



COMMONWEALTH of VIRGINIA

DEPARTMENT OF TRANSPORTATION
OFFICE OF PUBLIC-PRIVATE PARTNERSHIPS
1401 E Broad St, Richmond, VA 23219

Charles A. Kilpatrick, P.E.
Commissioner

October 20, 2016

RE: Transform 66 P3 Project – Final RFP Statement of Clarification #3

To Whom it May Concern:

With respect to the Final Request for Proposals (“RFP”) issued by the Virginia Department of Transportation (the “Department”) on July 29, 2016, as amended and clarified by Addendum #1 issued August 19, 2016, Addendum #2 issued September 12, 2016, Statement of Clarification #1 issued September 23, 2016, and Statement of Clarification #2 issued September 30, 2016, the Department makes the following Statement of Clarification:

- The Department clarifies that responses to the information described in Exhibit B, Section 4.1.2(e) of the Instructions to Proposers (“ITP”) shall include the exact dates within the Proposal Schedule for the Route 28 Signalization Milestone, the P&R Milestone and the Project Completion Date.
- Following selection, in accordance with ITP Section 5.12.1, the Department intends to amend the CA to incorporate additional commitments provided in the Preferred Proposer’s Proposal, if any. The Department anticipates submitting to the Preferred Proposer a redline version of the CA incorporating any such changes by November 21, 2016 for the Preferred Proposer’s review and comment.
- Exhibit A to the CA has been amended to add a Compensation Event arising from a change in Law that reduces the High Occupancy Requirement applicable to the portion of Interstate 66 located between Interest 495 and U.S. Route 29 in the Rosslyn area of Arlington County.

Redline pages showing the above change to the CA are attached hereto as Appendix A. Capitalized terms used and not defined herein shall have the meanings set forth in the ITP and CA, as applicable.

Sincerely,

Dr. Morteza Farajian
Virginia Office of Public-Private Partnerships

APPENDIX A

Compensation Event means any of the following events:

- (a) Department-Caused Delays;
- (b) the development or implementation of any Department Change or Department Project Enhancement pursuant to the Agreement;
- (c) any Discriminatory Change in Law;
- (d) an Alternative Facility, to the extent provided for in Section 12.05;
- (e) any Significant Force Majeure Event to the extent the Department or the Developer elects to continue the Agreement pursuant to Section 20.03;
- (f) in connection with a challenge to the NEPA Documents, the issuance by a court having jurisdiction over the Project of an injunction or other order enjoining or estopping the Developer or the Department from the performance of its rights or obligations pursuant to the Agreement, in any case for more than 45 Days in the aggregate;
- (g) in connection with a delay attributable to (i) a Utility Owner's refusing to enter or delay in entering into a two-party agreement on terms customary for utility providers affected by projects of a similar size and scope or (ii) a Utility Owner failing to perform its obligations under a two-party agreement (as described in the Technical Requirements) in accordance with the terms of such agreement, where such delay (or delays resulting from such failures by multiple Utility Owners) causes one or more Critical Path activities approved by the Department to be adversely impacted for a period of 180 days in the aggregate. The computation of 180 days in the aggregate shall treat any day of delay that runs concurrently with another day of delay, regardless of whether it is a delay caused by the Utility Owner or a different Utility Owner, as a single day and not as two days;
- (h) the occurrence of a Significant Reserved Rights Event within or immediately adjacent to the Express Lanes or the Design-Build Project Right of Way;
- (i) the Department's lack of good and sufficient title or right to enter or occupy any parcel that the Department owns as of the Agreement Date;
- (j) subject to the condition that the Developer has not failed to perform as is required and necessary in the preparation and submission of a Design Exception or Design Waiver, a Design Exception or Design Waiver necessary to perform the Work in accordance with the RFP Conceptual Plans is not timely granted or is revoked;
- (k) a Tax Imposition;
- (l) an order by the Department suspending tolls on, or diverting traffic onto, the Express Lanes, other than as provided in the Agreement;

(m) the issuance by a court having jurisdiction over the Project of any injunction or other order enjoining or estopping the Department from the performance of its rights or obligations pursuant to the Agreement, in any case for more than 45 Days in the aggregate;

(n) any change in Law taking effect prior to the Project Completion Date that specifically affects the physical construction of the Project Assets in such a way that directly increases the costs of the Work

(o) discovery within or immediately adjacent to the Express Lanes or the Design-Build Right of Way of archeological, paleontological or cultural resources (including historic properties), excluding any such resources known to Developer prior to the Setting Date or that would have become known to Developer by undertaking reasonable investigation prior to the Setting Date;

(p) discovery within or immediately adjacent to the Express Lanes or the Design-Build Right of Way of any threatened or endangered species (regardless of whether the species is listed as threatened or endangered prior to the Setting Date), excluding any such presence of species known to Developer prior to submission of the Proposal or that would have become known to Developer by undertaking reasonable investigation prior to the Setting Date;

(q) any failure to obtain, or delay in obtaining, a USACE 404 Individual Permit within 240 Days of the Developer's submittal of a complete (as determined by the U.S. Army Corps of Engineers) permit application therefor, or any change in the design concept of the Project or any portion thereof resulting from judicial or administrative action taken with respect to a legal challenge to such USACE 404 Individual Permit as compared to the design concept indicated in the alternative that was the subject of such USACE 404 Individual Permit, except to the extent the change in design concept had already been incorporated into the Developer's design schematics;

(r) any failure to obtain, or delay in obtaining, any of the Major Environmental Permits within 240 Days of the Developer's submittal of a complete permit application(s) therefore; ~~or~~

(s) a WMATA-Caused Compensation Delay; ~~or~~

(t) any change in Law during the Term that, with respect to Interstate 66 between Interstate 495 in Fairfax County and U.S. Route 29 in the Rosslyn area of Arlington County, (i) prior to the imposition of tolling thereon, prohibits tolling of any vehicles with less than two occupants (other than motorcycles) between 5:30 a.m. and 9:30 a.m. and between 3:00 p.m. and 7:00 p.m. on weekdays or (ii) at any time after the imposition of tolling thereon, permits non-HOV-3 vehicles to travel at reduced tolls or without tolls between 5:30 a.m. and 9:30 a.m. and between 3:00 p.m. and 7:00 p.m. on weekdays.

provided, that each of the above events does not arise by reason of:

(1) the negligence or misconduct of a Developer Party; or

- (2) any act or omission by a Developer Party in breach of the provisions of the Agreement or any other Project Agreement.