

MAJOR BUSINESS TERMS

I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT

IN THE COMMONWEALTH OF VIRGINIA

December 15, 2017

This Term Sheet (“Term Sheet”) sets out a summary of major business terms for the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the “Project”). For detailed information on the scope of the Project, refer to the Request for Qualifications (“RFQ”) for the Project. Capitalized terms used in this Term Sheet but not otherwise defined herein have the meanings set forth in the RFQ.

The Department intends to include the major business terms set forth in this Term Sheet in the Comprehensive Agreement (“CA”) for the Project.

§	Term	Provision
1.	Summary of the Project	<p>The Project includes the following improvements to the I-64 corridor between I-664 in the City of Hampton and I-564 in the City of Norfolk, that are intended to provide at least six lanes of capacity along such corridor:</p> <ul style="list-style-type: none"> (i) the design and construction of a new tunnel generally parallel to the existing Hampton Roads Bridge-Tunnel; and (ii) the design and construction of additional highway capacity on portions of the Project corridor that currently have only two lanes in each direction. <p>The final configuration of the Project must support the incorporation of the Project into a regional Express Lanes network.</p>
2.	Responsibility for Tolling Operations	The Design-Builder will not be responsible for carrying out tolling operations with respect to the Project.
3.	Right of Way	<p>To the extent additional right-of-way (including fee simple acquisitions and easements) is needed to construct the Project, the Design-Builder will be responsible for all costs of such right-of-way and all activities and services necessary for the acquisition of such right-of-way.</p> <p>The Design-Builder will be responsible for complying with all commitments with respect to the acquisition of permanent and temporary right-of-way set forth in the Final SEIS and the ROD.</p>
4.	Utility Relocation	The Design-Builder will be responsible for all costs of utility relocations or adjustments and all activities and services necessary for such utility relocations or adjustments. The Department will reasonably assist the Design-Builder in obtaining the benefit of all rights the Department has under any utility easement, permit, or other right in real property relating to utility relocations.
5.	Governmental Approvals	<p>The Department will obtain required NEPA approvals, CTB approvals, and approval by FHWA of the CA.</p> <p>The Design-Builder will be responsible for obtaining all other permits and governmental approvals, and will be responsible for all cost and schedule impacts relating to any re-evaluation of the NEPA approvals or new or amended governmental approvals required as a result of the Design-Builder's approved alternative technical concepts and/or final design, to the extent the Design-Builder's final design differs from the design on which the NEPA approvals were based.</p>
6.	Site Conditions	The Department will make available landside and marine geotechnical

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	Due Diligence	<p>data for locations along the Project corridor for the Design-Builder’s reference.</p> <p>The Design-Builder shall conduct additional geotechnical investigations specific to its Tunnel Construction Method, construction means and methods, and Project alignment.</p>
7.	Security	The Department will require proposal security, performance security, and payment security from the Design-Builder and/or its contractors to secure the Design-Builder’s obligations under the RFP and CA, likely in the forms of letters of credit, bonds, and/or guarantees by affiliates.
8.	Representations and Warranties	The CA will contain representations and warranties for each party that are customary for transactions of a similar scope and purpose.
9.	Insurance	The Design-Builder will obtain and maintain the insurance coverages described in the CA.
10.	Civil Rights	The Design-Builder shall use good faith efforts to achieve the goals for DBE participation and SWaM participation set forth in the CA. Failure to do so with respect to the DBE participation goals may result in increased Department oversight, debarment, or disqualification from participating in other Commonwealth procurements.
11.	Indemnification	The Design-Builder shall indemnify, defend, protect, and hold harmless the Commonwealth (including the Department) against any claims or losses resulting or accruing from the Design-Builder’s responsibilities and liabilities under the CA.
12.	Force Majeure Events	Force majeure events will be listed in the CA and will be typical for projects of similar scope and purpose.
13.	Delay Events	Delay Events will be listed in the CA and will be typical for projects of similar scope and purpose. The CA will describe the procedural and claims submission process.
14.	Compensation Events	Compensation Events will be typical for projects of similar scope and purpose. The CA will describe the procedural and claims submission process for administering compensation events and calculating damages.
15.	Completion Milestones; No Excuses Incentive	The CA will set forth one or more interim or final completion milestones relating to the early completion of construction works (“ <u>Completion Milestones</u> ”). The Design-Builder may elect to receive a “no excuses” incentive payment (“ <u>No Excuses Incentive</u> ”), in addition to the lump-sum design-build price for the Project, if the Design-Builder completes the specified construction work by the applicable Completion Milestone.

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		If the Design-Builder is eligible for and elects to be paid a No Excuses Incentive, the Design-Builder will be required to waive all claims for all cost and schedule impacts incurred by the Design-Builder.
16.	Completion Deadline	The CA will specify a required completion date for the Project, beyond which the Design-Builder will be expected to pay delay liquidated damages, and a long stop date beyond which the CA may be terminated for Design-Builder default if completion is not achieved.
17.	Termination	Termination Events will be listed in the CA, will be typical for projects of similar scope and purpose, and will include, among other things, termination for convenience of the Department.
18.	Governing Law	Laws of the Commonwealth
19.	Federal and State Law	The Design-Builder shall comply and require its contractors to comply with all federal and state laws and regulations applicable to transportation projects that receive federal or state funds. Federal or state laws and regulations will prevail over any conflicting provisions in the CA.
20.	Anticipated Exhibits	<p>The Department anticipates that some or all of the following exhibits will be included in the CA:</p> <ul style="list-style-type: none"> (i) Definitions; (ii) Scope of Work; (iii) Technical Requirements; (iv) Form(s) of Design-Build Work Performance Security; (v) Federal Requirements; (vi) Insurance Requirements; and (vii) Labor, Employment, and DBE/SWaM Related Matters.