any vehicle/owner data or information from the Department prohibited by Law.

Proposers will be allowed access, until and through the Technical Proposal Due Date, to those portions of the P3 Project under the Department's ownership and access to the I-66/I-495 interchange and portions of the 495 Express Lanes, for purposes of inspecting in-place assets and determining Site conditions through investigations. This work may include surveys and site investigations, such as geotechnical, Hazardous Materials and Utilities investigations. If Proposers wish to conduct their own geotechnical investigations on the Department ROW, Proposers must coordinate their activities with the Department. Proposers must obtain permits through the Department's normal permitting process prior to performing any drilling or other intrusive investigations on Department ROW. A copy of the permit application containing applicable requirements and contact information is available on the Department's website. Note that destructive testing or drilling/coring of pavements will not be permitted. If Proposers wish to conduct their own geotechnical investigations within the P3 Project corridor on property not acquired by the Department, Proposers must coordinate their activities with the individual property owners and must adhere to the Department and other regulatory guidelines for clearing and drilling and laws related to property owner notification.

After selection of a Preferred Proposer, the Preferred Proposer will be allowed access the Department ROW, in accordance with the process described in this Section 2.8.2, to conduct surveys and site investigations, including geotechnical, Hazardous Materials and Utilities investigations and to engage in the other activities referenced in the Technical Requirements that are allowed prior to the NTP, with the exception of surveys and site inspections conducted pursuant to a LNTP for Early Work.

2.9 Duty to Notify of Errors

If any mistake, discrepancy, deficiency, ambiguity, error or omission is identified by Proposer at any time during the procurement process in any of the documents supplied by the Department, Proposer shall have a duty to notify the Department of the error in writing in accordance with Section 2.3.1.

2.10 Improper Conduct

2.10.1 Non-Collusion

Neither Proposer nor any of its team members shall undertake any of the prohibited activities identified in the Non-Collusion Affidavit (Form F).

2.10.2 Organizational Conflicts of Interest

Guidelines for the Department's policy on organizational conflicts of interest are addressed in the PPTA Manual.

The Department, in its sole discretion, will make a determination relative to potential organizational conflicts of interest or a real or perceived competitive advantage, and its ability to mitigate such a conflict. An organization determined, at the Department's sole discretion, to have a conflict of interest or competitive advantage relative to this procurement that cannot be mitigated shall not be allowed to participate as part of the Proposer's team for the P3 Project. A list of parties the Department has predetermined to have organizational conflicts has been provided on the Project Website.

The list provided on the Project Website is not, and is not intended to be, an exhaustive list. Prospective Proposers are responsible for determining whether or not any of its team members has a conflict of interest. Prior to the Commercial Close Date, if a Proposer believes any of its team members may have a conflict of interest, the Proposer shall contact the Department Representative in writing to request a determination of the organization's conflict status. Failure to abide by the Department's determination in this matter may result in a Proposal being declared non-responsive.

Conflicts of interest and a real or perceived unfair competitive advantage are described in state and federal law, and, for example, may include, but are not limited to the following situations:

1. An organization or individual hired by the Department to provide assistance in development of evaluation criteria for the P3 Project;

2. An organization or individual hired by the Department to provide assistance in development of non-public evaluation criteria as part of the programmatic guidance or procurement documents for Virginia's P3 program, and as a result has a unique competitive advantage relative to the P3 Project;

3. An organization or individual with a present or former contract with the Department or VAP3 to prepare planning, environmental, engineering, or technical work product for the P3 Project, and has a potential competitive advantage because such work product is not available to all prospective Proposers in a timely manner prior to the procurement process; and

4. An organization or individual with a present contract with the Department or VAP3 to provide assistance in the development of the procurement documents, or the administration of the Comprehensive Agreement and the P3 Project.

In addition to the Department's policy on organizational conflicts of interest, the organizational conflict of interest rules found in 23 CFR § 636, Subpart A, including 23 CFR § 636.116, apply to this procurement. 23 CFR § 636.103 defines an organizational conflict of interest as follows:

> Organizational conflict of interest means that because of other activities or relationships with other persons, a person is unable or potentially unable to render impartial assistance or advice to the owner, or the person's objectivity in performing the contract work is or might be otherwise impaired, or a person has an unfair competitive advantage.

2.11 Changes in Proposer's Organization

Proposers are advised that, in order for a Proposer to remain qualified to submit a Proposal after it has been placed on the list of Qualified Proposers, the Proposer's organization as identified in the SOQ must remain intact until the Commercial Close Date.

If a Proposer wishes to make changes in the team members identified in its SOQ, the following actions may not be undertaken without the Department's prior written consent:

- Deletion or substitution of a Proposer team member or Key Personnel identified in its SOQ or a change in the role or scope of work of a team member or Key Personnel;
- Addition of a new Equity Member, proposed Financially Responsible Party or Major Non-Equity Member;
- Deletion or substitution of an Equity Member of Proposer or any other entity that will bear financial responsibility or liability for the performance of the Proposer; and
- Other changes, direct or indirect, in the equity ownership or team membership of a Proposer.

In any such case, Proposer shall submit to the Department a written request for approval of the change as soon as possible but in no event later than the date and time set forth in Section 1.6.1. Any such request shall be addressed to the Department at the address set forth in Section 2.2.1, accompanied by the information specified for such entities or individuals in the RFQ. If a request is made to allow deletion or role change of any team members identified in its SOQ, Proposer shall submit such information as may be required by the Department to demonstrate that the changed team meets the RFQ and RFP criteria (pass/fail and technical). Proposer shall submit an original and nine copies of each request package. The Department is under no obligation to approve such requests and may approve or disapprove in writing a portion of the request or the entire request at its discretion. Except as provided herein and in the

Comprehensive Agreement, a Proposer may not make any changes in the team members identified in its SOQ after the deadline set forth in Section 1.6.1. Between the applicable last date set forth in Section 1.6.1 and execution of the Comprehensive Agreement, the Department will consider requests by Proposers to make changes in Proposers' organization based only on unusual circumstances beyond Proposer's control.

2.12 Changes to Companies or Entities Filling Key Personnel Roles

Each Proposer must identify any company that will (a) fill a key project role, including project management, lead design firm, quality control management and quality assurance management, or (b) serve as a key task leader for geotechnical, hydraulics and hydrology, structural, environmental, utility and ROW issues. Furthermore, Proposer may not make changes to the companies so identified unless the original company or entity: (i) is no longer in business, is unable to fulfill its legal, financial or business obligations, or can no longer meet the terms of the teaming agreement with the Proposer; (ii) voluntarily removes itself from the team; (iii) fails to provide a sufficient number of qualified personnel to fulfill the duties identified during the proposal stage; or (iv) fails to negotiate in good faith in a timely manner in accordance with provisions established in the teaming agreement proposed for the P3 Project. If a Preferred Proposer makes team changes in violation of these requirements, any cost savings resulting from the change shall accrue to the Department and not to the Proposer. The Proposer shall identify all such contractors on Form B-3. Note that all teaming agreements and subcontracts must be executed and provided to the Department before the execution of the Comprehensive Agreement.

2.13 Changes in Key Personnel and Designation of New Key Personnel

Proposers are advised that the Department discourages changes in Key Personnel from the individuals listed in the SOQ. Any proposed changes in Key Personnel from those identified in the SOQ are subject to the Department approval as specified in this Section 2.13.

Each Proposer shall submit a package that includes a list of any proposed changes in Key Personnel from those identified in the SOQ and any new Key Personnel who were not required to be submitted with the SOQ falling within any of the categories identified in Exhibit B, Section 3.2.5.2, along with a copy of a resume for each such person contained on Form B-4 (which must contain the individual's qualifications and relevant work experience and contact information for three references for each individual).

In addition, if any individual to be included in the Proposal is also proposed as a Key Personnel or for another position on any other Department procurement, the Proposer shall include in the package either: (1) a statement certifying that said individual will be available to assume its designated role on the P3 Project if Proposer is the Preferred Proposer or (2) the resume, contained on a copy of Form B-4, of a qualified alternate.

Each such package shall include an original and nine copies of the information specified above. The package shall be submitted to the Department by the date and time for submittal of changes in Key Personnel specified in Section 1.6.1 for review and approval by the Department, in its discretion. The package shall be delivered to the address set forth in Section 2.2.1.

The Department is under no obligation to approve requested changes in Key Personnel or designations of new Key Personnel and may disapprove such requests at its discretion. If the Department, in its discretion, disapproves a proposed Key Personnel or (if applicable) its proposed alternate, Proposer shall submit the information required above for its proposed substitute for review and approval by the Department in accordance with the foregoing process at least 15 Business Days prior to the Technical Proposal Due Date.

The Proposal may not include any Key Personnel previously disapproved by the Department in writing for such Key Personnel position.

A Proposer may not make any changes in its Key Personnel after receipt of Department approval as specified in this Section 2.13, except as provided in the Comprehensive Agreement.

2.14 Non-Exclusive Relationship; Release of Exclusive Relationship

Monoline Insurers and Credit Rating Agencies

The market for monoline insurers and rating agencies is of a size that exclusive teaming arrangements between monoline insurers, rating agencies and Proposers could give Proposers in exclusive arrangements a distinct and unfair advantage relative to other Proposers. As a result, to ensure a fair procurement process, Proposers are forbidden from entering into exclusive teaming arrangements with monoline insurers and rating agencies.

Lead Underwriters and Lenders

Subject to the following paragraph, Proposers may enter into an exclusive relationship with not more than one Lead Underwriter. If a Proposer wishes to engage additional underwriters, such additional underwriters must be engaged on a non-exclusive basis. No exclusivity arrangements will be allowed with Lenders, including institutional investors proposing to providing debt through a private placement.

Release of Exclusive Relationships

Each unsuccessful Proposer shall release its Lead Underwriter and/or Lender(s) of any exclusivity obligations no later than five days after being notified by the Department that the Department has executed the Comprehensive Agreement with another Proposer. Failure to satisfy the requirements of this Section 2.14 will entitle the Department to draw on the Proposer's Proposal Security.

SECTION 3 ALTERNATIVE TECHNICAL CONCEPTS, ALTERNATIVE FINANCIAL CONCEPTS

3.1 Alternative Technical Concepts

"Alternative Technical Concepts" or "ATCs" are innovative concepts that deviate from the Technical Requirements for design, construction, operation and maintenance of the Project, or otherwise require a modification of the Technical Requirements that may be proposed in

accordance with the terms and conditions set forth in this ITP. Sections 3.1 through 3.3 set forth a process for pre-Proposal review of ATCs.

ATCs eligible for consideration hereunder shall be limited to those deviations from the as-issued Technical Requirements that result in performance, quality and value of the end product that is equal to or better than the end product that would result from full compliance with the Agreement and the Technical Requirements, as determined by the Department, in its sole discretion. A concept is not eligible for consideration as an ATC if, in the Department's discretion, if it is premised upon or would require a mere reduction in P3 Project scope, performance or reliability.

ATCs that, if implemented, would require further environmental evaluation of the Project may be allowed, provided that Proposer shall bear the schedule risks and cost impacts associated with such additional environmental evaluation. If the Developer is not able to obtain the approvals necessary to implement the ATC, the Developer will be obligated to develop the P3 Project in accordance with existing approvals without any relief for additional cost or schedule impacts due to the failure to obtain the necessary environmental approvals.

For ATCs that would require approval by a third party (e.g., a Governmental Authority), the Developer shall have full responsibility for, and bear the full risk of, obtaining any such approvals and submitting required or relevant data if it is selected as the Preferred Proposer; *provided, however*, that the Developer includes the Department in all correspondence and meetings with any third parties. If any required third-party approval is not subsequently granted with the result that the Developer must comply with the requirements of the original RFP, the Developer shall not be entitled to relief for additional cost or schedule impacts due to the failure to obtain the necessary third party approvals.

Any ATC approved by the Department that deviates from the following requirements described in the Technical Requirements may result in the issuance of an Addendum to the RFP to modify the Technical Requirements:

- Design Speeds
- Typical Section elements (lane width, shoulder width, number of lanes)

If a Proposer is unsure whether a concept is consistent with the requirements of the RFP or whether a concept would be considered an ATC by the Department, the Department recommends that the Proposer submit such concept for review as an ATC.

3.2 Pre-Proposal Submission of ATCs

If a Proposer wishes to include ATCs as part of its Proposal, Proposer may submit ATCs for review to the Department Representative until the applicable last date and time identified in Section 1.6.1. Such submission shall be in writing, with a cover sheet identifying Proposer and stating "Transform 66 P3 Project – Confidential ATCs." Proposer clearly shall identify the submittal as a request for review of an ATC under this ITP. If Proposer does not clearly designate its submittal as an ATC, the Department will not treat the submission as an ATC. Note

that the Department is considering an all-electronic ATC submittal process in which Proposers will upload their submissions to a secure site. Additional information will be made available prior to the date on which ATCs may first be submitted, as set forth in Section 1.6.1. The ATC submittals shall use Form P and include a narrative description of the ATC and technical information, including drawings, as described below.

3.2.1 Pre-Proposal ATC Submittal Requirements

Pre-Proposal ATC submissions shall be sequentially numbered and shall identify the Proposer and the ATC number (multi-part or multi-option ATCs shall be submitted as separate individual ATCs with unique sequential numbers). Each submittal shall include:

(a) all references to requirements of the RFP that are inconsistent with the proposed ATC, an explanation of the nature of the deviations from said requirements and a request for approval of such deviations;

(b) the locations where, and an explanation of how, the ATC will be used on the P3 Project;

(c) any reduction in the time period necessary to design and construct the P3 Project resulting from implementing the ATC, including, as appropriate, a description of method and commitments;

(d) an estimate of any savings that would accrue to the Department should the ATC be approved and implemented and/or any additional Department, Developer and third party costs associated with implementation of the ATC;

(e) additional ROW, if any, that will be required to implement the ATC (Proposers are advised that they shall (i) be solely responsible for the acquisition of any such ROW as per the Technical Requirements, including the cost thereof and obtaining any necessary Environmental Approvals; and (ii) not be entitled to any Change Order, Delay Event or Compensation Event as a result of acquisition or site conditions on such additional ROW);

(f) any changes in operations requirements associated with the ATC, including ease of operations;

(g) any changes in routine or capital maintenance requirements associated with the ATC, including ease of maintenance;

(h) any changes in the anticipated useful life of the item(s) comprising the ATC;

(i) any changes in Handback Requirements associated with the ATC;

(j) preliminary analysis and quantitative discussion of potential impacts on vehicular traffic (both during and after construction);

(k) a preliminary analysis on environmental permitting, community impact, and safety;

(l) a preliminary analysis of potential impacts on P3 Project revenue;

(m) a description of other projects on which the ATC has been used, the degree of success or failure of such usage and names and contact information, including phone numbers and e-mail addresses, for project owner representatives that can confirm such statements; and

(n) preliminary drawings of the configuration of the ATC or other appropriate descriptive information, including a traffic operational analysis, if appropriate.

3.2.2 Errors, Ambiguities or Mistakes

If the Department determines, based on a proposed ATC or otherwise, that the RFP contains an error, ambiguity or mistake, the Department reserves the right to revise the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed ATC.

3.3 Department Review of Pre-Proposal Submission of ATCs

The Department may request additional information regarding proposed ATCs at any time and will, in each case, return responses to each Proposer regarding its ATC on or before the applicable last date set forth in Section 1.6.1, provided that the Department has received all required and requested information regarding such ATC.

The Department's responses will be limited to one of the following statements:

(a) the ATC is acceptable for inclusion in the Proposal;

(b) the ATC is not acceptable for inclusion in the Proposal;

(c) the ATC is acceptable for inclusion in the Proposal with such conditions, modifications and/or requirements as identified by the Department; or

(d) the submittal does not qualify as an ATC but may be included in the Proposer's Proposal because it appears to be within the requirements of the RFP or a pending revised version of the draft RFP.

The Department may request additional information regarding proposed ATCs at any time. The Department will respond to each proposed ATC submission, provided that the Department has received all requested information regarding such proposed ATC.

Prior to the deadline for the Department to provide final responses to ATC proposals as set forth in Section 1.6.1 all approvals given by the Department will be considered preliminary. If a preliminary acceptance is granted, with or without conditions, this acceptance will not be rescinded by the Department unless the Department discovers information that makes the ATC unacceptable for inclusion or that one or more of the preliminarily-approved ATCs are

inconsistent or duplicative of one or more other preliminarily-approved ATCs. After the final submittal date for proposed ATCs, the Department will provide final responses for each submittal that has been preliminarily approved and for all submittals awaiting response by the response date specified in Section 1.6.1.

The Department's approval of an ATC will constitute a change in the specific requirements of the Comprehensive Agreement associated with the approved ATC for that Proposer, should the Proposer decide to incorporate that approved ATC. Each Proposer, by submittal of its Technical Proposal, acknowledges that the opportunity to submit ATCs was offered to all Proposers and waives any right to object to the Department's determinations regarding acceptability of ATCs.

The Department's acceptance or rejection of a pre-Proposal submission of an ATC will not entitle the Proposer to an extension of the Technical Proposal Due Date or the date that the ATCs are due; *provided, however*, that the foregoing shall not limit the Department's absolute and sole right to modify the Technical Proposal Due Date or any other date in connection with this procurement.

3.4 Incorporation of ATCs in the Comprehensive Agreement

Following selection of the Preferred Proposer, ATCs that were pre-approved by the Department and incorporated in the Proposal by the Preferred Proposer shall be included in the Comprehensive Agreement. If the Department responded to any ATC by stating that it would be acceptable if certain conditions were met, those conditions will become part of the Comprehensive Agreement. Notwithstanding anything to the contrary herein, if the Developer does not comply with one or more Department conditions of pre-approval for an ATC or the Developer fails to obtain a required third party approval for an ATC, the Developer will be required to comply with the original requirements of the RFP without additional cost or extension of time as set forth in the Comprehensive Agreement.

Prior to execution of the Comprehensive Agreement, ATCs from unsuccessful Proposers may, in the Department's discretion, be presented to the Preferred Proposer for possible incorporation into the Comprehensive Agreement during negotiation of the final terms of the Comprehensive Agreement pursuant to Section 5.12.1 and, if agreed by the Department and the Preferred Proposer in such negotiations, incorporated into the Comprehensive Agreement. In addition, following execution of the Comprehensive Agreement, ATCs from unsuccessful Proposers may, in the Department's discretion, be presented to the Developer as a Department Change Order in accordance with the Comprehensive Agreement.

3.5 Innovative Financial Concepts

This Section 3.5 sets forth a process for pre-Proposal review of Innovative Financial Concepts ("IFCs"). This process is intended to allow Proposers to incorporate innovation and creativity into the Proposals, in turn allowing the Department to consider Proposer IFCs in making the selection decision, to avoid delays and potential conflicts in the commercial terms associated with deferring of reviews of IFCs to the post-selection period and to obtain the Best Value for the Commonwealth.

IFCs are changes to the terms of the Comprehensive Agreement, subject to the exclusions set forth in Section 3.5.1, that allow IFCs that otherwise would be prohibited or impracticable due to the terms of the as-issued Comprehensive Agreement.

The Department has discretion to allow or reject any IFC submitted. Proposers are advised that the Department will allow an IFC only if the Department determines that the terms and conditions of the Comprehensive Agreement, as modified by the IFC, allow the Department better Value-for-Money, rights and remedies than the unmodified terms and conditions.

3.5.1 Exclusions to IFCs

A concept is not an IFC if, in the Department's discretion, it reduces the Department's Value-for-Money or the Department's contractual rights or remedies, including any concepts that include the following:

(a) A change to the tolling provisions, including tolling systems, minimum speed requirements, user classifications and Exempt Vehicles;

(b) An increase in the Public Funds Amount;

(c) A change in the Transit Funding Payments and Support for Corridor Improvements that results to a decrease of the Value-for-Money that the Department expects to receive from such payments;

(d) A change in the conditions to, or procedures for certifying Service Commencement and Project Completion;

(e) A change regarding allocation of responsibilities between the Department and the Developer for performance of design, permitting, ROW acquisition, Utility Adjustments, construction, operations, maintenance, the Life Cycle Maintenance Plan, Major Maintenance, Safety Compliance Orders or Handback Requirements;

(f) A change to the provisions addressing Compensation Events and Delay Events, or any other modifications that would allocate additional risk to the Department or reduce risks allocated to the Developer;

(g) A change to the provisions relating to Alternative Facilities;

(h) A change to the provisions regarding Developer default, notice, cure periods, remedies and dispute resolution, except to the extent such change would result in more favorable terms to the Department;

(i) A change to the provisions relating to Noncompliance Points and related remedies, except to the extent such change would result in more favorable terms to the Department;

(j) A change to the termination provisions, except to the extent such change would result in neutral or more favorable terms to the Department;

(k) A change to the provisions regarding lender direct agreements or Lender rights and protections provided in the Comprehensive Agreement, except insofar as an IFC not directed at lender direct agreements would require entry into or amendment of a direct lender agreement or amendment of the applicable provisions of the Comprehensive Agreement in order for the IFC to work; or

(l) A change resulting in requirements for insurance, Performance Security or Financial Close Security, as applicable, or indemnities that would be less favorable to the Department.

3.6 Pre-Proposal Submission of IFCs

If a Proposer wishes to include IFCs as part of its Proposal, the Proposer first shall submit the IFC for initial review by the Department, either to the Department Representative or at the first IFC meeting, as set forth in Section 1.6.1. Proposers may submit IFCs for initial review to the Department until the last date and time identified in Section 1.6.1. Such submission, if provided outside of the IFC meeting, shall be in writing, with a cover sheet identifying Proposer and stating "Transform 66 P3 Project – Confidential IFCs for Initial Review." If the Proposer does not identity its submittal as described in the preceding sentence, the Department will not treat the submission as an IFC. The Proposer shall submit five copies of each IFC initial review submission to the Department. An IFC initial review submission shall be a concise description of the IFC that is no more than five pages single-spaced, not including the cover sheet described above.

After reviewing each IFC initial review submission, the Department will notify the Proposer if the Proposer is invited to submit a Pre-Proposal IFC submission with respect to the particular IFC. Proposers invited to submit a Pre-Proposal IFC submission may submit a Pre-Proposal IFC to the Department Representative set forth in Section 2.2.1, until the last date and time identified in Section 1.6.1. Such submissions shall be in writing, with a cover sheet identifying Proposer and stating "Transform 66 P3 Project – Confidential Pre-Proposal IFCs." The Proposer clearly shall identify the submittal as a request for review of a Pre-Proposal IFC under this ITP. If the Proposer does not identify its submittal as described in the preceding sentence, the submission will not be treated as an IFC by the Department. Only Pre-Proposal IFCs invited by the Department after the review of an IFC initial review submission will be considered by the Department for inclusion in the Proposal.

Pre-Proposal IFC submissions shall include five copies of the following:

(a) a sequential IFC number identifying the Proposer and the IFC number (multi-part or multi-option IFCs shall be submitted as separate individual IFCs with unique sequential numbers);

(b) a detailed narrative description of the IFC;

(c) an explanation of the value of the IFC to the Department;

(d) an explanation and detailed description of each proposed change to the as-issued Comprehensive Agreement, including a detailed mark-up of each provision in the as-issued Comprehensive Agreement that will be changed as a result of the IFC;

(e) the analysis justifying use of the IFC, which may include an explanation of how the proposed changes to the Comprehensive Agreement will provide the Department substantially the same (or better) rights and remedies as the unmodified terms and conditions; and

(f) an estimate of any savings that would accrue to the Department should the IFC be approved and implemented.

Any IFC that has been pre-approved by the Department may be included in the Proposal, subject to the conditions set forth herein.

3.7 Revisions to the RFP

If the Department determines, as the result of review of a proposed IFC or otherwise, that the RFP contains an error, ambiguity or mistake, the Department reserves the right to revise the RFP to correct the error, ambiguity or mistake, regardless of any impact on a proposed IFC. Furthermore, the Department may modify the RFP Documents to incorporate modifications proposed by an IFC, provided that the Department (a) will not advise the other Proposers that the modification is associated with an IFC that the Department has confirmed in writing is not to be treated as a confidential IFC, and (b) will not make any modification if the Department determines that such modification would compromise a Proposer's intellectual property.

3.8 Department Review of Pre-Proposal Submission of IFCs

The Department may request additional information regarding proposed IFCs at any time and will, in each case, return responses to each Proposer regarding its IFC on or before the applicable last date set forth in Section 1.6.1, provided that the Department has received all requested information regarding such IFC.

The Department's responses will be limited to one of the following statements:

(a) the IFC, as submitted, is acceptable for inclusion in the Proposal;

(b) the submittal is not acceptable for inclusion in the Proposal;

(c) the IFC is not acceptable in its present form, but will be acceptable upon satisfaction, in the Department's discretion, of certain identified conditions which must be met or clarifications or modifications that must be made; or

(d) the concept in the submittal is permitted under the RFP Documents.

Approval of an IFC will constitute a change in the specific requirements of the Comprehensive Agreement associated with the approved IFC for that specific Proposer. Each Proposer, by submittal of its Proposal, acknowledges that the opportunity to submit IFCs was offered to all Proposers and waives any right to object to the Department's determinations regarding acceptability of IFCs.

The Department anticipates that its comments provided to a Proposer will be sufficient to enable the Proposer to make any necessary changes to its IFCs. However, if a Proposer wishes additional clarifications regarding necessary changes, the Proposer may provide a written request for clarifications under Section 2.3.1.

3.9 Incorporation of IFCs in the Comprehensive Agreement

Following selection of the Preferred Proposer, the IFCs that were pre-approved by the Department and incorporated in the Proposal by the Preferred Proposer shall be included in the Comprehensive Agreement in the form pre-approved by the Department. If the Department responded to any IFC by stating that it would be acceptable if certain conditions, clarifications or modifications were met, those identified conditions, clarifications or modifications will become part of the Comprehensive Agreement.

Following selection of the Preferred Proposer and prior to execution of the Comprehensive Agreement, IFCs from unsuccessful Proposers may, in the Department's discretion, be presented to the Preferred Proposer for possible incorporation into the Comprehensive Agreement during negotiation of the final terms of the Comprehensive Agreement pursuant to Section 5.12.1 and, if agreed by the Department and the Preferred Proposer in such negotiations, incorporated into the Comprehensive Agreement. In addition, following execution of the Comprehensive Agreement, IFCs from unsuccessful Proposers may, in the Department's discretion, be presented to the Developer as a Department Change in accordance with the Comprehensive Agreement.

3.10 Confidentiality of ATCs and IFCs

Subject to the provisions of the RFP, PPTA, VFOIA and the PPTA Manual, the Department will maintain the confidentiality of ATCs, IFCs, and all communications regarding ATCs and IFCs until a decision is made to select a Proposer or cancel the procurement, at which time all confidentiality rights, if any, shall be of no further force and effect except as otherwise allowed under the Act, applicable Law and Section 2.6 of this ITP. The foregoing shall not preclude the Department from modifying the documents: (1) as necessary to comply with applicable Law, (2) to account for information obtained by the Department outside of the ATC and IFC processes or (3) to correct an error in the Technical Requirements identified by a concept submitted as an ATC hereunder. By submitting a Proposal, Proposer agrees, if it is not selected, to disclosure of its work product to the Preferred Proposer.

SECTION 4 REQUIREMENTS FOR SUBMITTAL OF PROPOSALS AND ACCEPTANCE OF DELIVERY BY THE DEPARTMENT

4.1 General Submittal Requirements

Each Proposal shall include a Technical Proposal and a Financial Proposal meeting the requirements set forth in Exhibits B and C, respectively. Both Technical and Financial Proposals shall be submitted in recyclable, low-cost, sealed containers, in the format and manner set forth in this Section 4 no later than the applicable dates and times specified in Section 1.6.1.

4.1.1 Signatures Required

Each Proposal Letter (Form A-1 and Form A-2) shall be signed in blue ink by all Equity Members and shall be accompanied by evidence of signatory authorization as specified in Form A-1 and Form A-2, as applicable.

4.1.2 Copies

Where copies of the Proposal are required, Proposer shall mark the document or cover with the word "Copy" and shall number the copies sequentially.

4.1.3 Consequences of Failure to Follow Requirements

Failure to use sealed containers or to properly identify the Proposal may result in an inadvertent early opening of the Proposal and may result in disqualification of the Proposal. Proposer shall be entirely responsible for any consequences, including disqualification of the Proposal, which result from any inadvertent opening if the Department determines that Proposer did not follow the foregoing instructions. It is Proposer's sole responsibility to see that its Proposal is received as required. Proposals received after the date and time due will be rejected without consideration or evaluation.

4.2 Requirement to Submit Compliant Proposal

The Proposal may not include any qualifications, conditions, exceptions to or deviations from the requirements of the RFP, except as contained in pre-approved ATCs or IFCs (including conditionally pre-approved ATCs or IFCs that have been revised to satisfy any conditions to approval), or as otherwise contemplated in this RFP. If either the Technical Proposal or the Financial Proposal does not fully comply with the instructions and rules contained in this ITP, including the Exhibits, the entire Proposal may be disqualified. Any Technical Proposal or Financial Proposal that contains a material alteration, as determined by the Department, in its discretion, to the ITP Forms, will be considered non-responsive and non-compliant. Alterations that have been approved in writing in advance by the Department will not be considered material.

If either a Technical Proposal or a Financial Proposal is deemed non-responsive or non-compliant, the Department may disqualify the entire Proposal from further consideration, in its discretion. Such disqualification will not result in the forfeiture of Proposer's Proposal Security.

Each Proposal must be submitted in the official format that is specified by the Department in the RFP. Proposer shall sign the original copy of Forms A-1 and A-2 of the Proposal submitted to the Department. Multiple or alternate proposals may not be submitted.

Proposals may be considered non-compliant and may be rejected for any of the following reasons:

(a) If the Proposal: (i) is submitted in paper form or on disk other than that specified by the Department, (ii) is not properly signed, (iii) is missing any parts, or (iv) otherwise does not meet the Proposal submittal requirements;

(b) If the Proposal contains irregularities that make the Proposal incomplete, indefinite or ambiguous as to its meaning, including illegible text, omissions, erasures, alterations, items not called for in the RFP or unauthorized additions;

(c) If multiple or alternate Proposals are submitted or if the Proposal includes any conditions or provisions reserving the right to accept or reject a selection or to enter into a Comprehensive Agreement following selection;

(d) If the Proposal: (i) limits or modifies the Proposal Security, (ii) does not provide the Proposal Security or (iii) does not provide requested information deemed material by the Department; and

(e) Any other reason the Department determines the Proposal to be non-compliant.

4.3 Format

The Technical Proposal and the Financial Proposal shall contain concise written material and drawings enabling a clear understanding and evaluation of the capabilities of Proposer and the characteristics and benefits of the Proposal. Legibility, clarity and completeness of the Technical Proposal and Financial Proposal are essential. Financial statements may be submitted exclusively in electronic format, and electronic submissions of any kind must be free of encryption and document restrictions.

The Technical Proposal shall not exceed the page limitation set forth in Exhibit B, Section 2. No page limit applies to appendices and exhibits; *however*, the Department does not commit to review any information in appendices and exhibits other than those required to be provided, and the Proposal evaluation process will focus on the body of the Proposal and any required appendices and exhibits.

An $8^1/_2$ by 11-inch format is required for typed submissions relating to the Technical Proposal and the Financial Proposal, and an 11 by 17-inch format is allowable for drawings, except the Proposer's schematic submitted as part of the Technical Proposal, which shall be provided in the format set forth in Exhibit B, Section 4.2.2.2. Any support letters provided from parties outside the United States may be submitted in ISO A4 format and design drawings may be submitted on roll plots not to exceed 36 inches in width (and such design drawings shall be submitted on DVD in PDF format and in Bentley Microstation format). Preliminary schedule submissions shall

include both a hard copy and the electronic files necessary to view and manipulate the schedule in Primavera.

Submittals must be bound with all pages in a binder and must be sequentially numbered. Printed lines may be single-spaced with the type font size being no smaller than 12-point, other than in tables and figures which may be prepared using 10-point font size type. The use of 11 by 17-inch foldouts for tables, graphics and maps is acceptable in the main body of the Technical and Financial Proposal, if applicable. Each 11 by 17-inch foldout will be considered one page.

4.4 Additional Requirements for Technical Proposal and Financial Proposal Delivery

The completed Technical Proposals and Financial Proposals shall be submitted and delivered in sealed containers no later than the due dates and times specified in Section 1.6.1.

The Technical Proposals are to be delivered to the Department at the following address:

Virginia Department of Transportation
Northern Virginia District
4975 Alliance Drive
Fairfax, VA 22030
Attn: Dr. Morteza Farajian

The Financial Proposals are to be delivered to the Department at the following address:

Virginia Office of Public-Private Partnerships
1401 E. Broad Street, Suite 1306
Richmond, VA 23219
Attn: Dr. Morteza Farajian

All packages constituting the Technical Proposal shall be individually labeled as follows:

[Proposer Name]:
Response to the
Request for Proposals
for the Transform 66 P3 Project
Technical Proposal

All packages constituting the Financial Proposal shall be individually labeled as follows:

[Proposer Name]:
Response to the
Request for Proposals
for the Transform 66 P3 Project
Financial Proposal

Each responding Proposer shall submit originals, copies and electronic copies of its Technical Proposal as required by Section 4.5 and of its Financial Proposal as required by Section 4.6. The

original of each Technical Proposal and Financial Proposal clearly must be marked "Original" on its face and spine. Each copy must be sequentially numbered on its spine. The Proposer's name must be marked clearly on the spine. The Proposer's name must be marked clearly on all USB drives.

4.5 Technical Proposal

All of the binders comprising the original Technical Proposal, together with an electronic copy on one or more USB drives, shall be packaged in a single container, clearly addressed to the Department as provided herein and labeled as set forth in Section 4.4. Proposer shall provide nine copies (for a total of 10) of the Technical Proposal, excluding any roll plots, for which Proposer shall provide three copies. The containers that include the required hard copies of the Technical Proposal shall be labeled "Copies of Technical Proposal for the Transform 66 P3 Project."

The electronic copies shall be in PDF format on USB drives or Microstation files; *provided, however*, that (a) Proposal forms may be submitted in either PDF or Word format, and (b) corporate, partnership, joint venture and limited liability company documents (e.g., articles of incorporation, bylaws, partnership agreements, joint venture agreements and limited liability company operating agreements) must be submitted in hard copy and need not be submitted electronically.

4.6 Financial Proposal

One original and nine copies (for a total of 10) of the Financial Proposal shall be delivered to the Department, together with (i) one electronic copy of the Financing Plan in either PDF or Word format, (ii) one electronic copy of financial statements in PDF format (if electing to submit them electronically) and (iii) one electronic original and three electronic copies of the Financial Model in Excel (*see* Exhibit C). The documents shall be included in a sealed container labeled as set forth in Section 4.4. One electronic copy in the format set forth in Exhibit C, Section 6.2.1 of Form J-1, Form J-2, Form N, Form O, and Form T shall also be delivered to the Department.

4.7 Modifications and Withdrawals

4.7.1 Modifications to a Proposal

In the event a Proposer submits its Technical Proposal or Financial Proposal prior to the applicable due date, the Proposer may modify its Financial Proposal or Technical Proposal in writing prior to the specified time on the applicable due date. The modification shall conform in all respects to the requirements set forth in the RFP for submission of a Proposal. Modifications clearly shall be delineated as such on the face of the document to prevent confusion with the original Proposal and shall specifically state that the modification supersedes the previous Proposal and all previous modifications, if any. If multiple modifications are submitted, they shall be numbered sequentially so the Department can identify accurately the final Proposal. The modification must contain complete Proposal sections, complete pages or complete forms as described in Exhibits B and C. Line item changes will not be accepted. No facsimile or other electronically transmitted modifications will be permitted.

4.7.2 Withdrawal and Validity of Proposals

A Proposer may withdraw its Proposal at any time prior to the time due on the applicable Proposal due date by means of a written request signed by the Proposer's designated representative. Such written request shall be delivered to the Department Representative specified in Section 2.2.1. A withdrawal of a Proposal will not prejudice the right of a Proposer to file a new Proposal provided that it is received before the time due on the applicable Proposal due date. Except as expressly set forth herein, no Proposal may be withdrawn on or after the time due on the Financial Proposal Due Date and any attempt to do so will entitle the Department to draw on the Proposal Security. Proposals shall be valid for acceptance by the Department for a period of 210 days after the Financial Proposal Due Date (as the same period may be extended hereunder, the "Proposal Validity Period"). No Proposer shall withdraw its Proposal within the 210-day period, unless notified by the Department that (i) no Preferred Proposer will be selected by the Department pursuant to the RFP; (ii) the Department has selected a Preferred Proposer and has received the executed Comprehensive Agreement and other required documents; or (iii) such Proposer is not the Preferred Proposer or next highest ranking Proposer.

If the next best Proposer is notified during the Proposal Validity Period that it is selected as the substituted Preferred Proposer, such Proposer shall enter into good faith negotiations with the Department and shall use commercially reasonable efforts to extend the validity of its Proposal for the period until 180 days after the applicable Proposal due date.

Any Proposer may elect to extend the validity of its Proposal beyond the time periods set forth above; *provided that*, as a condition precedent to the extension of its Proposal Validity Period, such Proposer shall submit to the Department amended and/or replaced forms of Proposal Security that reflect such extension.

4.7.3 Late Proposals

The Department will not consider any late Proposals. Proposals and/or modification or withdrawal requests received after the time for submittal of Proposals will be returned to Proposer without consideration or evaluation.

4.8 Submission and Forfeiture of Proposal Security

4.8.1 Submission of Proposal Security

As security for its commitment to enter into the Project Documents in accordance with its Proposal commitments if it becomes the Preferred Proposer, each Proposer shall submit to the Department a Proposal letter of credit (the "Proposal Security") at or before the date and time on which it submits its Financial Proposal, as set forth in Section 1.6.1. The Proposer shall provide as part of its Proposal one original and three certified copies of the Proposal Security. The original Proposal Security shall be provided with the Financial Proposal and shall be in a separate envelope labeled "[Proposer Name]: Proposal Security for the Transform 66 P3 Project."

The Proposal Security shall be a letter of credit, or multiple letters of credit, in the aggregate amount of $10 million and in the form of Form K-1. The Proposal Security must be issued by an Eligible Security Issuer. A draft of the form of Proposal Security must be submitted to the Department for pre-approval by the date set forth in Section 1.6.1. The Proposer shall deliver, together with its Proposal Security, evidence demonstrating that each issuer of the Proposal Security is an Eligible Security Issuer. At any time following the Proposer's submission of its Proposal Security to the Department, if any issuer thereof shall fail to be an Eligible Security Issuer, the Proposer shall promptly notify the Department in writing of such change and, within 10 days of such notice, the Proposer shall deliver to the Department new Proposal Security from a replacement Eligible Security Issuer. Upon the Department's receipt of such replacement Proposal Security, the Department will promptly return the replaced Proposal Security to the Proposer.

To the extent that a Proposer seeks to deviate in any way from the foregoing requirements, the Proposer must submit a draft of its intended Proposal Security in accordance with the deadline specified in Section 1.6.1.

4.8.2 Forfeiture of Proposal Security

In the event the Department elects to commence negotiations with a Proposer, such Proposer shall be deemed to have failed to engage in good faith negotiations with the Department and shall forfeit its Proposal Security as set forth in this Section 4.8.2 if the following circumstances occur: (a) (i) the Proposer fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department, or (ii) the Proposer insists upon terms or conditions for any documents to be negotiated or provided by the Developer hereunder that are inconsistent with the RFP, and (b) the Proposer fails to execute the Comprehensive Agreement in the form issued by the Department as of the Financial Proposal Due Date.

Each Proposer, by submittal of its Proposal, shall be deemed to have agreed to the following:

(a) Failure to Deliver Financial Close Security

Subject to Section 4.7.2, the Proposal Security is subject to forfeiture if (a) the Proposer is selected as the Preferred Proposer and (b) fails to deliver the Financial Close Security as required under Section 6.1.2.

(b) Failure to Deliver Replacement Proposal Security

The Proposal Security is subject to forfeiture if the issuer of such security fails to be an Eligible Security Issuer and the Proposer fails to notify the Department of the ineligibility of the issuer or fails to deliver replacement Proposal Security by the deadline specified in Sections 4.8.1.

(c) Failure to Meet Commitments

Subject to Section 4.7.2, the Proposal Security is subject to forfeiture if (a) the Proposer withdraws, repudiates or otherwise indicates in writing that it will not meet any commitments

made in its Proposal except as specifically permitted hereunder or (b) the Proposer does not comply with its obligations set forth in Section 2.14.

(d) Failure to Execute and Deliver Documents

Subject to Section 4.7.2, the Preferred Proposer's Proposal Security is subject to forfeiture if it fails to deliver to the Department executed copies of the Comprehensive Agreement and the documents required under Section 6.1.4 by the deadline set forth in Section 1.6.2, unless such failure is directly attributable to:

i. the Department's failure to timely deliver any of the Department Post-Selection Deliverables as described in the Comprehensive Agreement; or

ii. the Department's election not to enter into the Comprehensive Agreement in the form included with the RFP, following (i) the Department's election to commence negotiations regarding the Comprehensive Agreement, (ii) the Proposer's engaging in good faith negotiations as set forth in Section 5.12.1 and (iii) failure of the parties to agree upon Department changes to the terms of the Comprehensive Agreement.

4.8.3 Proposal Security as Liquidated Damages

Forfeiture of Proposal Security in accordance with Section 4.8.2 of the ITP will constitute liquidated damages. By submitting its Proposal, the Proposer agrees and acknowledges that such liquidated damages are reasonable in order to compensate the Department for damages it will incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal. Such damages include potential harm to the credibility and reputation of the Department's transportation improvement program, with policy makers and with the general public, delays to the P3 Project and additional costs of administering this or a new procurement (including engineering, legal, accounting, overhead and other administrative costs). By submitting its Proposal, the Proposer further acknowledges that these damages would be difficult and impracticable to measure and prove, are incapable of accurate measurement because of, among other things, the unique nature of the P3 Project and the efforts required to receive and evaluate proposals for it, and the unavailability of a substitute for those efforts. The amounts of liquidated damages stated herein represent good faith estimates and evaluations as to the actual potential damages that the Department would incur as a result of the Proposer's failure to satisfy the obligations under the RFP to which the Proposer agreed when submitting its Proposal and do not constitute a penalty. By submitting its Proposal, the Proposer agrees to such liquidated damages in order to fix and limit the Proposer's costs and to avoid later Disputes over what amounts of damages are properly chargeable to the Proposer.

4.8.4 Return of Proposal Security of the Unsuccessful Proposer

The Department will retain the Proposal Security of each unsuccessful Proposer until the earlier to occur of the following: (i) each of the Department and the Preferred Proposer has executed and delivered the Comprehensive Agreement; (ii) the expiration of such Proposer's Proposal Validity Period; and (iii) the Department has terminated the RFP process and cancelled the RFP.

Following the occurrence of any of the foregoing events, the Department will promptly return the Proposal Security of each unsuccessful Proposer, except for any Proposal Security that has been drawn by the Department in accordance with the terms of Section 4.8.2 of the ITP prior to such date.

4.9 Acceptance of Delivery by the Department

The Department will provide a receipt for Proposals that are timely delivered to the Department as specified herein.

4.10 Costs Not Reimbursable

The cost of preparing the Proposal and any costs incurred at any time before execution and delivery of the Comprehensive Agreement, including costs incurred for any interviews, costs associated with Post-Selection Deliverables, costs for compliance with federal requirements and costs relating to the finance process, shall be borne by a Proposer.

SECTION 5 EVALUATION AND POST-SELECTION PROCESS

The Department's goal is to create a fair and uniform basis for the evaluation of the Proposals in compliance with all applicable legal requirements governing this procurement.

VAP3, in coordination with the Department and DRPT, is responsible for reviewing and ranking all Proposals. The Proposal evaluation process will include an initial review of each Technical Proposal for pass/fail and responsiveness criteria, followed by a responsiveness and qualitative evaluation of the P3 Project Development Plan; an initial review of each Financial Proposal for pass/fail and responsiveness criteria, followed by a responsiveness and quantitative evaluation of each Financial Proposal; and a Best Value determination based on the scoring formula described in Section 5.2. The process may, at the Department's discretion, include a request for Proposal Revisions and may, but is not anticipated to, include a negotiations phase with the Preferred Proposer. The steps in the process and evaluation criteria are set forth in Sections 5.1 through 5.10. The evaluation and selection process is subject to modification by the Department, in its discretion.

The evaluation process will involve the following steps:

(a) The Executive Scoring Panel will:

i. evaluate the Proposals and determine which Proposer has offered the Apparent Best Value Proposal based on the specific evaluation criteria set forth herein; and

ii. provide a recommendation to the Commissioner regarding the Apparent Best Value Proposal.

(b) The Commissioner will review and consider the recommendations from the Executive Scoring Panel and will provide a report of the selection of a Preferred

Proposer to the CTB. Following input from the CTB, the Department will issue notice of the selection of a Preferred Proposer.

The details of the evaluation and selection process are set forth more fully in this Section 5.

5.1 Organization of the Executive Scoring Panel

Evaluation of Proposals will be conducted by the Executive Scoring Panel with assistance from advisors consisting of Department personnel and other representatives as determined by the Department and the Executive Scoring Panel. In addition, observers from federal or other agencies with specific interests and responsibilities associated with the P3 Project, including representatives of local agencies and municipalities, may be invited to observe aspects of the evaluation process.

5.2 Best Value Determination

The determination of the Apparent Best Value Proposal will be computed using the following formula:

Total Proposal Score = Financial Score (max. 70 points)
+ Technical Score (max. 30 points)

5.2.1 Technical Score

The Technical Score will be qualitative and will be based on the P3 Project Development Plan as described in Section 5.4.1.

5.2.2 Financial Score

The Financial Score will be quantitative and will be computed based on the formula described in Section 5.5.1.

5.3 Pass/Fail and Responsiveness Evaluation

Upon receipt, the Technical Proposals and the Financial Proposals will be made available for review by the Executive Scoring Panel and its advisors. They will be reviewed for the Proposal's conformance to the RFP instructions regarding organization, format and responsiveness to the requirements of the RFP and based on the pass/fail criteria set forth below.

5.3.1 Technical Proposals

Technical Proposals will be evaluated based on the following pass/fail and responsiveness criteria:

(a) The business form of Proposer, the proposed Developer and any entities that will have joint and several liability (i.e., any joint venture members or partners) under the Comprehensive Agreement or that will provide a guaranty (including any joint venture agreement, partnership agreement, operating agreement, articles of

incorporation, bylaws, association agreements or equivalent documents) is consistent, or will be consistent, with the requirements of the P3 Project and Comprehensive Agreement.

(b) To the extent that there are any changes from Proposer's SOQ regarding the criteria set forth in Exhibit B, Section 3.2.2, that such changes are acceptable to the Department in conformance with the requirements set forth for such personnel in the RFQ.

(c) Proposer information, certifications, signed statements and documents as listed in Exhibit B, Section 3.2 are included in the Proposal and do not identify any material adverse information.

(d) The Technical Proposal as outlined in Exhibit B, including the P3 Project Development Plan outlined in Exhibit B, meets all applicable RFP requirements.

5.3.2 Financial Proposals

Financial Proposals will be evaluated based on the following pass/fail and responsiveness criteria:

(a) Based on the information furnished in response to Exhibit C, Section 5, Proposer's financial condition and capabilities shall not have materially adversely changed from its financial condition and capabilities as evidenced by the financial and other data submitted in the SOQ, such that Proposer continues to have the financial capacity to complete, operate and maintain a project of the nature and scope of the P3 Project. Factors that will be considered in evaluating Proposer's financial capacity include changes to the following:

i. profitability;

ii. ability to manage existing debt;

iii. ability to invest equity; and

iv. other commitments and contingencies evaluated in the SOQ.

If the Department determines that a Proposer has insufficient financial capacity to fulfill its obligations under the Comprehensive Agreement, it may offer the Proposer the opportunity to meet the financial requirement through one or more guarantors acceptable to the Department. If required, the Proposer shall provide such guaranty in the form attached hereto as Form Q.

(b) The Proposer's Financing Plan demonstrates the following:

i. that it identifies sufficient financing for the Comprehensive Agreement, including all design and construction, operation, maintenance and rehabilitation funding;

ii. that, pursuant to Section 1.3.4, the requested Public Funds Amount, if any, as set forth in Form J-1, Box 1, does not exceed the maximum available funding, and the cost of completing the Early Work, as set forth in Form J-1, Box 3, does not exceed the maximum available funding;

iii. that the required Transit Funding Payments, pursuant to Exhibit J to the Comprehensive Agreement, are included in the Financial Model;

iv. that the required Support for Corridor Improvements is included in the Financial Model as set forth on Form J-2;

v. that it contains key milestones that are consistent with the Proposal Schedule submitted pursuant to this RFP;

vi. that it is adequate, feasible and capable of being executed if the Proposer is selected as the Preferred Proposer; and

vii. that it is sufficiently developed and, subject to Exhibit C, Sections 5.2 and 5.3, has attracted sufficient support and commitment from Lenders (which, in the context of a committed financing, may be subject to the completion of due diligence that is required to be undertaken after the Financial Proposal Due Date as a result of applicable securities laws and regulations) and investors following assessment of the Project, the RFP and projections, to satisfy the Department that there is no material risk on financial grounds of any performance failure, including failure to perform any of the following:

A. execution and delivery of the Comprehensive Agreement;

B. making scheduled payments owing to the Department;

C. completion of design and construction of the P3 Project by the Project Completion Date set forth in the Comprehensive Agreement and in accordance with Comprehensive Agreement requirements;

D. operation and maintenance of the P3 Project throughout the term in accordance with the requirements of the Comprehensive Agreement;

E. meeting Handback Requirements set forth in the Comprehensive Agreement; and

F. achievement of Financial Close for the P3 Project by the deadline identified in Section 1.6.3.

(c) In evaluating the adequacy of the Proposer's Financing Plan under Section (b)vii above, the following factors will be considered:

i. subject to Exhibit C, Sections 5.2 and 5.3, the terms and conditions of the financing (including debt, quasi equity and equity), in compliance with the conditions set forth in the RFP, including the conditions set forth in Section 7.06 of the Comprehensive Agreement and proposed risk allocation and conditions attached to financing, if any, appear reasonable; provided however that to the extent that PABs are selected as a financing source, there shall be no requirement that the approval of the issuance of the PABs by the PABs Issuer be obtained prior to the Financial Proposal Due Date;

ii. guarantees and other security required to realize financing;

iii. the commitment of the Equity Members in the Proposer;

iv. subject to Exhibit C, Section 5.2, assurance from senior Lenders that they are prepared to accept the terms of any proposed TIFIA financing substantially as set forth in the Indicative TIFIA Term Sheet, unless the Department has approved a deviation from such term sheet via the IFC process.

(d) To the extent that a Proposer has elected to include TIFIA as a financing source, the Proposer's Financial Proposal includes TIFIA facilities in accordance with the Indicative TIFIA Term Sheet, unless any deviation was approved by the Department as an IFC.

(e) The Proposer has provided the required Lenders' support letters or indicative letters of support evidencing the proposed Lenders' willingness to provide funding under the Comprehensive Agreement pursuant to Exhibit C, Section 5.2.

(f) The Proposer has provided the required indicative rating letters on senior debt and the TIFIA loan, if applicable, pursuant to Exhibit C, Section 5.2.

(g) The Proposer has provided assurance that private equity will be in place for the Comprehensive Agreement, including the required letters from the Proposer's Equity Member evidencing their commitment to provide equity funding pursuant to Exhibit C, Section 5.3.

(h) The Proposer has provided the required preliminary audit report(s) and opinion(s) relating to the Financial Model Auditor's review of the Financial Model, pursuant to Section 5.12.3.

(i) The Proposer has submitted the required Proposal Security, pursuant to Section 4.8.1.

(j) The Financial Proposal, as outlined in Exhibit C, meets all applicable RFP requirements.

Any Proposer that fails to achieve a passing score on any of the pass/fail portions of the evaluation will not be eligible for recommendation for selection as the Preferred Proposer.

5.3.3 Department Right to Exclude Proposals from Consideration

Any Proposal not responsive to the RFP, or that does not pass the pass/fail criteria, will be excluded from further consideration. The Department also may exclude from consideration any Proposer whose Proposal contains a material misrepresentation.

5.4 Evaluation of P3 Project Development Plan

After completion of the pass/fail criteria and initial responsiveness to the RFP, the P3 Project Development Plan will be evaluated based on the factors set forth below to determine whether it improves upon the Comprehensive Agreement requirements and brings additional benefits or value to the Department and the public.

5.4.1 P3 Project Development Plan Evaluation Factors

(a) The evaluation factors for the P3 Project Development Plan are listed under three main areas:

i. Project Schedule (10% of Technical Score)

ii. Design and Construction (40% of Technical Score, with four scoring categories, each weighted 10%);

iii. Traffic Operations, Operations and Maintenance, and Long Term Partnership (50% of Technical Score, with five scoring categories, each weighted 10%).

Points are only assigned to technical enhancements where they exceed the minimum requirements for a responsive Proposal.

(b) Points for Project Schedule will be assigned as follows:

i. Project Completion Date

A. By July 1, 2021 – 15 points

B. By September 1, 2021 – 10 points

C. By November 1, 2021 – 5 points

ii. P3 Project Acceleration – the milestone dates provided in each Proposal will be compared against the dates provided by other Proposal milestone

dates, and the Proposer with the earlier date will receive the following points:

A. Project Completion Date – 5 points

B. P&R Milestone Date – 5 points

C. Route 28 Signalization Milestone Date – 5 points

(c) Scoring will be on a 30-point scale for each of the nine remaining scoring categories as follows:

i. Exceptionally exceeds requirements – 30 points

A. Demonstrates exemplary commitment to partnering and customer service across a broad range of contract elements.

B. Provides significant improvements over a majority of the entire corridor, benefits a majority of key stakeholders, or provides a significant number of innovative P3 Project features.

C. Contains specific, quantifiable elements that clearly minimize future maintenance costs to the Department and that clearly result in additional value to the Department through increased quality of the P3 Project elements throughout the P3 Project.

ii. Markedly exceeds requirements – 20 points

A. Demonstrates commitment to partnering and customer service in several key systems or contract elements.

B. Provides significant improvements over several key features of the P3 Project, benefits certain key stakeholders, or provides several innovative P3 Project features.

C. Contains specific, quantifiable elements that clearly minimize future maintenance costs to the Department and that clearly result in additional value to the Department through increased quality of the P3 Project elements on several key features of the P3 Project.

iii. Exceeds requirements – 10 points

A. Demonstrates commitment to partnering and customer service in at least one key contract element.

B. Provides significant improvements over at least one key feature of the P3 Project, benefits certain key stakeholders, or provides some innovative P3 Project features.

C. Contains specific, quantifiable elements that clearly minimize future maintenance costs to the Department and that clearly result in additional value to the Department through increased quality of the P3 Project elements on some features of the P3 Project.

iv. Meets requirements (responsive) – 0 points

In order to meet the evaluation factors listed below, specific, well-defined items must be provided in the P3 Project Development Plan that clearly demonstrate that the objectives will be achieved. Submissions should include information that can be objectively (preferably quantifiably) and easily measured while giving sustained, improved performance of the system, operations, and customer service. Commitments made as part of the Technical Proposal will become part of the Comprehensive Agreement. The term "other" used in the sub-categories provides an opportunity for Proposers to provide distinct additional, quantifiable strategies, elements or value-added items for the Department's consideration.

5.4.1.1 Design and Construction (40% of Technical Score)

(a) Pavement, bridge, structural durability

i. Demonstrates durability beyond the minimum requirements and performance specifications to general purpose lane infrastructure, including ease of maintenance after delivery.

A. Demonstrates innovative or robust construction techniques or materials that result in improved pavement durability.

B. Evaluates and remedies localized pavement distress.

C. Other.

ii. Perpetual or composite pavement, and bridge or other materials extending the design life by 25 years with supporting references.

A. Reduction of total number of bridge joints.

B. Elimination of cracking in bridge decks, parapets, other elements.

C. Other.

(b) Design Concepts

i. The preliminary conceptual plan results in reduced Right-of-Way acquisition.

A. Total Right-of-Way acquisition area is reduced compared to the RFP plans. (Note that new Project elements requiring additional

right-of-way approved as part of the ATC process will be considered as part of the base RFP plan Right-of-Way.)

B. Total number of parcels impacted is reduced compared against the RFP plans.

C. Other.

ii. The preliminary conceptual plan demonstrates design features that better serve 2025 and 2040 traffic demands on the combined Express Lanes and general purpose lanes system and adjacent roadway network.

A. Redesigned or new ramp connections that positively impact the general purpose lanes.

B. Additional strategies for increased corridor throughput on both Express Lanes and general purpose lanes.

C. Other.

(c) Risk Mitigation

i. Technical Proposal, including conceptual plan, minimizes WMATA risk, either through avoidance or through partnering.

A. Innovative strategies that minimize impacts to WMATA transit operations or facilities.

B. Comprehensive approach to interaction, communication and dispute resolution with WMATA.

C. Other.

ii. Environmental commitments are met and environmental stakeholder coordination is demonstrated.

A. Increased partnership with external agencies in order to realize positive audit review.

B. Innovative features that mitigate environmental challenges.

C. Reduced impacts to streams, wetlands, cultural resources, and parks through reduced temporary impacts, permanent impacts, increased mitigation, etc.

D. Other.

iii. Commitment to construction safety is demonstrated.

A. Innovative strategies for realizing a zero incident culture.

B. Innovative strategies during the Construction Period for improved Project-wide safety and coordination in terms of MOT operations, traveling public and pedestrian safety, etc.

C. Other.

(d) Partnering, public outreach

i. Proposer demonstrates commitment to proactive prevention of construction disputes.

A. Commitment to a minimum value for Delay or Compensation Event claims submitted against the Department. In other words, Proposer will not file a Delay or Compensation claim against the Department for amount less than the committed amount.

B. Demonstrated methods that have been implemented and successful on other projects are included for reaching resolution on disputes without triggering formal dispute resolution process.

C. Other.

ii. Proposer commits to resolve all construction disputes prior to Service Commencement.

A. Achieve agreed solutions prior to Service Commencement in the form of a conditions precedent in the Comprehensive Agreement.

B. Other.

iii. Proposer demonstrates public outreach plan and commitment of quantifiable plan elements.

A. Additional creative user features for increased stakeholder communication and engagement through new applications or other social media options.

B. Incorporation of systematic feedback and tracking mechanisms to improve stakeholder engagement.

C. Other.

iv. Proposer demonstrates quality customer service and owner partnering during the design and construction phase of an existing facility.

A. Customer satisfaction demonstrated through Owner interview.

B. Owner satisfaction demonstrated through contract records and Owner interview.

C. Other.

5.4.1.2 Traffic Operations, Operations and Maintenance, and Long Term Partnership (50% of Technical Score)

(a) Tolling System

i. Efficient data collection and meaningful reporting.

A. Additional features that demonstrate improved data collection efficiency for items, including transponder reads, adjudicated trip records, etc.

B. Additional features that demonstrate improved customer service – i.e. toll planning apps.

C. Other.

ii. Commitment to maximizing person-throughput, without impacting financing, in the corridor.

A. Demonstrated strategies for maximizing throughput.

B. Coordinated strategies with transit providers and use of Park-and-Ride facilities to proactively increase use of transit and HOVs.

C. Other.

(b) Customer Service

i. Commitment to improved customer service requirements is demonstrated.

A. Customer satisfaction results are communicated through user recruitment strategies and locality endorsement.

B. Commitment to achieve superior customer satisfaction metrics.

C. Other.

ii. Commitment to customer relations management services and ongoing improvement plans, such as customer satisfaction surveys, process reengineering, or similar metrics is demonstrated.

A. Commitment to incorporate future strategies as user behavior changes through surveys, process reengineering, etc.

B. Other.

(c) Traffic Flow and Operations

i. Commitment to higher level of service or increased average operating speeds for the combined Express Lanes and general purpose lanes system as compared to the RFP conceptual plan.

A. Innovative strategies to improve level of service on the general purpose lanes through operational modifications to the Express Lanes.

B. Other.

ii. Commitment to ensure Express Lanes maintenance and operations are accomplished in a manner to avoid negative impact on general purpose lanes and adjacent roadway network.

A. Innovative operations and maintenance strategies that minimize future maintenance costs.

B. Other.

(d) Partnering

i. Proposer's operation of an existing facility demonstrates quality customer service and owner partnering.

A. Customer satisfaction demonstrated through independent audit results.

B. Owner satisfaction demonstrated through contract records and Owner interview.

C. Other.

ii. Proposer has demonstrated commitment to analyze, partner with, and implement innovative methods and flexibilities to achieve future Project enhancements during the operations and maintenance phase.

A. Additional innovative facility enhancement features for implementation in future years in order to improve the travel in the corridor.

B. Other.

(e) Maintenance

i. Technical Proposal demonstrates upgraded Express Lanes at the time that the Proposer will hand back the Project to the Department at the end of the Term.

A. At Handback, the facility is returned to the Department with a 20-year service life or more.

B. Other.

5.5 Financial Proposal Evaluations

The Executive Scoring Panel will evaluate the Financial Proposal to determine (i) the Public Funds Amount (Form J-1, Box 1) or (ii) the Concession Fee (Form J-1, Box 2).

5.5.1 Financial Score

5.5.1.1 Price Forms

Each Proposer shall indicate (a) a schedule of the required Public Funds Amount, as set forth in Form J-1, Box 1 or (b) the amount of the offered Concession Fee, as set forth in Form J-1, Box 2. For the purposes of the remainder of this Section 5.5.1, a Proposer's "Price" refers to the requested Public Funds Amount (reflected as a positive value) or the offered Concession Fee (reflected as a negative value).

In addition, although the following items will not directly influence the Financial Score, each Proposer shall provide (a) a schedule of anticipated SIB Loan draws and requested Early Work Department Funding (Form J-1, Box 3), (b) a schedule of Support for Corridor Improvements (Form J-2, Box 1), (c) the present value of such Support for Corridor Improvements (Form J-2, Box 2) and (d) the lump-sum, fixed-price amount for the Design-Build Contract as set forth in Form N.

5.5.1.2 Financial Score

Each Proposer's Financial Score shall be determined as follows:

$$\text{Financial Score} = 70 - [(P_1 - P_{Best}) / 10]$$

Where:

P_1 = such Proposer's Price (in $ millions)

P_{Best} = the lowest Price offered by any Proposer (in $ millions)

5.6 Executive Scoring Panel Evaluation

The Executive Scoring Panel will review the results of the Technical Proposal evaluation and Financial Proposal evaluation to determine each Proposal's Technical Score and Financial Score, respectively. Then the Executive Scoring Panel will determine the Total Proposal Score for each Proposal based on the formula set forth in Section 5.2, assign rankings to the Proposals based on the Total Proposal Scores and determine the Apparent Best Value Proposal based on the highest Total Proposal Score.

5.7 Requests for Clarification

The Department may at any time issue one or more requests for clarification to the individual Proposers, requesting additional information or clarification from a Proposer, or may request a Proposer to verify or certify any aspect of its Proposal. Any requests for clarification shall be in writing to Proposer's designated representative. Proposers shall respond to any such requests within two Business Days (or such other time as is specified by the Department) from receipt of the request. The scope, length and topics to be addressed in clarifications shall be prescribed by and subject to the discretion of the Department.

Upon receipt of requested clarifications and additional information as described above, if any, the Proposals may be re-evaluated to factor in the clarifications and additional information.

5.8 Requests for Proposal Revisions

The Department may, at any time after receipt of Proposals and prior to selection of the Preferred Proposer, determine that it is appropriate to request changes to the Proposals ("Proposal Revisions"). Only Proposers that submitted a compliant Technical Proposal and a compliant Financial Proposal will be permitted to submit Proposal Revisions. The request for Proposal Revisions may be based on revisions to the RFP. Before requesting any such Proposal Revisions, the Department will engage in separate discussions (either in writing or in person through one-on-one meetings if not in writing) with each Proposer and in accordance with the procedures for proposal revisions described in 23 CFR 636.501 *et seq*. The request for Proposal Revisions will identify any revisions to the RFP and will specify terms and conditions applicable to the Proposal Revisions, including identifying a time and date for delivery. In the event that Proposal Revisions are requested, the term "Proposal," as used in the RFP, shall mean the original Proposal, as modified by the Proposal Revision. Each Proposer may determine in its discretion whether to deliver the requested Proposal Revisions. Failure of a Proposer to deliver the requested Proposal Revisions shall not, in and of itself, result in the forfeiture of such Proposer's Proposal Security; *provided* that such Proposer's original Proposal, together with the Proposal Security included therewith, shall remain valid and in effect notwithstanding its election not to deliver the requested Proposal Revisions.

Upon receipt of Proposal Revisions, the Executive Scoring Panel, with assistance from the appropriate advisors, will re-evaluate the Proposals as revised and will revise ratings and value estimates as appropriate following the process described above.

5.9 Identification of Apparent Best Value Proposal

Once the Executive Scoring Panel has determined a Total Proposal Score for each Proposal, assigned rankings to the Proposals based on the Total Proposal Scores (whether based on the original Proposals or Proposal Revisions) and determined the Apparent Best Value Proposal, the Executive Scoring Panel will present its recommended rankings to the Commissioner.

5.10 Department Selection of Preferred Proposer, CTB Endorsement

The Commissioner will review the Proposals and the recommendations and supporting information provided by the Executive Scoring Panel and may: (i) accept the recommendation, (ii) reject the recommendation and cancel the procurement or (iii) request that the Executive Scoring Panel reconsider the Executive Scoring Panel's recommendation and provide the basis and reasons for reconsideration. The Department's decision regarding selection of the Preferred Proposer shall be final.

Near the end of the procurement, VAP3 and the Commissioner or his designee will present a P3 Project fact sheet and the FOPI to the CTB. The CTB will be briefed as required by Section 5.10 of the PPTA Manual. During the briefing, the Commissioner or his designee will seek the CTB's endorsement, indicating support of the Department's execution of a Comprehensive Agreement. A P3 Project fact sheet and the CTB's endorsement will be posted on the Project Website for public awareness. The Commissioner and VAP3 will notify and brief the Chairman of the House and Senate Transportation Committees as required by Section 5.10 of the PPTA Manual. Other members of the General Assembly and Stakeholders will be notified and briefed upon request.

5.11 Certification of Finding of Public Interest

Prior to executing the Comprehensive Agreement with the Preferred Proposer, the Commissioner must certify in writing to the General Assembly a Final Finding of Public Interest for the P3 Project stating that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the Initial Finding of Public Interest have not materially changed since the Finding of Public Interest originally was issued and the finding of public interest is still valid.

5.12 Finalization of the Comprehensive Agreement; Post-Selection Process

5.12.1 Negotiation of Comprehensive Agreement

If the Commissioner has accepted the recommendation of the Executive Scoring Panel as provided in Section 5.10 above, then the Department intends to proceed with the Preferred Proposer to finalize the Comprehensive Agreement. The Department may agree to limited negotiations with the Preferred Proposer to clarify any remaining issues regarding scope, schedule, financing or any other information. In addition, limited negotiations may be conducted as necessary to incorporate the ideas and concepts of unsuccessful Proposers' work product; *however*, any decision to commence or continue negotiations regarding the terms of the Comprehensive Agreement is at the Department's discretion. By submitting its Proposal, each

Proposer commits to enter into the form of Comprehensive Agreement included in the RFP, without negotiation or variation, to fill in blanks and include information from the Proposal that the form of the Comprehensive Agreement indicates is required.

If a Comprehensive Agreement satisfactory to the Department cannot be negotiated with the Preferred Proposer, the Department will formally end negotiations with the Preferred Proposer and will require the Preferred Proposer to enter into the Comprehensive Agreement in the form included in the RFP, without variation except to fill in blanks and include information from the Proposal that the form of the Comprehensive Agreement indicates is required from the Proposal (e.g., ATCs and IFCs). If the Preferred Proposer refuses to enter into the Comprehensive Agreement as described in the preceding sentence, the Department may then choose to: (a) reject all Proposals or (b) proceed to the next most highly ranked Proposal to finalize or attempt to negotiate the Comprehensive Agreement with that Proposer in accordance with this Section 5.12. If option (b) is selected, the Proposer that submitted the next most highly ranked Proposal will be considered the Preferred Proposer and the former Preferred Proposer shall forfeit its Proposal Security.

5.12.2 Commonwealth Statutory Audit

In accordance with the PPTA and the PPTA Manual, the Preferred Proposer's Proposal will undergo an audit of any and all traffic and cost estimates associated with the Proposal, and a review of all public costs and potential liabilities to which taxpayers could be exposed (the "Statutory Audit"). VAP3 will appoint an independent consultant to conduct this audit prior to the execution of the Comprehensive Agreement with the Preferred Proposer. Such independent audit shall be at the Preferred Proposer's sole cost and expense. VAP3 will engage the consultant and commission the Statutory Audit. The Preferred Proposer shall promptly and directly pay the independent consultant upon receipt of a valid invoice. For fairness during the evaluation process, Proposers shall include as a line item in their bids a cost of $250,000 for the Statutory Audit. The Department will bear no responsibility if the cost of the Statutory Audit exceeds $250,000, and to the extent that the Statutory Audit costs less than that amount, any savings will inure to the Proposer.

The Department will disclose all information from such a review within 30 calendar days of completion by posting it on the Project Website. The Department will not be entitled to draw on Proposer's Financial Close Security as the result of the Statutory Audit.

5.12.3 Independent Financial Model Audit

Each Proposer shall, at its sole cost and expense, cause a preliminary independent audit of its Financial Model (the "Financial Model Audit") to be conducted by a firm engaged on a non-exclusive basis by the Proposer and approved by the Department (the "Financial Model Auditor"). Each Proposer shall cause the drafts or pro formas of the preliminary audit report(s) and opinion(s) to be submitted to the Department as a required element of the Financial Proposal.

Copies of the preliminary audit report(s) and opinion(s) shall be co-addressed to the Department, and the Department will be expressly identified therein as an entity entitled to rely upon such audit, subject to the Financial Model Auditor's contractual caps on liability. The contract for

such services may limit the Financial Model Auditor's liability to the Department for the Financial Model Auditor's opinion's failure to identify any error(s) in the Financial Model to five years from completion of services and in an amount of no less than $2,000,000; provided that such caps shall be effective only if the Financial Model Auditor maintains professional liability insurance in the amount and for the duration of the cap.

Prior to engaging the Financial Model Auditor, each Proposer shall provide the Department with information about the proposed Model Auditor (including qualifications and relevant experience), the proposed terms of engagement (including the proposed form of the model audit opinion and any governing law provisions) and the level of professional liability coverage (which must be at least $2,000,000 and cover claims by the Department arising from any errors or omissions by the Financial Model Auditor in connection with the model audit). The Financial Model Auditor chosen by the Proposer must be unaffiliated with the Proposer and otherwise be free of any conflict of interest.

The information to be submitted by Proposer to the Department pursuant to this Section 5.12.3 also shall include, at a minimum, the following: (a) the name and address of the proposed Financial Model Auditor; (b) a list of transportation projects, grouped by geographic location, for which the proposed Financial Model Auditor has provided model auditing services; (c) a list of the Financial Model Auditor team members; and (d) a resume for each Financial Model Auditor team member. The required information shall be submitted by the deadline set forth in Section 1.6.1. The Department will use reasonable efforts to respond to the submittal of Proposer's Financial Model Auditor within five Business Days after receipt thereof. If the Financial Model Auditor is not pre-approved by the Department, Proposer shall submit a different candidate and the Department will use reasonable efforts to respond within five Business Days to the re-submission. It is the Proposer's sole responsibility to ensure that approval occurs prior to the date specified in Section 1.6.1. Risk relating to defects in the Financial Model will be governed by Section 7.06(b)(i) of the Comprehensive Agreement.

The Proposer also shall provide the Department with an opinion from the Financial Model Auditor stating that the Financial Model is suitable for use in connection with the Delay Event and/or Compensation Event procedures set out in the Comprehensive Agreement. The Financial Model Auditor is not required to provide an opinion on whether the financial statements for future periods are in compliance with GAAP. This opinion, on which the Department will be a co-addressee and expressly entitled to rely, may also result from an independent review of the Financial Model required by the Proposer's Lenders. The opinion is to be provided at the Preferred Proposer's sole cost and expense.

5.12.4 Financing Adjustments

As set forth in Section 7.06 of the Comprehensive Agreement, the Department will share certain risks and benefits with the Developer relating to Benchmark Rates, credit spreads, TIFIA financing terms and Design-Build Contract price indexation.

5.12.4.1 Benchmark Rate Adjustment

As provided in Section 7.06(b)(ii) of the Comprehensive Agreement, the Department will bear the risk and have the benefit of changes (either positive or negative) in base market indices used to price the proposed Developer Debt ("Benchmark Rates") for the period between the date such rates are required to be submitted to the Department by Proposers in accordance with Section 1.6.1 and ending on the earlier of: (i) 10:00 a.m. Eastern Time on the Financial Close Date (as such date may be extended pursuant to Section 7.06(b)(ii)(B) of the Comprehensive Agreement), and (ii) 10:00 a.m. Eastern Time on the Financial Close Deadline. Each Proposer's Financing Plan and Financial Model shall include pre-approved Benchmark Rate(s). Proposers shall submit their selected indices and Benchmark Rate(s), as the case may be, to the Department for approval on the date set forth in Section 1.6.1, and such rates must be approved by the Department not later than the date and time set forth in Section 1.6.1 to be included in the Proposal; provided, however, that if the Department has a clarification or issue regarding a Proposer's submittal, the Department may extend the date by which it must approve the selected indices and Benchmark Rate(s), as the case may be, while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the approved indices and Benchmark Rate(s), as the case may be, shall be included in the Proposal (and the delay in approval shall not affect other deadlines set forth in Section 1.6.1), *provided*, that such resolution occurs prior to the Financial Proposal Due Date..

Prior to the required submission of Benchmark Rates that the Proposer intends to use in the Financial Model as specified in Section 1.6.1, the Proposer will be required to submit a draft submittal of the Benchmark Rates with supporting information ("Draft Submittal – Benchmark Rates"), so that the Department can provide approval to the Proposers on the debt instruments and the corresponding Benchmark Rates being used. The timing for the draft submittal is indicated in Section 1.6.1. Proposers will provide the Draft Benchmark Rates in a draft version of Form O.

The Benchmark Rate(s) submitted by Proposers must be independently verifiable by the Department using Bloomberg U.S.-based screens or another independently verifiable source acceptable to the Department, as appropriate. Pricing should not assume any forward component.

In the case of a bank or private placement financing, the Department reserves the right to request additional information if needed to verify the submitted Benchmark Rate(s). Any bank debt, private placement or TIFIA financing provided by the Proposer shall be (i) priced as of 10:00 a.m. Eastern Daylight Time on the date of submittal. In the case of bank financing, it should be priced without any swap margin. In addition, Proposers must provide, at a minimum, detailed supporting documentation on the relevant date set forth in Section 1.6.1, in order for the Department to verify the Benchmark Rate(s), such as step-by-step screenshots on Bloomberg or any price calculations.

Proposer shall use Form O for purposes of the Benchmark Rate submittal. The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable market interest rate adjustment.

5.12.4.2 Credit Spread Adjustment

As provided in Section 7.06(b)(ii) of the Comprehensive Agreement, the Department will bear a certain level of risk and benefit of changes in credit spreads (either positive or negative) with respect to a PABs financing or any capital markets financing the Department approves in writing. The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable adjustment of the Public Funds Amount due to changes in credit spreads.

On the relevant date and time specified in Section 1.6.1, each Proposer must submit to the Department for approval the credit spreads that the Proposer intends to use in the Financial Model supporting its Financial Proposal. As part of this submittal, Proposer shall provide its bond maturities and credit rating assumptions, market comparables and/or other supporting data. Proposer shall use Form O for purposes of the credit spread submittal. Depending on the results of the review of the credit spreads submitted, the Department may require a floor on the credit spread that Proposers will assume in their Financial Proposals.

Prior to the required submission of credit spreads that the Proposer intends to use in the Financial Model as specified in Section 1.6.1, the Proposer will be required to submit a draft submittal of the credit spreads including supporting information ("Draft Submittal – Credit Spreads"), so that the Department can provide approval to the Proposers on the debt instruments being used and the corresponding credit spreads. The timing for the draft submittal is indicated in Section 1.6.1. Proposers will provide the credit spreads in a draft version of Form O. As part of the Draft Submittal – Credit Spreads, Proposers may request approval for credit spread protection of other capital markets financing. Such approval is at the sole discretion of the Department and will be based on the review of features such as: (i) wide number of data points or market index to establish credit spread in financial proposal, (ii) data points based on similar transactions with similar credit rating and with trades within a short period of time, (iii) data points or market index can be independently verified, and (iv) pricing at financial close based on a market based index or wide market pricing (e.g. public offering).

No later than the relevant date and time specified in Section 1.6.1, the Department will provide written approval to each Proposer of the draft benchmark rates and the credit spreads to be assumed in the Proposer's Financial Model; *provided*, *however*, that if the Department has a clarification or issue regarding a Proposer's submittal, the Department may extend the date by which it must approve the credit spreads while it addresses the clarification or issue with such Proposer and, assuming and following the resolution thereof, the credit spreads shall be included in the Proposal (and the delay in approval shall not affect other deadlines specified in Section 1.6.1), *provided*, that such resolution occurs prior to the Financial Proposal Due Date..

Only bond maturities and associated ratings that have been submitted for approval will ultimately be eligible for credit spread protection.

The Department will not accept increases in credit spreads on a PABs or other capital markets financings approved by the Department resulting from the final credit rating being lower than the indicative investment grade ratings provided in the Financial Proposal. In the event that there is a difference in indicative investment grade ratings received by Proposers from the Rating

Agencies, then Proposers are required to assume the lowest indicative investment grade rating in their Financial Proposal.

Movements in credit spreads or margins (e.g. bank Lender margin, swap credit margin) from the Financial Proposal Due Date to the Financial Close Date associated with any other type of financing will be borne solely by the Proposer.

5.12.4.3 Indexation of the Design-Build Contract Price

As provided in Section 7.06(b)(iv) of the Comprehensive Agreement, the Department will bear specified levels of risks and benefits from indexation of the Design-Build Contract price, only during the period of a permitted extension, if any, to the Financial Close Deadline. The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable adjustment.

5.12.4.4 Changes to TIFIA Financing Terms

To the extent provided in the Comprehensive Agreement, the Department will bear a certain level of risk and benefit from changes in the specific TIFIA financing terms provided that (a) the Financial Proposal accurately reflects the Indicative TIFIA Term Sheet and (b) changes to the Indicative TIFIA Term Sheet that occur during TIFIA negotiations process are not initiated by the senior Lenders or Rating Agencies . The Comprehensive Agreement sets forth the process, mechanics and constraints on any applicable adjustment.

5.12.5 TIFIA Negotiations

If the Preferred Proposer included TIFIA financing in its Financing Plan, the Preferred Proposer shall submit, within 14 days after selection as the Preferred Proposer, (a) the credit assessment materials required at that point in time for the TIFIA financing to the TIFIA JPO and (b) a financing schedule that demonstrates that Financial Close can be reasonably expected to be achieved by the Financial Close Deadline (as provided in Section 1.6.3). The Department reserves the right to participate in negotiations between the Preferred Proposer and the TIFIA JPO concerning the final term sheet. The Preferred Proposer shall notify the Department of any meetings with the TIFIA JPO and shall include the Department on all communications with the TIFIA JPO, including email correspondence, conference calls and meetings.

5.13 Post-Selection Deliverables

5.13.1 Department Comments on Post-Selection Deliverables

The Department will provide comments on any Post-Selection Deliverables required by the Comprehensive Agreement within 21 Business Days of the date of the Department's receipt of such deliverable. The Department will have 10 Business Days to review and respond to subsequent submittals of the deliverable.

SECTION 6 COMPREHENSIVE AGREEMENT; POST-EXECUTION ACTIONS

6.1 Execution and Delivery of Comprehensive Agreement

6.1.1 Commercial Close, Financial Close and Early Work

Commercial Close is expected to take place as set forth in Section 1.6.1 and will consist of the requirements set forth in Sections 6.1.2 and 6.1.4. During the period between Commercial Close and Financial Close, the Developer will be expected to commence the Early Work outlined in the Comprehensive Agreement.

6.1.2 Financial Close Security

If selection of a Preferred Proposer is made, the Preferred Proposer shall be required, as a condition precedent to execution of the Comprehensive Agreement, to deliver to the Department a letter of credit in the amount of $20 million plus the amount intended to be drawn on the SIB Loan (not to exceed $25 million), together not to exceed a total amount of $45 million, as Financial Close Security in the form of Form K-2 by the deadline set forth in Section 1.6.1. Upon receipt of the Financial Close Security, the Department will return to the Preferred Proposer its Proposal Security. The Financial Close Security shall be issued by an Eligible Security Issuer. At any time following the Preferred Proposer's submission of its Financial Close Security to the Department, if any issuer thereof shall fail to be an Eligible Security Issuer, the Preferred Proposer shall promptly notify the Department in writing of such change and, within 10 Business Days of such notice, the Preferred Proposer shall deliver to the Department new Financial Close Security from a replacement Eligible Security Issuer. Upon the Department's receipt of such replacement Financial Close Security, the Department will promptly return the replaced Financial Close Security to the Preferred Proposer.

The Financial Close Security shall be effective at the date on which the Proposer is selected as the Preferred Proposer and shall expire on the date that is 70 days after the Financial Close Deadline set forth in Section 1.6.1. In the event the Department commences finalization or negotiation of the Comprehensive Agreement with the next highest ranking Proposer, then such Proposer shall be required to deliver the Financial Close Security within 10 Business Days of notification by the Department.

6.1.3 Comprehensive Agreement

Upon and subject to successful completion of any negotiations (if held), concurrence by the FHWA, and receipt by the Department of all of the documents required by this ITP to be provided by the Preferred Proposer prior to execution of the Comprehensive Agreement, the Department will deliver three copies of the Comprehensive Agreement, with all exhibits attached, to the Preferred Proposer for execution by the Preferred Proposer. The Department will deliver two sets to be retained by the Department and as many sets as requested by the Preferred Proposer to be retained by the Preferred Proposer.

Within five Business Days after receipt of such execution copies, the Preferred Proposer shall execute and return all execution copies of the Comprehensive Agreement, together with the

required documents described in Section 6.1.4, to the Department for counter-execution by the Department. If the Developer is a joint venture or a partnership, the Comprehensive Agreement must be executed on behalf of the Developer by all joint venture members or general partners, as applicable.

Within five Business Days after receipt of the executed Comprehensive Agreement sets (and all other required documents) from the Preferred Proposer, the Department will counter-execute the Comprehensive Agreement, retain two sets of the executed Comprehensive Agreement for itself, and deliver the other executed Comprehensive Agreement sets to the Developer.

Subject to satisfaction of all conditions precedent to the foregoing, the Comprehensive Agreement shall be fully executed and become effective not later than the expiration of the validity period of the Preferred Proposer's Proposal.

6.1.4 Documents to Be Delivered By Proposer With Executed Comprehensive Agreement

As a condition precedent to execution of the Comprehensive Agreement by the Department, the Preferred Proposer shall ensure that the following actions take place concurrently with or prior to delivery of the Comprehensive Agreement as executed by the Developer:

(a) Delivery to the Department of the Financial Close Security in accordance with Section 6.1.2.

(b) Immediately notify the Department of any material adverse change in the financial condition of any firm whose financial statements were provided with the Proposal, and take action with respect thereto as required by the Department;

(c) Identify the attorneys and law firms that will provide the legal opinions identified in the completed Opinion of Counsel (Form L) and provide draft opinion letter(s) to the Department for the Department's approval, not to be unreasonably withheld;

(d) Provide to the Department all documents required to be provided in accordance with the Comprehensive Agreement and the Design-Build Contract for Department review and approval;

(e) Provide to the Department evidence of approval of the final form of the Comprehensive Agreement, and of due authorization, execution, delivery and performance of the Comprehensive Agreement by the Developer thereunder and (if the Developer is a joint venture) by its joint venture members. Such evidence shall be in form and substance satisfactory to the Department. If the Developer is a corporation, such evidence shall be in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Developer is a partnership, such evidence shall be in the form of a resolution signed by the general partners and appropriate evidence of authorization for each of the general partners, in each case, certified by an appropriate officer of the general partner. If

the Developer is a limited liability company, such evidence shall be in the form of (i) a resolution of the governing body of the limited liability company, certified by an appropriate officer of the company, or (ii) a managing member(s) resolution, certified by an appropriate officer of the managing member(s), or (iii) if there is no managing member, a resolution from each member certified by an appropriate officer of such member. If the Developer is a joint venture, such evidence shall be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member;

(f) Provide to the Department evidence of insurance required to be provided by the Developer under the Comprehensive Agreement (including, in the case of insurance policies not required to be in place until after the effective date, evidence satisfactory to the Department that the Developer is able to obtain the coverages to be bound, such as a letter from an insurance broker with details of the coverages and pricing, limits, endorsements, and other terms required by the Comprehensive Agreement);

(g) Provide to the Department evidence that each of the Developer and its Major Participants hold all licenses required for performance of the Work as of the Agreement Date;

(h) Provide to the Department commitments for and delivery of payment and Performance Security as set forth in Section 17.08 of the Comprehensive Agreement;

(i) If security for the Proposer's obligations under the Comprehensive Agreement is required by the Department pursuant to Section 5.3.2, deliver guarantees from a Financially Responsible Party(ies) in the form previously approved by the Department;

(j) Confirm the Preferred Proposer's proposed underwriter(s) for the financing, as previously approved by the Department; and

(k) Deliver other ancillary documents, if any, not inconsistent with the Comprehensive Agreement or this ITP, customarily and reasonably provided in connection with the execution of Virginia comprehensive agreements and non-financial closing of such transactions (which the Department will identify at least five Business Days prior to the date by which the Developer is required to deliver the documents listed in this Section 6.1.4 to the Department) and (ii) other documents determined to be necessary as a result of pre-selection negotiations, if any (which the Department and the Proposer shall mutually identify as part of the pre-selection negotiations).

6.2 Debriefings

All Proposers submitting responsive Proposals will be notified in writing of the results of the evaluation process. Proposers not selected as the Preferred Proposer may request a debriefing.

Debriefings shall be provided at the earliest feasible time after execution of the Comprehensive Agreement. The debriefing shall be conducted by a procurement official familiar with the rationale for the decision selecting the Preferred Proposer.

Debriefings shall:

(a) Be limited to discussion of the unsuccessful Proposer's Proposal and may not include specific discussion of any competing Proposal;

(b) Be factual and consistent with the evaluation of the unsuccessful Proposer's Proposal; and

(c) Provide information on areas in which the unsuccessful Proposer's Proposal had weaknesses or deficiencies.

6.3 Payment to Unsuccessful Responsive Proposers

6.3.1 Payment of Stipend

Each Proposer that submits a responsive but unsuccessful Proposal and that has timely executed and delivered to the Department a Stipend Payment Agreement in the form attached hereto as Form R, shall be entitled to receive payment from the Department for all work product on the terms and conditions described herein. No Proposer shall be entitled to reimbursement for any of its costs in connection with the RFP except as specified in this Section 6.3.

6.3.2 Amount of Payment; Invoice

The amount of the stipend payment per Proposer for this procurement is $1 million.

In order to be eligible to receive payment, each Proposer must execute and deliver a Stipend Payment Agreement (Form R). An executed copy of the Stipend Payment Agreement must be submitted with such Proposer's Proposal on or prior to the Technical Proposal Due Date. Once executed, the Stipend Payment Agreement shall constitute the irrevocable election by the Proposer to accept the stipend described therein and under this Section 6.3. Payments will be made in accordance with the Stipend Payment Agreement. As further provided in the Stipend Payment Agreement, payment of the stipend to the Proposer shall operate as a release and waiver by the Proposer of any and all claims challenging the procurement process.

6.3.3 Right to Use Work Product

In accordance with the PPTA Manual, each Proposal and every submittal a Proposer makes prior to submitting its Technical Proposal and Financial Proposal to the Department in response to this RFP becomes the property of the Commonwealth of Virginia. Each Proposer agrees that the Department will be entitled to use all such work product and that the Department may incorporate such work product into the Comprehensive Agreement and otherwise use such work product in the performance of its functions.

6.3.4 No Payment to Preferred Proposer

For the purposes of this Section 6.3, a Preferred Proposer that withdraws its Proposal as a result of any of the circumstances set forth in Section 4.8.2(d) shall not be deemed to have submitted an unsuccessful Proposal for purposes hereof and shall not be entitled to any stipend pursuant to Section 6.3.1.

SECTION 7 DEPARTMENT RIGHTS AND DISCLAIMERS

7.1 Department Rights

The Department may investigate the qualifications and Proposal of any Proposer under consideration, may require confirmation of information furnished by a Proposer and may require additional evidence of qualifications to perform the Developer's obligations under the Comprehensive Agreement. The Department reserves the right, in its discretion, to:

(a) Develop the P3 Project and any facility in any manner that it, in its discretion, deems necessary;

(b) Reject any or all of the Proposals;

(c) Modify any dates set or projected in this RFP and extend any deadlines;

(d) Cancel, modify or withdraw this RFP in whole or in part;

(e) Terminate this procurement and commence a new procurement or an alternate method of project delivery for part or all of the P3 Project;

(f) Terminate evaluations of Proposals received at any time, in its discretion;

(g) Suspend, discontinue or terminate negotiations of the Comprehensive Agreement at any time, elect not to commence negotiations of the Comprehensive Agreement with any responding Proposer and engage in negotiations with the substitute Preferred Proposer;

(h) Modify the procurement process (with appropriate notice to Proposers);

(i) Waive or permit corrections to data submitted with any response to the RFP until such time as the Department declares in writing that a particular stage or phase of its review of the responses to the RFP has been completed and closed;

(j) Permit submittal of addenda and supplements to data previously provided in a Proposal pursuant to a request for clarification issued by the Department until such time as the Department declares that a particular stage or phase of its review of the responses to the RFP has been completed and closed;

(k) Appoint one or more Executive Scoring Panels to review Proposals, make recommendations and seek the assistance of outside technical experts and consultants in Proposal evaluation;

(l) Disclose information contained in a Proposal to the public as described herein;

(m) Approve or disapprove changes to the Key Personnel identified in the SOQ;

(n) Approve or disapprove changes to Proposer's organization;

(o) Accept a Proposal other than that which requests the least public contribution from or offers the highest total payment to the Department;

(p) Waive deficiencies, informalities and irregularities in Proposals; accept and review a non-conforming Proposal or seek clarifications or modifications to a Proposal;

(q) Request or obtain additional information about any Proposal from any source;

(r) Disqualify any Proposer that violates the terms of the RFP;

(s) Issue Revised Draft RFPs or addenda to the Final RFP, in collaboration with VAP3 and DRPT, including after the Financial Proposal Due Date, and including changes to conform the RFP to applicable legal requirements and address any changes to the scope of the P3 Project arising from the environmental analysis process; and

(t) Exercise any other right reserved or afforded to the Department under the RFP and applicable Law.

7.2 Department Disclaimers

The RFP does not commit the Department to enter into a Comprehensive Agreement. Except as expressly set forth in Section 6.3, the Department and the Commonwealth of Virginia assume no obligations, responsibilities or liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this RFP. All of such costs shall be borne solely by each Proposer and Proposer team.

In no event shall the Department be bound by, or liable for, any obligations with respect to the P3 Project until such time (if at all) as the Comprehensive Agreement, in form and substance satisfactory to the Department, has been authorized and executed by the Department and, then, only to the extent set forth therein. In submitting a Proposal in response to the RFP, a Proposer is specifically acknowledging these disclaimers.

EXHIBIT A

VIRGINIA SMALL BUSINESS FINANCING AUTHORITY PROCESS

Should Proposers elect to use PABs as part of their financing plan and elect to petition the Virginia Small Business Financing Authority ("VSBFA") to serve as the conduit issuer of such PABs, the following table provides an overview of the VSBFA application process, including assumptions regarding the application timeline and cost of issuance. All assumptions contained in this Exhibit A are subject to change.

Item	Assumption
Application instructions available	http://www.vabankers.org/LiteratureRetrieve.aspx?ID=120119&A=SearchResult&SearchID=2174373&ObjectID=120119&ObjectType=6
Application due date	Approximately three weeks prior to public hearing date; VSBFA meets monthly
Total application time	Not fixed; at Proposer's discretion
Approximate annual fees	Fee formula set forth in Application
Requirements for application	Application Form
	Cover Letter
	Fiscal Impact Statement
	Commitment letter
	Public hearing notice

EXHIBIT B

TECHNICAL PROPOSAL INSTRUCTIONS

1 General Instructions

The required contents and organization of the Technical Proposal are presented in this Exhibit B and summarized in the Technical Proposal checklist provided in Exhibit D. Proposers are to provide all the information set out in this Exhibit B in the organization and format specified herein and in the order set forth in Exhibit D. A copy of the checklist for the Technical Proposal shall be included in the Technical Proposal. Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Technical Proposal.

2 Format

The Technical Proposal shall be limited to an aggregate of 125 pages (the Department requires that the Technical Proposal be printed on double-sided sheets), plus the Executive Summary, resumes, appendices and exhibits containing required forms, graphs, matrices, schedule, drawings and other pertinent data. Proposers may also submit one (1) video card as part of the Technical Proposal to illustrate elements of Proposer's approach to developing the Project, such as design concepts, construction sequencing, renderings showing operation of the Project, etc. The video card shall be limited in length to no more than five (5) minutes and shall count as one page of the aggregate 125 pages. The video card shall be self-contained and playable without inserting into a computer or other electronic device (i.e., "push-and-play").

3 Contents of the Technical Proposal

The Technical Proposal shall consist of the following major elements:

(a) Executive Summary;

(b) Proposer Information, Certifications and Documents (including required Forms A through I and M); and

(c) P3 Project Development Plan.

3.1 Executive Summary

The executive summary ("Executive Summary") shall be written in a non-technical style and shall contain sufficient information for reviewers with both technical and non-technical backgrounds to become familiar with Proposer's Proposal and its ability to satisfy the financial and Technical Requirements of the P3 Project. The Executive Summary shall not exceed three single-sided pages. The Executive Summary shall not include any information regarding pricing. It shall, at a minimum, include the following:

(a) An explanation of the organization and contents of the Proposal;

(b) A summary of any changes to Proposer's SOQ;

(c) A summary of all Major Participants and identification of any changes in Proposer's organization, Equity Members and Key Personnel since submission of the SOQ; and

(d) A summary of the P3 Project Development Plan.

3.2 Proposer Information, Certifications, and Documents

3.2.1 Proposal Letter and Additional Documentation

The Proposal shall include the Technical Proposal Letter (Form A-1). The Proposer shall attach to the Technical Proposal Letter the documents and information described on pages 5 and 6 of Form A-1 and shall identify its authorized representative for all purposes relating to the Technical Proposal, including the Proposer's rights and obligations under the RFP, negotiations of the Comprehensive Agreement and receipt of any submittals returned to Proposer, including the Proposal Security.

The Technical Proposal Letter shall include evidence of signature authorization for each individual executing any Proposal forms.

3.2.2 Information About Proposer, Major Participants, and Other Subcontractors

To the extent there are any changes from the Proposer's SOQ, the Technical Proposal shall include all of the following, to the extent each is required to reflect changes from the SOQ:

(a) a completed chart on Form B-1, including the names, contact information, role in organization, licensing information and description of work (if applicable) for the Proposer and all Equity Members;

(b) a completed Form B-2 providing information about the Proposer and its team as specified therein; and

(c) a completed Form B-3 providing information regarding: (i) each Major Participant (excluding Equity Members that do not fall into categories (a) through (g) of the definition of Major Participants); (ii) each firm that will provide engineering, architectural, surveying, planning, quality assurance and/or other professional services for development of the P3 Project valued at $20 million or more ("Major Professional Services Firms"); and (iii) all other subcontractors identified by Proposer as of the Technical Proposal Due Date. The Proposer is advised that all Major Professional Services Firms must be identified at the time of the Proposal, and that, as a condition to execution of the Comprehensive Agreement, the Preferred Proposer must provide evidence that it and its Major Participants hold all necessary licenses, professional registrations and Department pre-qualifications.

3.2.3 Responsible Proposer Questionnaire

The Proposal shall include Form C (Responsible Proposer Questionnaire) signed by the Proposer. As noted on the form, it may be provided by the Proposer on its own behalf and on behalf of the Developer and Equity Members, or it may be provided by the Proposer on its own behalf and the individual Equity Members on their own behalf. The form executed by the Proposer shall be signed by the same individual(s) who sign the Proposal Letter. The forms signed by Equity Members shall be signed by an authorized representative of such Equity Member and the Proposal.

3.2.4 Industrial Safety Record

The Proposal shall include an industrial safety record on Form D for each member of Proposer's team that will perform or supervise installation and/or construction Work on the P3 Project, including information for any entity in which such team member holds a substantial interest. If any such entity does not have an industrial safety history (for example if the firm is newly formed), Form D is not required for such entity, but a statement shall be provided explaining why the form is not included. Should any of these parties have been a member of a joint venture on past projects, the safety record of the joint venture in full shall be included as part of Form D.

3.2.5 Key Personnel

3.2.5.1 Affirmation of Key Personnel

Each Proposer shall certify that the Key Personnel for the DBFOM Delivery Method identified in its SOQ have not changed. To the extent that Key Personnel have changed, such change requires Department approval. If such a change has occurred, the Proposer shall submit a package that includes an original and nine copies of the information specified in this Exhibit B, Section 3.2.5 to the Department, by the date and time for submittal of Key Personnel specified in Section 1.6.1, for review and written approval by the Department in its discretion in the course of Proposal evaluations. The package shall be delivered to the address set forth in Section 2.2.1, and shall include a list of the proposed Key Personnel changes for each category identified in Section 3.2.5.2 below, along with copies of resumes for each such person contained on Form B-4 (which must contain the individual's qualifications and relevant work experience) and contact information for three references for each individual.

The Proposer may not make any changes in its Key Personnel after receipt of Department approval as specified in this Section 3.2.5.1, except as provided in the Comprehensive Agreement.

3.2.5.2 Information Regarding Key Personnel in the Proposal

The Proposal shall identify the pre-approved Key Personnel and shall include a statement signed by Proposer and the employer of each designated key person, committing to maintain such individual's availability for and active involvement in the P3 Project. Refer to the Comprehensive Agreement for information regarding time commitment requirements for Key Personnel and the Department rights if it determines that any such personnel are not devoting sufficient time to the prosecution and performance of the Work required for the P3 Project. The

Proposal shall also include copies of the resumes and contact information for each of the identified Key Personnel in Form B-4.

3.2.6 Letter Approving Key Personnel and Changes in Proposer's Organization

The Proposal shall include a copy of the letter(s) issued by the Department pursuant to Section 3.2.5.1 approving the Key Personnel. If the Proposer's organization for the DBFOM Delivery Method has changed since submission of the SOQ for the DBFOM Delivery Method, the Proposer specifically shall describe such changes and, if applicable, include a copy of the Department's approval letter.

3.2.7 Non-Collusion Affidavit

The Proposal shall include Form F, certifying that the Proposal is not the result of and has not been influenced by collusion.

3.2.8 Certification Regarding Buy America

The Proposal shall include Form G, regarding Buy America requirements.

3.2.9 Conflict of Interest Disclosure Statement

The Proposal shall include a certification on Form I describing potential organizational conflicts of interest, including disclosure of all relevant facts concerning any past, present or currently planned interest that may present an organizational conflict of interest.

3.2.10 Certification Regarding Equal Employment Opportunity

The Proposal shall include Forms E and H, regarding participation in contracts or subcontracts subject to the equal opportunity clause and the filing of required reports.

4 P3 Project Development Plan

The Proposer shall present a P3 Project Development Plan, which shall consist of three components: General Project Management (Section 4.1), Design-Build Management and Technical Solutions (Section 4.2) and Operations and Maintenance Management and Technical Solutions (Section 4.3). The P3 Project Development Plan shall describe the project management philosophy, the plan and schedule for the P3 Project and any related contract administration, and how Proposer plans to achieve and satisfy the P3 Project requirements.

4.1 General Project Management

General Project Management shall set out the Proposer's management approach to coordination of all P3 Project activities including design, construction, operations, maintenance (routine and capital), quality, handback, documentation, scheduling, testing and auditing/reporting for the P3 Project, risk analysis and mitigation and community outreach. Information presented shall apply to all stages of the Work. The General Project Management approach shall address the information requested in Sections 4.1.1 through 4.1.7.

4.1.1 Management Structure and Personnel

The General Project Management approach shall describe the proposed overall P3 Project management organization, identifying participating firms, organizations and individuals. It shall include:

(a) An organization chart, which may be excluded from the page count limitation, outlining the structure of Proposer's P3 Project management organization (including the design, construction, operations, maintenance and quality sub-organizations) and a description of the roles allocated, responsibilities, interrelation and Work to be accomplished by each member of the management team and each sub-organization, including identified subcontractors and suppliers (at all tiers);

(b) Information describing how each of the Key Personnel will fit into the organization, including a description of each key person's function and responsibility relative to the P3 Project, and indicating the percent of time that he or she will devote to the P3 Project;

(c) Information regarding the current and projected workload of all Major Participants and a description of the Proposer's plan and overall ability to provide the experienced personnel, equipment and facilities required to successfully complete all aspects of the P3 Project on a timely basis and within any applicable time frames set forth in the Comprehensive Agreement and the Technical Requirements.

4.1.2 Schedule, Cost Control, and Risk Mitigation

The General Project Management approach shall describe the proposed schedule methodology and include at least the following:

(a) A description of the approach used for preparing, controlling and updating the Baseline Schedule, and for calculating progress and performance on a monthly basis;

(b) A description of the approach used for preparing and updating the Schedule of Values for the Early Work, as required pursuant to Section 8.02 of the Comprehensive Agreement;

(c) A description of the approach to integrate subcontract activities into Proposer's scheduling and reporting system;

(d) A description of the approach to managing resources and activities, both its own and subcontractors, in order to achieve the Initial Baseline Schedule, and if necessary, to recover schedule slippage;

(e) A proposal schedule ("Proposal Schedule") and narrative for the P3 Project[1]. The Proposal Schedule should be a high level Critical Path method schedule representing Proposer's plan for completing the Work between LNTP and Project Completion, including the interim milestones. The schedule must show a Project Completion Date that is no later than the Long Stop Date:

i. The Proposal Schedule is the Developer's preliminary conceptual plan for the design and construction of the P3 Project. The Proposal Schedule should depict the Developer's proposed overall sequence of work, and times each work task and deliverable required to complete the Project will be accomplished. The Proposal Schedule should be organized using a hierarchical Work Breakdown Structure (WBS), broken down into major phases of the Project (i.e. Project milestones, Project management, design, public involvement, environmental, ROW, utility, and construction, etc.). The Proposal Schedule should depict the anticipated Critical Path of the Project (based on the longest path), reviews by Department, FHWA, other regulatory agencies; Early Work activities, work by suppliers, subcontractors, and other involved parties, as applicable. For the Early Work activities, the Proposer must show all of the scheduling detail necessary to complete each activity, including cost, resources, predecessor and successor logic, appropriate calendars, and any other information needed to understand and complete the Early Work.

ii. The Proposal Schedule narrative must describe the Developer's proposed overall plan to accomplish the Work, including but not limited to the overall sequencing of the Work, a description and explanation of the Critical Path, proposed means and methods, and other key assumptions upon which the Proposal Schedule is based. In addition, the Developer shall include a listing of resource allocation (including, at a minimum, manpower, equipment, and material supplies) required to meet the Project's interim milestones and Project Completion Date.

iii. Developer must supply the Proposal Schedule and accompanying narrative in both hard copy and in PDF format. Proposer also should provide a back-up copy of the Proposal Schedule's source document, which may be in any of the following electronic file formats: "XER", "PRX," "MPP" or "MPX".

iv. The Proposal Schedule shall be used to monitor performance of the Work until the Initial Baseline Schedule is submitted by the Developer as part of the Early Work.

(f) Description of the Proposer's document, cost control and schedule management system to be used to control, review and coordinate the cost and schedule of the

[1]Please note that the Project Schedule can be submitted per the date noted in Section 1.6.1

Work during the term of the Comprehensive Agreement, including during design, construction, installation, operations and maintenance;

(g) Description of the Proposer's approach to identify, assess, manage, mitigate and allocate P3 Project-specific risks. The Proposal shall, at a minimum:

i. Identify significant risk categories, such as, capacity, planning, design, construction completion, operations, maintenance, demand, inflation, financing, legislative policy, technology, and residual value;

ii. Describe the potential consequences of the identified risks;

iii. Describe the probability of identified risks;

iv. Propose procedures and tools to conduct a risk sensitivity analysis; and

v. Provide a proposed or desirable allocation of risks among the Proposer and its team members.

4.1.3 Environmental and Permit Management

The General Project Management approach shall describe the management approach to environmental compliance and permitting. The approach shall:

(a) Describe applicable qualifications and experience of the Lead QA Inspector for Environmental Compliance, as such role is described in the Technical Requirements;

(b) Describe the approach to the Proposer's environmental compliance described in the Technical Requirements;

(c) Identify applicable laws, rules and regulations;

(d) Identify the environmental commitments, permits, mitigation, potential re-evaluations and documentation, necessary to complete the P3 Project;

(e) Identify potential environmental risk and describe the approach to mitigate, eliminate or reduce those risks.

4.1.4 Safety and Health

The safety component of the General Project Management approach shall include a description of the preliminary safety plan meeting the requirements set forth in the Technical Requirements Section 1.12 and Attachment 1.3, Section 1.12 to the Technical Requirements, including at least the following:

(a) A description of the role and responsibilities of the Project safety officer's staff, the hierarchical relationship between the Project safety officer and other

managers, supervisors, and employees, and how responsibility and accountability for safety will be incorporated at all levels;

(b) A description of the Proposer's approach to identifying, developing and providing relevant training for employees and supervisors;

(c) A description of the Proposer's approach to safety procedures, including incident response plans and systems for reporting and responding to hazardous conditions, and how such procedures will ensure the safety and health of personnel involved in the P3 Project and the general public affected by the P3 Project;

(d) The procedures the Proposer will use to immediately notify the Department of all incidents arising out of the performance of the Work, and the Proposer's approach to communication and coordination of incident response and emergency management with the Department and other involved agencies;

(e) A description of how the Proposer's approach to safety will account for the unique attributes of this P3 Project, including but not limited to, the urban environment, the heavy traffic conditions and the size and scope of the P3 Project; and

(f) A description of the Proposer's safety goals and its approach to evaluating the effectiveness of policies and measuring success in meeting the goals.

4.1.5 Organizational Systems

The General Project Management approach shall describe the organizational systems to be used by Proposer, and shall include:

(a) A detailed description of how Proposer's team members will work together to provide a unified design, construction, operations, maintenance and quality approach to all elements of the Work;

(b) A description of the Proposer's team decision-making process, how internal disputes between team members will be resolved and how the Proposer will avoid adverse impacts to the P3 Project (cost, schedule or quality) in the event of such disputes;

(c) A description of the methods to be used to establish lines of communication and documentation within the Proposer's team, including communication among the sub-organizations and management personnel;

(d) A description of how the quality process will be structured for the P3 Project, and how the quality process will function independently of design, construction, operations and maintenance; and

(e) A description of how the Proposer intends to interface with the Department, its consultants, applicable third parties, and relevant federal, State and local agencies

on all matters including planned transportation and utility infrastructure in the project area.

4.1.6 Public Information and Communications

The public information and communications component of the General Project Management approach shall include:

(a) Qualifications and experience of proposed staff members who will be engaged for purposes of public information and community outreach; and

(b) A preliminary public information and communications plan, which presents the approach to addressing all items of the public information communications requirements as referred to in the Technical Requirements.

4.1.7 Project Labor Strategy

The project labor strategy of the General Project Management approach shall include:

(a) Sufficient information to enable the Department to understand and evaluate the Proposer strategy in light of potential challenges to attract skilled construction crafts in the Metropolitan Washington D.C. construction market considering the large volume of similar infrastructure projects happening at the same time (e.g., I-395 Express lanes, I-66 Inside the Beltway, Dulles Corridor Metrorail Project – Phase 2 and 95 Express Southern Extension).

(b) A discussion of the Proposer's strategy for the P3 Project to address craft training, worker benefits, and critical skills retention focusing on what the Proposer's team considers the most relevant to the success of the P3 Project, and shall include a narrative that describes the criticality of having a coordinated labor strategy for the P3 Project's success and discusses the measures the Proposer's team may implement to address potential challenges and ensure an adequate supply of skilled labor.

4.2 Design-Build Management and Technical Solutions

Design-Build Management and Technical Solutions shall present the Proposer's approach to Design-Build Management, Design-Build Quality Management and the Proposer's Design-Build Technical Solutions as required in Section 4.2.1 through 4.2.3.

4.2.1 Design-Build Management

The Design-Build Management approach shall provide a description of the Proposer's approach for performing design and construction on the P3 Project, including at a minimum the following:

(a) A description of the management approach for development and coordination of design, including integrating related issues such as ROW, survey, environmental permitting, utilities and community relations;

(b) A description of the proposed approach for delivering the design for the P3 Project, including where the designers will be located and how designs developed by different firms and offices will be integrated and coordinated to ensure consistency and quality;

(c) A description of the management approach for construction, including how design will be integrated with construction and how the Work will be divided and controlled; and

(d) A description of how the Proposer will manage staged construction, including how it will simultaneously manage construction with ongoing operation and maintenance activities.

4.2.2 Design-Build Technical Solutions

The Design-Build Technical Solutions shall include information identified herein relevant to the Proposer's schematic and proposed approach to construction sequencing and traffic management, drainage and utilities, subsurface elements, roadways, bridges and surface structures, toll lane tolling system, ETTM, signing, delineation, pavement markings, signalization and lighting, and aesthetics that meet the requirements set forth in Sections 4.2.2.1 through 4.2.2.10.

The Proposer's schematic shall be presented in English units on 18-inch by 120-inch scroll plots at a scale of 1 inch = 200 feet and shall clearly identify the Work to be completed for the P3 Project. Each Proposer shall identify characteristics of its Proposal and schematic which vary from the Department's Schematic (provided in the RFP Reference Documents) or which exceed P3 Project requirements. Further, the Proposer may provide supporting documentation for the change outlining the overall benefits to the P3 Project. Responsibility for changes in alignments or other elements proposed by the Proposer's schematic is addressed in the Comprehensive Agreement.

4.2.2.1 ATCs

The Proposer must specifically state whether any approved ATCs are included, with reference to the ATC identification number, and shall describe how the ATC is used and provide cross-references to other elements of the Proposal that are affected by the ATC. For each ATC the Proposer includes, the Proposer shall provide the complete ATC package, including approvals and any conditions, in electronic format.

4.2.2.2 Roadway

The Proposer' Roadway schematic shall include:

(a) General P3 Project roadway information including P3 Project limits, design speeds, functional classification(s), and other data indicating minimum design criteria have been satisfied;

(b) P3 Project horizontal alignments including PI station/location, degree of curve, radius, length of curve, PC and PT (graphical location) and bearings;

(c) P3 Project planimetrics including curbs and barriers, driveways, edge of pavement, and surface roadways' edge of shoulders;

(d) An attachment with supporting preliminary traffic analysis that provides level of service and average operating speeds for the combined Express Lanes and general purpose lanes system. The preliminary traffic analysis shall demonstrate that the Proposer's Roadway schematic is equal to or better than the RFP Conceptual Plans in terms of safety and traffic operations for the design year 2040.

(e) Directional arrows indicating the number of lanes;

(f) Proposed ROW limits and control of access limits;

(g) P3 Project profiles including existing/natural ground, vertical clearance, grades, VPI station, vertical curve length and K-values;

(h) Typical sections including existing ground, pavement cross slope, super elevation, lane and shoulder widths, and slope ratio for fills and cuts;

(i) The location and text of the P3 Project general purpose lanes and Express Lanes guide signs; and

(j) Drawings demonstrating how the horizontal alignment of a future transit facility will be achieved.

4.2.2.3 Construction Sequencing and Traffic Management

The Proposal shall include a description of the construction staging and traffic control and sequencing proposed to accommodate traffic during the construction of the P3 Project. The construction traffic control shall include the following:

(a) The overall traffic management and control and sequencing approach;

(b) Conceptual construction staging diagrams including initial and ultimate proposed treatment of ramps, staging of major drainage trunk line(s) and a description of all existing roadways and structures to be closed, demolished, left as is, or incorporated into the P3 Project;

(c) A description of how business and residential accesses will be provided;

(d) A narrative description of how the Proposer intends to schedule and sequence the construction to minimize impacts on the environment, communities and traveling public while still providing acceptable construction performance;

(e) A description of the intended laydown, recycling, staging, disposal and maintenance locations to be used during construction; and

(f) A description of how the ROW and adjacent roads and properties will be maintained and protected, including the intended measures to be used to mitigate and minimize noise, vibration, light, dust, erosion/run-off and local road damage.

4.2.2.4 Drainage

The Proposal shall provide a description of the drainage for the P3 Project in conformance with Section 3.5 of the Technical Requirements. For the drainage related to the P3 Project, the Proposal is to include:

(a) A description of the overall surface water collection system identifying the proposed location of major drainage trunk lines and outfall locations to accommodate the P3 Project;

(b) Exhibit drawings (scale: 1 inch = 200 feet) of the Proposer's design for conveying runoff through the facility to discharge points; and

(c) Exhibit drawing(s) defining the approximate limits of temporary construction easements and drainage easements necessary for completion of the P3 Project drainage work.

(d) A description of the detention required for the P3 Project and exhibit drawings of Proposer's detention locations.

4.2.2.5 Pavement

The Proposal shall include validation of the adequacy of the minimum pavement sections (as defined in Section 3.7 of the Technical Requirements) and notify the Department of its findings in the Design Build Technical Solutions. If the Developer's findings require a deviation from the RFP requirements, the Developer shall notify the Department and submit the proposed revised pavement typical sections with supporting calculations. Acceptable changes to the minimum pavement sections are limited to increasing the specified thickness of the base or subbase layers.

4.2.2.6 Structures

The Proposal shall provide a description of the Structures (as defined in Section 3.14.1 of the Technical Requirements) for the P3 Project, including at least the following:

(a) The Proposer's schematic shall include:

(i) Sufficient detail to indicate bridge and culvert locations and limits, bridge types, foundation types, controlling vertical clearances and typical span arrangements; and

(ii) Preliminary wall types, proposed locations and limits for retaining and sound walls.

(b) The Proposer shall include the following:

(i) An exhibit of the bent placement near restricted substructure placement areas. The exhibit shall depict the restricted substructure placement areas; and

(ii) Drawings detailing the proposed structures' conformance to the aesthetic requirements of the P3 Project.

4.2.2.7 Tolling and ETTM Systems

The Proposal shall include the following information pertaining to tolling and ETTM systems, as further described in Section 3.15 of the Technical Requirements:

(a) A description of the toll lane tolling system for the P3 Project. The information shall include at least the following:

(i) A toll collection methodology that includes a schematic plan showing tolling points, informational signing and other pertinent information.

(ii) A preliminary approach to ETTM Facilities and ETTM Equipment, including how the ETTM plan meets or exceeds the functional requirements. The description shall include hardware and software specifications to describe all of the aspects of the system and its functionality.

(iii) A description of the proposed secure network communications system.

(b) A description of the dynamic tolling plan for the Express Lanes. The information shall include at least the following:

(i) The Proposer's approach to congestion pricing and the Proposer's congestion pricing methodology;

(ii) A description of how the Proposer's approach to dynamic tolling will coordinate with the Department's plans and programs for highways system management of the overall transportation network in Northern Virginia; and

(iii) Whether the Proposer intends to adopt and implement any discount programs for users of the Express Lanes.

(c) A description of the ETTM System for the P3 Project. The information shall include at least the following:

(i) A schematic plan and layout showing the locations of ETTM equipment, including cameras, DMS signs, traffic monitoring stations and lane marking points.

(ii) A description of how the system will be monitored and connected to area traffic management centers to maintain interoperability for monitoring and control of subsurface systems.

(iii) A description of the approach to coordinating information with the Department and other ETTM systems in the region.

4.2.2.8 Traffic Engineering

The Proposal shall provide a description of the signing, delineation, pavement markings, signalization and lighting for the P3 Project, as described in Section 3.8 of the Technical Requirements. The information shall include at least the following:

(a) A preliminary operational guide signing schematic formatted for the Department approval; and

(b) A general description of the approach for striping, signalization and lighting of the facility.

4.2.2.9 Capital Asset Facilities

The Proposal shall provide a description of the buildings and enclosed facilities for the P3 Project, as described in Section 3.12 of the Technical Requirements. The information shall include at least the following:

(a) Identification of all proposed buildings, enclosed facilities and associated items, along with a general description of the function of each of the facilities.

(b) A description of the proposed approach to minimize the impact that each of the buildings, enclosed facilities and associated items may have on the surrounding communities.

4.2.2.10 Aesthetic and Landscape Design

The Proposal shall provide the following related to the aesthetic design for the P3 Project, as further described in Sections 3.10 and 3.11 of the Technical Requirements:

(a) A preliminary Aesthetic and Landscaping Plan;

(b) A description and concept drawings of additional aesthetics items proposed to be completed as a portion of Proposer's Work; and

(c) A description of how the Proposer plans to work with the Department and other regional Stakeholders to enhance the design and aesthetic details.

4.2.3 Design-Build Quality Management

The Design-Build Quality Management approach shall describe the Proposer's quality approach to design and construction for the P3 Project, including at least the following:

(a) For the design quality component associated with the preliminary Quality Management Plan, a description of the design deliverable process, a description of the internal process for design reviews and a description of quality assurance and quality control functions. The design quality component shall present the Proposer's approach to reporting relationships and responsibilities, including Department oversight procedures to be implemented; conformance with federal oversight requirements; how design quality management will be documented; and how changes will be made to correct design deficiencies; and

(b) For the construction quality component associated with the preliminary Quality Management Plan, a description of the approach to acceptance testing and inspection, and how construction deficiencies and non-compliance issues will be documented and corrected. The construction component of the preliminary Quality Management Plan shall describe how the program will integrate with the design activities, including Department oversight and all quality-related activities and conformance with federal oversight requirements.

4.2.4 Right of Way Acquisition and Utility Adjustment Management and Approach

The ROW and utility adjustment management and approach shall describe the Proposer's approach to performing ROW services and a description of utility work required for the P3 Project. The information shall include at least the following:

(a) For ROW services for the P3 Project, Proposer is to include:

(i) The approach describing how the acquisition of ROW and any necessary relocation service will be managed by the Proposer in conjunction with the Department, local officials and the Office of the Attorney General. The approach must describe how acquisition of ROW will be incorporated into the Baseline schedule to avoid delays.

(ii) A description of the quality control methods that the Proposer will employ to assure that all property owners' rights under the Uniform Relocation and Real Property Acquisition Policies Act of 1970, as amended, are being satisfied, including without limitation, the safeguards and policies the Proposer will implement to ensure, that no coercive actions, as described in 49 CFR 24.102(h), will result from advancing a portion of ROW to the construction stage or any other action that may be undertaken that could adversely affect the ROW acquisition process.

(iii) A description of the acquisition and relocation process that will maintain the project schedule but be sensitive to the needs and concerns of property owners, lessees, licensees and other occupants.

(b) For utilities related to the P3 Project, the Proposer is to include:

(i) The Proposer's approach to identifying, verifying and documenting the presence and locations of subsurface utilities that may impact or be impacted by the Work.

(ii) The intended means of communication and planning of construction to keep Utility Owners informed of the construction schedule, the means of construction and changes that may affect their facilities.

(iii) The methods of design and construction related to utility relocation and protection.

(iv) The proposed methods to minimize utility conflicts during design and construction and the approach for managing conflicts.

(v) The proposed methods to facilitate cooperation from Utility Owners, including without limitation the approach to negotiating utility adjustment agreements and resolving betterment issues.

(vi) The Proposer's approach to / knowledge of when utility relocation / upgrade / replacement is paid for by the utility and when the Proposer will be liable for costs.

4.3 Operations and Maintenance Management and Technical Solutions

Operations and Maintenance Management and Technical Solutions shall present the Proposer's approach to Operations and Maintenance Management, Operations and Maintenance Quality Management, and the Proposer's Operations and Maintenance Technical Solutions as required in Sections 4.3.1 through 4.3.3.

4.3.1 Operations and Maintenance Management

The Operations and Maintenance Management approach shall provide a description of the proposed approach to operating and maintaining the P3 Project, including at least the following:

(a) A preliminary Operations Management Plan, which presents the Proposer's approach to meeting the P3 Project's operations obligations as described in the Technical Requirements and a description of the procedures to be established for monitoring the condition and operational performance of the P3 Project. The plan shall describe operational interfaces between the Proposer and the Department (e.g., protocols to ensure smooth integration of operations between the Project Assets, the Transferred Project Assets and the Department Shared Assets).

(b) A preliminary Maintenance Management Plan, which presents the Proposer's approach to meeting the P3 Project's maintenance obligations as described in the Technical Requirements and the approach to processes and procedures for the maintenance of the P3 Project over the Term of the Agreement. The plan shall include details of protocols between the Developer and the Department where the Developer makes available the Express Lanes to the Department or its contractors to provide snow and ice removal services.

(c) The approach to operations and maintenance prior to, during transition to, and following Service Commencement, and specifically during transition from the end of the Design-Build phase to the Operating Period.

4.3.2 Operations and Maintenance Technical Solutions

The Operations and Maintenance Technical Solutions shall include information identified herein relevant to Proposer's approach to roadway operations, congestion pricing, Express Lanes tolling operations, routine maintenance and Major Maintenance as set forth in Sections 4.3.2.1 through 4.3.2.4.

4.3.2.1 Roadway Operations

The Proposal shall describe how the daily roadway operations functions will be handled including:

(a) The detection and response to emergencies, hazardous weather, breakdowns, accidents, and incidents;

(b) The approach for liaising and handling emergency services;

(c) The approach to traffic management and operation of ETTM systems;

(d) A description of the approach to accident analysis and implementation of improvements to user safety; and

(e) The approach to policing the roadway.

4.3.2.2 Express Lanes Tolling Operations

The Proposal shall provide a preliminary tolling plan, which shall include, at a minimum, the following items:

(a) A description of the Express Lanes tolling operations;

(b) Limits of proposed Toll Segments;

(c) The locations of toll gantries;

(d) Declaration zone locations;

(e) Location of enforcement zones;

(f) Required enforcement equipment;

(g) A description of the methods for performance monitoring; and

(h) A description of the parameters to be used for setting, increasing and decreasing tolls to better achieve the Department's P3 Project goal of enhancing throughput capacity.

4.3.2.3 Routine Maintenance

For routine maintenance, the following maintenance items shall be addressed, including:

(a) Details and locations of maintenance yard(s) and facilities;

(b) A preliminary list of specialized maintenance equipment proposed for use throughout the life of the P3 Project;

(c) A description of the approach to supply and management of maintenance spare parts;

(d) The approach to traffic management during maintenance work;

(e) The approach to inspection and testing of P3 Project items and the identification, classification and rectification of defects and inspection failures;

(f) A description of the system to be used for maintaining accurate as-built records, and records of inspections and maintenance activities;

(g) A description of Proposer's training program for operations and maintenance personnel during all phases, including the identification of hazards on the roadway;

(h) The plan and approach to transitioning and phasing from construction to maintenance activities;

(i) The plan and approach to maintenance activities, specifically including routine maintenance, capital maintenance, preventative maintenance, emergency and incident management (including due to weather-related events), coordinating with emergency service providers and maintenance reporting, and how they will be used to manage the maintenance of the P3 Project; and

(j) A description of the Maintenance Management System ("MMS") and how it will meet or exceed the requirements of the Technical Requirements.

4.3.2.4 Maintenance Work

The Proposal shall describe the approach to Maintenance Work, including the processes that will be employed for developing a Life Cycle Maintenance Plan and Major Maintenance to be undertaken during the Term. The information shall describe the approach to programming of works and costing and ensuring that Handback Requirements will be met. The Proposal shall include a preliminary version of the Life Cycle Maintenance Plan describing Major Maintenance to be undertaken by component, item or discrete project with the underlying assumptions used to develop such plan.

4.3.3 Operations and Maintenance Quality Management

The Operations and Maintenance Quality Management approach shall describe the Proposer's quality program approach to operations and maintenance for the P3 Project, including at least the following:

(a) The Proposer's approach to operations quality management, including a description of quality assurance and quality control functions, and the Proposer's approach to reporting relationships and responsibilities, including Department oversight procedures. The approach shall include a description of the internal process for preparing and reviewing incident reports, non-conformance reports, traffic reports and maintenance work reports, and how non-compliance issues will be documented and corrected; and

(b) The Proposer's approach to maintenance quality management, including a description of quality assurance and quality control functions, and the Proposer's approach to reporting relationships and responsibilities, including Department oversight procedures. The approach shall include a description of how the quality process will be integrated into maintenance inspections to effect changes, as necessary, in maintenance procedures and performance.

EXHIBIT C

FINANCIAL PROPOSAL INSTRUCTIONS

1 General Instructions

The required contents and organization of the Financial Proposal are presented in this Exhibit C and summarized in the Financial Proposal checklist provided in Exhibit D. The Proposers are to provide all the information set out in this Exhibit C in the organization and format specified herein and in the order listed in Exhibit D. Each component of the Financial Proposal shall be clearly titled and identified.

The Proposal shall include the Financial Proposal Letter (Form A-2). The Financial Proposal Letter shall include evidence of signature authorization for each individual executing any Proposal forms.

A copy of the checklist for the Financial Proposal shall be included in the Financial Proposal. A Proposer shall not amend the order or change the contents of the checklist except to provide the required cross reference to its Financial Proposal. To ensure a competitive procurement process, the Department intends to place all Financial Models in escrow until Commercial Close is achieved.

2 Format and Content of Financial Proposal

All financial information provided in the Financial Proposal shall be in U.S. Dollar currency only and all amounts clearly shall be identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of the individual line amounts and totals, the individual line amounts will prevail.

The following components should be included in the Financial Proposal:

- Financial Proposal Cover Letter (Form A-2);
- Financial Proposal Checklist;
- Executive Summary;
- Financial Capacity Information;
- Financing Plan;
- Financial Model Submittal Requirements;

- Availability of Public Funds submittal requirements, including Financial Request/Offer (Form J-1), Support for Corridor Improvements (Form J-2) and Revenue Sharing Payments (Form T);

- Draft Design-Build Contract; and

- Proposal Security (Form K-1)

3 Executive Summary

The executive summary ("Executive Summary") shall be written in a non-technical style and shall contain sufficient information for reviewers with both financial and non-financial backgrounds to become familiar with Proposer's Proposal and its ability to satisfy the financial requirements of the P3 Project. The Executive Summary shall not exceed 5 single-sided pages. It shall, at a minimum, include the following:

(a) An explanation of the organization and contents of the Proposal;

(b) A summary of any changes to Proposer's SOQ;

(c) A summary of all Major Participants and identification of any changes in Proposer's organization, Equity Members and Key Personnel since submission of the SOQ; and

(d) A summary of the P3 Project Finance Plan.

4 Financial Capacity Information

Proposers shall clearly identify any materially adverse differences between the financial capacity information submitted in the Proposal and the information submitted in the SOQ.

4.1 The Financial Proposal shall include the following information for the Proposer, Equity Members, the Lead Contractor and the Lead Operations & Maintenance Firm of Proposer. If an Equity Member, the Lead Contractor or the Lead Operations & Maintenance Firm is a subsidiary of a larger corporation whose financial obligations will be supported by the parent company or an affiliate company (a "Financially Responsible Party"), only financial statements of the Financially Responsible Party need be submitted:

(a) Audited financial statements for all periods subsequent to those previously submitted to the Department during the procurement process, audited by a certified public accountant in accordance with U.S. GAAP and/or International Financial Reporting Standards ("IFRS").

(b) Interim unaudited statements for the period since the most recent completed fiscal year excluding those previously submitted to the Department during the procurement process.

4.2 The financial statements, whether for the most recent completed fiscal year or for the period since the most recent completed fiscal year, must meet the following requirements:

(a) Financial statement information must include:

(i) With respect to audited financial statements only, an Opinion Letter (Auditor's Report)

(ii) Balance Sheet

(iii) Income Statement

(iv) Statement of Changes in Cash Flow

(v) Footnotes.

(b) Financial statements must meet the following requirements:

(i) **U.S. GAAP or IFRS**. Financial statements must be prepared in accordance with U.S. Generally Accepted Accounting Principles ("U.S. GAAP") or International Financial Reporting Standards ("IFRS"). If financial statements are prepared in accordance with principles other than U.S. GAAP or IFRS, a letter must be provided from a certified public accountant discussing the areas of the financial statements that would be affected by a conversion to U.S. GAAP or IFRS.

(ii) **U.S. Dollars**. Financial statements must be provided in U.S. dollars. If financial statements are not readily available in U.S. dollars, the Proposer must convert the Balance Sheet, Income Statement and Statement of Changes in Cash Flow to U.S. dollars and provide a summary of the conversion methods and applicable foreign exchange rates used to do so.

(iii) **Audited.** Financial statements must be audited by an independent party qualified to render audit opinions (e.g. a certified public accountant). If audited financials are not available for an Equity Member, the Lead Contractor or the Lead Operations & Maintenance Firm of Proposer, the Proposal shall include unaudited financial statements for such Equity Member or Lead Contractor, certified as true, correct and accurate in all material respects by the chief financial officer ("CFO") or treasurer of the entity.

(iv) **English**. Financial statement information must be prepared in English. If audited financial statements are prepared in a language other than English, translations of all financial statement information, including footnotes, must be provided.

4.3 The Proposer must provide the following information:

(i) **Newly Formed Entity**. If the Proposer is a newly formed entity or has not yet formed a legal entity and does not have independent financial statements, financial statements for the Equity Members shall be provided. The Proposer shall state expressly that the Proposer is a newly formed entity or not yet formed entity, as applicable, and does not have independent financial statements.

(ii) **Financially Responsible Party Letter of Support**. If financial statements of a Financially Responsible Party are provided to demonstrate financial capability of the Proposer or its Equity Members, Lead Contractor or Lead Operations & Maintenance Firm, an appropriate letter from the Financially Responsible Party must be provided stating that it will guarantee all the obligations of the Proposer, Equity Member of Proposer, Lead Contractor, or Lead Operations & Maintenance Firm, as applicable, with respect to the P3 Project. Proposers shall note that the Department may, in its discretion based upon the review of the information provided, specify that an acceptable guarantor is required, in which case the information required of such Financially Responsible Party or additional Equity Member shall be submitted upon request by the Department.

(iii) **SEC Filings**. If any entity for whom financial information is submitted hereby files reports with the Securities and Exchange Commission, then such financial statements shall be provided through a copy of their annual report on Form 10K. Also, for all subsequent quarters, provide a copy of any report filed on Form 10Q or Form 8-K which has been filed since the latest filed 10K. If any of these reports have previously been submitted to the Department during the procurement process, they are not required to be resubmitted. Instead of providing hard copies of such forms, Proposers may submit digital copies of such information in a read-only format on a USB drive with each submission.

(iv) **Credit Ratings**. Each rated Proposer, Equity Member, Lead Contractor and Financially Responsible Party must provide confirmation that no changes have occurred in its credit ratings and that it has not been notified of any pending rating change since the SOQ submission.

(v) **Off-Balance Sheet Liabilities**. A letter from the CFO or treasurer for each entity for which financial information is submitted, identifying, as applicable, each off-balance sheet liability exceeding $25 million. Proposers shall be required to provide updated information following the Financial Proposal Due Date as such information becomes public. At the discretion of the Department, any failure to disclose a prior or pending off-balance sheet liability may result in disqualification from further participation in the selection process. Estimates of the impact on

revenues, expenses and the change in equity shall be provided separately for each off-balance sheet liability as certified by the CFO or treasurer. Where an off-balance sheet liability will have a negative financial impact, the affected entity shall provide a discussion of measures that would be undertaken to insulate the P3 Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future.

(vi) **Material Changes in Financial Condition**. A letter from the CFO or treasurer, providing information on any material changes in financial condition since submission of the SOQ and the Conceptual Financial Proposal and those that are pending. Proposers shall be required to provide updated information following the Financial Proposal Due Date as such information becomes public. The following list identifies certain items that the Department would consider a material change in financial condition. This list is intended to be indicative only. At the discretion of the Department, any failure to disclose a prior or pending material change may result in disqualification from further participation in the selection process. In instances where a material change has occurred, or is anticipated, the affected entity shall provide a statement describing each material change in detail, the likelihood that the developments will continue during the period of performance of the P3 Project development, and the projected full extent of the changes likely to be experienced in the periods ahead. Estimates of the impact on revenues, expenses and the change in equity shall be provided separately for each material change as certified by the CFO or treasurer. References to the notes in the financial statements are not sufficient to address the requirement to discuss the impact of material changes. Where a material change will have a negative financial impact, the affected entity shall provide a discussion of measures that would be undertaken to insulate the P3 Project from any recent material adverse changes, and those currently in progress or reasonably anticipated in the future. If the financial statements indicate that expenses and losses exceed income in the periods between submission of the SOQs and the most recent completed periods (even if there has not been a material change), the affected entity shall provide a discussion of measures that will be undertaken to make the entity profitable in the future and an estimate of when the entity will be profitable.

<u>List of Representative Material Changes</u>

A. An event of default or bankruptcy involving the affected entity, a related business unit within the same corporation, or the parent corporation of the affected entity;

B. A change in tangible net worth of 10% of shareholder equity;

C. A sale, merger or acquisition exceeding 10% of the value of shareholder equity prior to the sale, merger or acquisition which in any way involves the affected entity, a related business unit, or parent corporation of the affected entity;

D. A change in credit rating for the affected entity, a related business unit or parent corporation of the affected entity;

E. Inability to meet conditions of loan or debt covenants by the affected entity, a related business unit or parent corporation of the affected entity which has required or will require a waiver or modification of agreed financial ratios, coverage factors or other loan stipulations or additional credit support from shareholders or other third parties;

F. The affected entity, a related business unit in the same corporation, or the parent corporation of the affected entity either: (i) incurred a net operating loss; (ii) sustained charges exceeding $10 million due to claims, changes in accounting, write-offs or business restructuring; or (iii) implemented a restructuring/reduction in labor force exceeding 200 positions or involving the disposition of assets to unrelated entities exceeding $10 million; and

G. Other events known to the affected entity, a related business unit or parent corporation of the affected entity which represents a material change in financial condition since submission of the SOQ or may be pending for the next reporting period.

The information required under this Section 3(d) shall be packaged separately for each separate entity with a cover sheet identifying the name of the organization and its role, if any, in the Proposer's organization (e.g., Equity Member, Lead Contractor, etc.).

5 Financing Plan

5.1 Range of Financing Sources

The Proposers shall describe their Financing Plan and provide supporting evidence of the commitments from Lenders and Equity Members by addressing the range of financing sources including, as applicable:

- senior debt finance;
- mezzanine debt finance;
- equity and quasi-equity finance (including subordinated debt or loan stock);
- any other forms of finance;

- identity of the investors;
- identity of lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers that have given indications/commitments;
- type and purpose of each funding source and facility;
- the proposed steps and timeframes for reaching financial close; and
- a discussion of the tax analysis assumed in the financial model encompassing federal, state, local and foreign taxes, including assumptions, tax structure of the special purpose vehicle, treatment of asset classes, etc.

5.2 Details for Lenders and Lender Support Letters

A Financing Plan may be based entirely on committed debt instruments, entirely on uncommitted debt instruments or on combinations of the two. For each separate PABs facility, TIFIA loan, bank loan facility or other debt instrument (including capital market debt, working capital, private placement, guarantee and standby facilities) included in the Financing Plan, Proposers shall provide, as applicable:

(a) Identity of lead arrangers, lead managers and/or underwriting banks and/or quasi-equity providers and/or private placement agents that have given indications/commitments or an indicative letter of support from all lead arrangers, lead managers and/or underwriting banks and/or debt providers indicating their view that, subject to due diligence, credit approval, final credit documents and then current market conditions, the debt funding described in the Financing Plan and reflected in the Financial Model is reasonable for the purpose of fulfilling the Proposer's commitments, while also acknowledging that the terms of the Comprehensive Agreement would not have to be altered. An indicative letter of support is not required from the TIFIA JPO;

(b) Type and purpose of facility;

(c) Amounts to be provided/approved or sought by each Lender;

(d) To the extent available, terms and conditions attaching to the loan such as conditions precedent to drawdown, principal covenants (including details of cover ratios), refund policy of any commitment fees in the event the Comprehensive Agreement is terminated prior to financial close and any and default provisions;

(e) Drawdown schedule, capitalized interest period, repayment schedule and final maturity date, events of default, security required (including any guarantees), any reserve accounts;

(f) Interest rates (whether fixed or floating) specifying base rate and credit spreads/margins and the reference interest rates that are relevant to the Proposal;

(g) Any proposed hedging arrangements in relation to interest rate risks or loan/funding amounts denominated in currencies other than U.S. dollars;

(h) Average life of debt;

(i) All commitment, arrangement and other fees, if any, necessary for the Proposer to provide the deliverables required prior to financial close (excluding financing efforts and deliverables), as set forth in the Comprehensive Agreement;

(j) Identity of monoline insurers, if any, as well as terms and provisions, if proposed for specific debt instruments;

(k) A letter from two rating agencies, any of Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., DBRS, Inc., or Fitch Investors Service, Inc., providing indicative investment grade ratings on senior debt and TIFIA loan, if applicable, such letter to include information on the assumptions used in establishing the rating;

(l) An opinion letter from the preparer of the Proposer's traffic and revenue forecast stating that the base case traffic projections are reasonable, and describing the key assumptions used in the traffic and revenue forecasting and supporting the bid price;

(m) Evidence of the Lender's, or other parties referenced in Section 5.2(a), review and comfort, in principle, of technical, legal and insurance due diligence reports;

(n) Evidence of the Lender's, or other parties referenced in Section 5.2(a), review and comfort, in principle, of the Proposer's traffic and revenue report;

(o) Any other information that would be relevant to specific forms of debt finance; and

(p) A detailed timetable setting out the expected period for negotiation and signing of the debt facilities.

The Financial Proposal is to include one or more support letters from proposed Lender(s) and monoline insurers (if applicable) confirming the Lender's willingness to provide the funding or the monoline insurer's willingness to provide insurance as described in the Proposer's Financing Plan and shall describe any conditions that will need to be met prior to receipt of funds or the receipt of insurance proceeds, as applicable. Such letters of support must include evidence of authorization (or a representation to such effect by such Lender) from the Lender's board or credit committee as appropriate. PABs underwriting letters of support must include evidence of authorization (or a representation to such effect by such Lender) from the underwriting committee. If such PABs-related support letters of financial commitment are not available from the proposed Lenders to include with the Financial Proposal submission, the requirement for Lender's support letters of financial commitment related to PABs may be waived for the Financial Proposal at the discretion of the Department.

5.3 Details of Equity Source and Equity Member Letters

For each equity source, Proposers shall provide:

(a) Identity of the investors. In cases where the equity is contributed by a fund please identify fund managers and general characteristics of the fund investors and the percentage of participation;

(b) The amount of funds the equity provider is to commit (e.g., shareholder capital, shareholder loans), the source/type of the funds, the timing of such subscription and any potential risks due to other equity commitments; and

(c) The terms and conditions of the subscription, including dividend rights attaching to shares, the extent to which funds are committed and the length of time funds will remain in the project vehicle.

Sufficient documentation must be submitted that provides assurance that private equity will be in place, including letters from the Equity Members evidencing their commitment to provide equity funding. The Proposal shall include certified copies of the board minutes or other written evidence of approval of the contents of the Financial Proposal by each Equity Member, together with appropriate evidence of the authorization of the person/body giving the approval.

5.4 Financial Advisor Letter

The Proposal shall include an opinion letter from Proposer's Project Finance Lead or Financial Advisor indicating that, as of the date thereof, in their professional view, the Financial Proposal is achievable and sufficient to fulfill Proposer's commitments as set out in the Proposal.

5.5 Schedule for Commercial and Financial Close

The Financing Plan shall include a detailed schedule for completing activities and deliverables necessary to reach commercial and financial close, taking into consideration the review period for deliverables set forth in Section 5.13.1. The schedule shall reflect the Proposer's estimated date for commercial and financial close, which may not be after the last applicable deadlines set forth in Sections 1.6.2 and 1.6.3.

5.6 Feasibility of Financing Plan

Proposers shall ensure that their Financing Plans are sufficiently developed and have attracted sufficient support and commitment from Lenders and investors to satisfy the Department that there is no material risk on financial grounds that:

(a) The Proposer will fail to enter into a Comprehensive Agreement on the terms in the RFP;

(b) The Proposer will fail to provide the Support for Corridor Improvements to the Department in accordance with the dates and terms set forth in the Comprehensive Agreement; and

(c) Senior Lenders, or other parties referenced in Section 5.2(a), will not accept the terms of any proposed TIFIA financing substantially as set forth in the Indicative TIFIA Term Sheet. If such assurance regarding acceptability of TIFIA financing is not available, the Proposer shall describe its alternative approach to achieving Financial Close.

Subject to compliance with the RFP, the suitability or desirability of different funding solutions in each Proposal to be submitted is the Proposer's responsibility.

6 Financial Model Submittal Requirements

6.1 General Financial Model Requirements

Proposers shall submit a Financial Model for the P3 Project. The format of the Financial Model is at the discretion of Proposers, but must comply with the requirements set out in this Section 6.

6.2 Financial Model Structure and Supporting Documents

6.2.1 Financial Model Format Requirements

The Financial Model shall be compatible with Microsoft Excel Version 2007 for Windows XP or later. The file name of each Financial Model shall clearly identify the Financial Model version and shall change with each successive version of the Financial Model issued. Where additional Financial Models based on the same version are issued (i.e. where the additional Financial Model is generated by changing input cells only) the file name shall reflect that the same version is being used.

The Financial Model shall contain as a minimum the following on a title page in a separate worksheet:

(a) Model name;

(b) Proposer's name;

(c) Model author;

(d) Version;

(e) Date (Financial Model date and run date);

(f) Key to formats (e.g. yellow for inputs); and

(g) Key to sheet names (e.g., "Inputs" for input sheets, "Calculations" for calculation sheets etc.).

Each output sheet of each Financial Model shall identify the Financial Model version and the date of issue.

No password protection may be included in the Financial Model (including password protected macros, or hidden rows columns, cells or sheets). Each Financial Model shall be formatted to facilitate printing.

6.2.2 Financial Model Consistency

Each Financial Model shall have time periods across the columns and calculations down the rows. This shall be consistent in all sheets of such Financial Model. There are two areas where consistency is most important:

(a) Columns – a column shall be used for the same period in each of its occurrence in model worksheets; and

(b) Rows – a row shall contain only one formula, copied across all columns. Exceptions may only be made when appropriate according to modeling best practices, in which case such cells should be marked in a manner noting them as unique formulae.

6.2.3 Financial Model Integrity

All calculations shall be coded to provide exactly what they purport to represent, i.e. no balancing figures. Use of a macro is acceptable provided it is appropriately documented in the model and the Assumptions Book.

6.2.4 Financial Model Linearity

Each Financial Model shall calculate in one pass (i.e., no circular references).

6.3 Financial Model Organization

6.3.1 Elements of Financial Model

Each Financial Model shall have three distinct elements:

(a) **Inputs** – which shall include data and assumptions but no calculations;

(b) **Calculations** – individual calculations that support each line of all outputs and reports. There shall be no duplication of calculations nor shall input cells be hard-coded in calculations sheets; and

(c) **Outputs** – no input cells hard-coded in output sheets and no calculations except for simple formulae such as sums and check totals.

6.3.2 Financial Model Inputs and Specifications

The Financial Model shall be developed with reference to the following key inputs and assumptions:

(a) **Specific P3 Project Dates**. All milestone dates for the P3 Project set in the RFP shall be met and coordinated with the schedule provided in the Technical Proposal;

(b) **Currency**. Each Financial Model shall be in U.S. dollars;

(c) **Periods**. Each Financial Model shall be constructed to include key financial statements and ITP-required outputs to conform to monthly periods until the end of construction and semi-annual or quarterly periods from the end of construction until two years after the end of the Term;

(d) **Revenues**. All demand and toll rate assumptions shall be clearly stated in each Financial Model, with supporting detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual revenue assumptions. While aggregate revenue estimates may be used as an input within the Financial Model, a detailed breakdown, supported by any traffic and revenue studies undertaken by the Proposer, shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between demand, toll rates and toll revenues;

(e) **Expenditure**. All cost assumptions shall be clearly stated in each Financial Model, with additional detail being provided in the supporting Assumptions Book. The level of detail in the Assumptions Book shall be sufficient to enable independent verification of individual cost assumptions. The costs must match the values provided in the detailed costing form, and should be in real dollar values, with the exception of the Design-Build Contract. Where aggregate costs are used as an input within a Financial Model, a detailed breakdown shall be supplied as an annex to the Assumptions Book, such that there is a transparent relationship between costs and the price of the service to the Department;

(f) **Contingencies and Profit Margins**. Each Financial Model shall make clear where contingencies and profit margins have been included so that the financial evaluation can be based on an appropriate understanding of the levels of risk assumed by Proposers;

(g) **Macroeconomic Assumptions**. All macroeconomic assumptions used within each Financial Model shall be clearly stated;

(h) **Inflation**. If inflation indices other than CPI are used within the model (e.g., to inflate wages) then these shall be clearly stated as separate inputs;

(i) **U.S. GAAP or IFRS**. Each Financial Model shall be compliant with U.S. GAAP or IFRS;

(j) **Taxation Rates**. Each Financial Model shall use the appropriate rates for tax in force at the submission date; and

(k) **Tax Allowances**. Each Financial Model shall clearly show the assumptions regarding tax allowances being claimed.

(l) **Transit Funding Payments.** Each Proposer must include the schedule of Transit Funding Payments, as provided in Exhibit J to the Comprehensive Agreement, in its Financial Model. These payments rank below debt service and associated Lenders' requirements in the cash flow waterfall but shall be above Support for Corridor Improvements and Distributions.

(m) **Support for Corridor Improvements.** The Support for Corridor Improvements payments shall be included in the Financial Model based on the terms described in Exhibit J to the Comprehensive Agreement. These payments rank below all Transit Funding Payments but above Distributions in the cash flow waterfall. Proposers must complete Form J-2 with the proposed schedule of Support for Corridor Improvements payments.

(n) **TIFIA Eligible Costs.** No later than the date of issuance of the Final RFP, the Department will provide a schedule (as set forth in Attachment 2 to Exhibit C) of development costs incurred to date by the Department. Each Proposer must make its own assumption as to which of these costs, if any, may qualify as TIFIA eligible costs. For the avoidance of doubt, these costs are not required to be reimbursed by the Developer.

6.3.3 Financial Model Outputs

Each Financial Model shall be provided and will include:

(a) Outputs of each Financial Model that must identify the Financial Model version and the date of issue.

(b) A summary sheet which includes a sources and applications of funds statement, graphs of cover ratios, and a profile of cash balances confirming the financial feasibility of the P3 Project (including payment of required Transit Funding Payments, Support for Corridor Improvements, and all required reserves as prescribed by Lenders);

(c) Financial statements (cash flow, sources and uses of funds, balance sheet and profit and loss) in nominal terms for each period;

(d) A schedule outlining calculation of taxes payable in each period, and showing tax carry forward and un-depreciated balances;

(e) Cash cascade in order of seniority (consistent with the Comprehensive Agreement);

(f) Internal rate of return on a committed and cash basis on pre- and post-tax equity and quasi–equity/subordinated debt in both real and nominal terms and a blended equity return, incorporating all sub–senior debt finance;

(g) Debt to equity ratio for all periods, defined as the ratio of total debt to total equity and quasi–equity;

(h) Weighted average cost of capital (the average cost of equity and debt weighted by the prevailing proportions of debt to equity for the initial design and construction) over the term of the Comprehensive Agreement;

(i) Net present value of construction costs, O&M costs, toll collection costs, lifecycle costs, Transit Funding Payments, Support for Corridor Improvements and Public Funds Amount, discounted to the Financial Proposal Due Date (using 5% as the discount rate);

(j) For each annual period of each loan, all actual and average ratios required by the Lender's term sheets, including as a minimum, the debt service cover ratio, loan life cover ratio being the net present value of future net cash flow available to service debt over the loan life including cash balances but excluding the balance of the lifecycle maintenance reserve, divided by the senior debt outstanding;

(k) For each period of each loan, all commitment, arrangement and other required fees;

(l) Appropriate reserves as required by Lenders' term sheets, which may include a debt service reserve account and a maintenance reserve account. The Department will expect the Financial Model to incorporate the benefit of interest earned on all Developer cash balances; and

(m) The impact of all claims for tax allowances made by the Proposer.

6.3.4 Financial Model Functionality and Sensitivity Analysis

Each Financial Model is to provide the ability to run sensitivities to absolute or percentage changes, whichever is appropriate, in each of the following areas:

(a) traffic and revenue;

(b) inflation rates;

(c) interest rates;

(d) capital costs; and

(e) operating cost, maintenance cost and rehabilitation costs.

Running a sensitivity analysis only shall require change to a single model input. The Department anticipates that when an input variable is changed, the effect will flow through the model to all relevant outputs (subject to re-optimization of the Financial Model through the use of a macro, if applicable). Major variable cost items (e.g. toll collection costs) must dynamically adjust when running sensitivities.

6.4 Financial Model Scenarios

Each Financial Model is to provide and include the Financial Model Inputs, Outputs and Specifications for the following scenarios:

(a) "Bid Case" (the case on which the Public Funds Amount or Concession Fee for the Financial Proposal will be based); and the

(b) Lenders' base and low scenarios to assess compliance with the Indicative Term Sheet:

i. "Lenders' Base Case Scenario" (based on the Lenders' Base Case traffic and revenue and reflecting Lenders' Technical Advisor's considerations, and excluding all refinancings);

ii. "Indicative Rating Base Case" (based on the Indicative Rating Base Case traffic and revenue and reflecting any other Rating Agency assumptions);

iii. "Lender's Low Case Scenario" ("Lenders' Base Case Scenario" using the Lenders' Low Case traffic and revenue); and

iv. "Indicative Rating Case" ("Indicative Rating Base Case" using the Indicative Rating Case traffic and revenue).

6.5 Financial Model Assumptions Book

Proposers shall submit an Assumptions Book describing fully all the assumptions underlying the financial projections within each Financial Model and at a minimum include the items listed below:

(a) Dates as listed in the RFP documents;

(b) Assumptions relating to general inflation and, where different, specific inflation relating to each component of expenditure, including construction costs and revenue for each year;

(c) Forecast capital expenditure, presented in prices at the Financial Proposal Due Date and classified in accordance with the construction cost categories outlined in Form N (Detailed Costing Form);

(d) Depreciation assumptions – split between the various categories of fixed asset;

(e) O&M costs, presented in prices at the Financial Proposal Due Date analyzed in the categories outlined in Form N (Detailed Costing Form);

(f) Traffic assumptions underlying the revenue forecasts including the following reports:

i. Lender's Traffic Revenue report (including assumptions for Base and Low cases);

ii. Ratings Agency's report with base and low cases); and

iii. Lender's Technical Advisor Report;

(g) Average actual tolls for each year of the term of the Comprehensive Agreement; and

(h) All financing assumptions, including but not limited to drawdowns, capital repayment moratoria, repayment schedules and maturity, interest rates and margin, and arrangement and other fees (all must be referenced to the relevant credit provider term sheet).

Any third party reports developed to support the revenue and cost estimates used in developing the financial offer shall be appended to the Assumptions Books.

6.6 Financial Model Instructions Guide

Proposers shall provide details of how each Financial Model operates. Such details shall include identifying all worksheets and describing their respective functions.

The instructions shall include step by step instructions on the procedure to run and to optimize each Financial Model, including any constraints imposed by the credit providers on results of downside sensitivities. The instructions shall also explain how to print the model.

6.7 Detailed Cost and Pricing Data

Proposer shall complete Form N for Phase 1 scope. Form N shall be included in the Financial Proposal and shall be clearly labeled. Mobilization Costs to be included on Form N shall not exceed $50 million. The Proposer shall provide the detailed back-up information regarding the basis for the Proposer's cost estimates for development, operations and maintenance of the P3 Project, meeting all requirements of this Section 6.7 (the "Cost and Pricing Data"). The Cost and Pricing Data shall be separately sealed, and shall include copies of all offers and all data and information received from all Contractors (at all tiers) identified in the Proposal and any other potential Contractors that provided data and information used as the basis for Form N. The Cost and Pricing Data shall include supporting data, technical memoranda, calculations, formulas, unit and materials prices (if applicable) and such other cost, charge and fee information used by Proposer in the creation and derivation of its Proposal. The Proposer shall submit its Cost and

Pricing Data in hard copy and whenever possible shall also provide electronic copies. The Proposer shall submit the Cost and Pricing Data in such format as is used by the Proposer and its Contractors in connection with the Proposal. The Cost and Pricing Data provided with the Proposal shall be personally examined by an authorized officer of the Proposer, who shall ensure that they meet the requirements of this Section 6.7 prior to delivery.

6.8 Inclusion of IFCs

The Proposer specifically must state whether any approved IFCs are included, with reference to the IFC identification number assigned by the Department, and shall describe how the IFC is used and provide cross-references to other elements of the Proposal that are affected by the IFC.

6.9 Preliminary Independent Model Audit Report

The Proposer must provide the preliminary model audit report(s) and opinion(s) relating to the Financial Model Auditor's review of the Financial Model.

7 Availability of Public Funds

7.1 Public Funds Amount

The Department intends, to the extent needed, to contribute public funds in an amount not to exceed $600 million to the P3 Project ("Public Funds Amount"), which will be payable in accordance with the terms of Exhibit M of the Comprehensive Agreement. The Public Funds Amount will be calculated in the Financial Model and payable as a fixed percentage of the Design-Build Contract price ("Public Funds Amount Payment Ratio").

Each Proposer shall indicate, using Form J-1, (a) any Public Funds Amount required and, for each such payment, the earliest date (in the form of a certain number of months after the issuance of NTP) on which the payment would be made by the Department to the Developer or (b) any Concession Fee offered.

With respect to the Early Work funding described in Section 8.02(e) of the Comprehensive Agreement, a schedule of the anticipated SIB Loan draws and requested Early Work Department Funding shall also be indicated on Form J-1. Requested early work funding shall not exceed the maximum available amounts set forth in Section 1.3.4 of this ITP.

7.2 Support for Corridor Improvement Payments

The Proposer shall provide the Department a schedule of the proposed Support for Corridor Improvement payments in accordance with the mechanism set out in Exhibit J of the Comprehensive Agreement. The Proposer shall indicate the Support for Corridor Improvement payments in Form J-2.

7.3 Revenue Sharing Payments

The Proposer will share revenue with the Department (Revenue Sharing Payments) in accordance with the mechanism set out in Exhibit J of the Comprehensive Agreement. The Proposer shall indicate revenue sharing tiers using Form T.

7.4 Verification

Each Proposer shall satisfy itself as to the revenues, costs and tax consequences of entering into a Comprehensive Agreement and becoming a Developer. The Department makes no representations or warranties, express or implied, and assumes no liability whatsoever, with respect to revenues, costs or the consequences of federal or state income tax treatment of the Developer under the Comprehensive Agreement.

8 Draft of Design-Build Contract

The Proposal shall include a draft of Proposer's Design-Build Contract for Department review. The draft Design-Build Contract shall include provisions that are substantially consistent with the provisions identified for inclusion in the Department's heads of terms for the Design-Build Contract that is set forth in Exhibit E to the Comprehensive Agreement.

EXHIBIT C - ATTACHMENT 1

INDICATIVE TIFIA TERM SHEET

[TO COME.]

EXHIBIT C – ATTACHMENT 2

DEPARTMENT-INCURRED DEVELOPMENT COSTS

TIFIA ELIGIBLE COSTS – VDOT ASSUMPTIONS

Category	Amount ($ millions)
Transit Costs	$42.5
Predevelopment Costs	$85.0
Transportation Management Plan and Construction Oversight	$130.0

EXHIBIT D

SUMMARY AND ORDER OF PROPOSAL CONTENTS

Technical Proposal				
Proposers shall follow the order of the Technical Proposal Checklist in their submissions. A referenced copy of this document shall be submitted with the Technical Proposal.				
Proposal Component	**Form (if any)**	**ITP Cross- Reference**	**Count Toward Page Limit?**	**Proposal Cross-Reference**
A. Executive Summary				
Executive Summary (**Exclude price information**)		Exhibit B, Section 3.1	No	
B. Proposer Information, Certifications & Documents				
Technical Proposal Letter	Form A-1	Exhibit B, Section 3.2.1	No	
Authorization Documents		Exhibit B, Section 3.2.1	No	
Identification of Proposer and Equity Members	Form B-1	Exhibit B, Section 3.2.2	No	
Information About Proposer Organization	Form B-2	Exhibit B, Section 3.2.2	No	
Information About Major Participants, Major Professional Services Firms and Identified Subcontractors	Form B-3	Exhibit B, Section 3.2.2	No	
Responsible Proposer Questionnaire	Form C	Exhibit B, Section 3.2.3	No	
Industrial Safety Record for Team Members Performing Installation or Construction Work	Form D	Exhibit B, Section 3.2.4	No	

Proposal Component	Form (if any)	ITP Cross- Reference	Count Toward Page Limit?	Proposal Cross-Reference
Personnel Work Assignment Form	Form E	Exhibit B, Section 3.2.5	No	
Key Personnel statement of availability		Exhibit B, Section 3.2.5	No	
Letters Approving Key Personnel		Exhibit B, Section 3.2.6	No	
Letters Approving Changes in Proposer's Organization		Exhibit B, Section 3.2.6	No	
Non-Collusion Affidavit	Form F	Exhibit B, Section 3.2.7	No	
Buy America Certification	Form G	Exhibit B, Section 3.2.8	No	
Use of Contract Funds for Lobbying Certification	Form H	Exhibit B, Section 3.2.10	No	
Conflict of Interest Disclosure Statement	Form I	Exhibit B, Section 3.2.9	No	
Completion Deadlines Form	Form M	Section 5.3.1(d)		
Equal Opportunity Employment Certification	Form E	Exhibit B, Section 3.2.10	No	
Stipend Payment Agreement	Form R	Section 6.3.1		
C. P3 Project Development Plan				
General Project Management		Exhibit B, Section 4.1	Yes	
Design-Build Management and Technical Solutions		Exhibit B, Section 4.2	Yes	

Proposal Component	Form (if any)	ITP Cross- Reference	Count Toward Page Limit?	Proposal Cross-Reference
Operations and Maintenance Management and Technical Solutions		Exhibit B, Section 4.3	Yes	
D. Appendices				
Key Personnel Resumes and References	Form B-4	Exhibit B, Section 3.2.5.2	No	
Proposer's Schematic		Exhibit B, Section 4.2.2	No	
Initial Baseline Schedule		Exhibit B, Section 4.1.2	No	

Financial Proposal				
Proposers shall follow the order of the Financial Proposal Checklist in their submissions. A referenced copy of this document shall be submitted with the Financial Proposal.				
Tab Reference	**Proposal Component**	**Form (if any)**	**ITP Cross- Reference**	**Count Toward Page Limit?**
A	**General**			
A1	Financial Proposal Cover Letter	Form A-2	Exhibit C, Section 1	No
A2	Financial Proposal Checklist	N/A	Exhibit C, Section 1	No

Tab Reference	Proposal Component	Form (if any)	ITP Cross- Reference	Count Toward Page Limit?
A3	Executive Summary	N/A	Exhibit C, Section 3	Yes
B	**Financial Capacity Information**[2]			
B1	Audited financial statements for all periods subsequent to SOQ and unaudited interim financial statements for Proposer, Equity Members, Lead Contractor and Lead Operations & Maintenance Firm of Proposer	N/A	Exhibit C, Section 4.1	No
B2	Newly formed entity financial information (as required)	N/A	Exhibit C, Section 4.3	No
B3	Financially Responsible Party letters of support (as required)	N/A	Exhibit C, Section 4.3	No
B4	For publicly held companies, most recent SEC 10-K and 10-Q reports and any 8-Ks filed since the SOQs	N/A	Exhibit C, Section 4.3	No

[2]Note: Financial Capacity Information should be packaged separately for each entity within the Proposer's team. However, please note that each set of separately packaged information should appear sequentially within Tab B.

Tab Reference	Proposal Component	Form (if any)	ITP Cross- Reference	Count Toward Page Limit?
B5	Credit Ratings	N/A	Exhibit C, Section 4.3	No
B6	Letter disclosing all material off balance sheet liabilities	N/A	Exhibit C, Section 4.3	No
B7	Letter regarding material change in financial condition since submission of the SOQ and for next reporting period	N/A	Exhibit C, Section 4.3	No
C	**Financing Plan**			
C1	Range of Financing Sources	N/A	Exhibit C, Section 5.1	No
C2	Details for Lenders and Lender Support Letters	N/A	Exhibit C, Section 5.2	No
C3	Details of Equity Source and letters from Equity Members (Exhibit C, Section 5.3)	N/A	Exhibit C, Section 5.3	No
C4	Financial Advisor letter	N/A	Exhibit C, Section 5.4	No
C5	Schedule for Commercial and Financial Close	N/A	Exhibit C, Section 5.5	No
C6	Feasibility of Financing Plan	N/A	Exhibit C, Section 5.6	No
D	**Financial Model**			

Tab Reference	Proposal Component	Form (if any)	ITP Cross- Reference	Count Toward Page Limit?
D1	Financial Model outputs	N/A	Exhibit C, Section 6.3	No
D2	Financial Model Scenarios	N/A	Exhibit C, Section 6.4	No
D3	Financial Model Assumptions Book	N/A	Exhibit C, Section 6.5	No
D4	Financial Model Instructions Guide	N/A	Exhibit C, Section 6.6	No
D5	Detailed Costing Form	Form N	Exhibit C, Section 6.7	No
D6	Inclusion of IFCs	N/A	Exhibit C, Section 6.8	No
D7	Preliminary Independent Model Auditor Report	N/A	Exhibit C, Section 6.9	No
E	**Availability of Public Funds**			
E1	Financial Request/Offer	Form J-1	Exhibit C, Section 7.1	No
E2	Support for Corridor Improvements	Form J-2	Exhibit C, Section 7.2	No
E3	Revenue Sharing Payments	Form T	Exhibit C, Section 7.3	No
F	Draft Design-Build Contract		Exhibit C, Section 8	No
G	**Proposal Security**			
G1	Proposal Security in form of Letter of Credit	K-1	Section 4.8.1	No

EXHIBIT E

REQUIRED FORMS

Form A-1	Technical Proposal Letter
Form A-2	Financial Proposal Letter
Form B-1	Identification of Proposer and Equity Members
Form B-2	Information About Proposer Organization
Form B-3	Information About Major Participants, Major Professional Services Firms and Identified Subcontractors
Form B-4	Key Personnel Resume Form
Form C	Responsible Proposer Certification
Form D	Industrial Safety Record
Form E	Equal Employment Opportunity Certification
Form F	Non-Collusion Affidavit
Form G	Buy America Certification
Form H	Use of Contract Funds for Lobbying Certification
Form I	Conflict of Interest Disclosure Statement
Form J-1	Financial Request/Offer
Form J-2	Support for Corridor Improvements
Form K-1	Proposal Security
Form K-2	Financial Close Security
Form L	Opinion of Counsel
Form M	Completion Deadlines
Form N	Detailed Costing Form
Form O	Benchmark Rates and Credit Spreads
Form P	ATC Submittal Form
Form Q	Guaranty
Form R	Stipend Payment Agreement
Form S	Proposer Questionnaire Form
Form T	Revenue Sharing Payments