I-64 Hampton Roads Bridge Tunnel Expansion Project Procurement Updates

Commonwealth Transportation Board
March 20, 2019
Agenda

1. Procurement progress updates
2. PPTA Independent Audit results
3. Commissioner’s Certification to the Governor and General Assembly
4. Project Agreement for Funding and Administration
From January to February 2019, VDOT received and evaluated Proposals from Hampton Roads Capacity Constructors (HRCC) and the Hampton Roads Connector Partners (HRCP).

On February 21, 2019, VDOT notified the CTB on:
- Identification of the Apparent Best Value Proposer and intention to execute an agreement with Hampton Roads Connector Partners
- The Term Sheet drafted for Project Agreement for Funding and Administration (PAFA) with HRTAC

Following the February 2019 CTB meeting, VDOT has finalized:
- the independent audit required by the Public-Private Transportation ACT (PPTA)
- the reevaluation of Finding of Public Interest (FOPI) issued by Commissioner of Highways in 2018
- the PAFA in coordination with Hampton Roads Transportation Accountability Commission (HRTAC)
### Sources of Funds

<table>
<thead>
<tr>
<th>AVAILABLE FUNDS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>HRTAC (Debt and Cash)*</td>
<td>$3,208,469,673</td>
</tr>
<tr>
<td>Toll-Backed Bond Proceeds</td>
<td>$345,000,000</td>
</tr>
<tr>
<td>SMART SCALE (Value Reserved)</td>
<td>$200,000,000</td>
</tr>
<tr>
<td><strong>Subtotal</strong></td>
<td>$3,753,469,673</td>
</tr>
<tr>
<td>VDOT – Bridge and SGR</td>
<td>$108,527,554</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$3,861,997,227</strong></td>
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### Uses of Funds

<table>
<thead>
<tr>
<th>PROJECT COSTS</th>
<th>AMOUNT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Administration Costs (PE &amp; CEI)</td>
<td>$122,000,000</td>
</tr>
<tr>
<td>Right-of-Way</td>
<td>$15,000,000</td>
</tr>
<tr>
<td>Design-Build Contract (Not to Exceed)</td>
<td>$3,299,997,227</td>
</tr>
<tr>
<td>No Excuses Incentive</td>
<td>$90,000,000</td>
</tr>
<tr>
<td>Contingency (Includes $4M Stipend)</td>
<td>$335,000,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>$3,861,997,227</strong></td>
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* *Maximum Commission Financial Commitment set out as $3.217 billion in the PAFA*
2. INDEPENDENT AUDIT REQUIRED UNDER PPTA
“....an independent audit of any and all traffic and cost estimates associated with the private entity's proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project)...."
Independent Auditors & Scope of Audit

• **H. W. Lochner, Inc. (Consulting Engineers)** was engaged as independent auditors on February 15, 2019

• The Scope of Work for this Audit included three specific reviews:

  1. Comprehensive Agreement Review
  2. Design-Build and Public Cost Estimate Reviews
  3. FHWA Cost Estimate Review and Risk
Audit Results – CA Review

• Reviewed Project’s Comprehensive Agreement (CA) to identify, and, where possible, quantify the potential risks and liabilities to which the State of Virginia could be exposed

• After reviewing the risk allocation between VDOT and the Apparent Best Value Proposer, the Audit Team concluded that risks have been properly identified and have been appropriately allocated to the party best suited to accept them

• Specifically identified multiple LNTPs as a step-by-step process that limits public’s exposure to excessive costs in event of default
Audit Results – DB/Public Costs Review

- Reviewed the (a) Apparent Best Value Proposer's final design-build cost estimates and (b) VDOT’S project costs
- Used a top-down methodology of cost per square foot and/or cost per lane mile. Analysis confirmed that costs and cost distribution are reasonable and within range of industry norms
- Specifically found that number of management personnel in Apparent Best Value Proposal is reasonable for a project of this size, complexity, and duration
- Specifically found that VDOT’s general administrative costs are reasonable and adequate to perform contract administration and oversight
Audit Results - FHWA Cost Estimate Review and Risk Register

- Reviewed and compared the information contained the VDOT Risk Register (December 2018) and the VDOT-FHWA Major Project Cost Estimate Review (CER)

- Concluded that standard FHWA CER procedures were followed

- Concluded that VDOT Risk Register is well-developed and comprehensive

- Concluded the process followed the VDOT P3 Risk Management Guidelines, as appropriate for a Design-Build delivery model
3. COMMISSIONER’S CERTIFICATION TO GOVERNOR AND THE GENERAL ASSEMBLY
In January 2018, the Commissioner issued a Finding of Public Interest (FOPI) for the Project.

This FOPI was re-affirmed in May 2018 to the Transportation Public-Private Partnership Steering Committee and procurement documents were prepared based on the benefits described in the FOPI.

The FOPI covers (Va. Code § Section 33.2-1803.1):

- Expected Project benefits
- Maximum public contribution
- Benefits of PPTA delivery
- Risks, liabilities and responsibilities
- Level of Project delivery risk
- Use of competitive negotiation
<table>
<thead>
<tr>
<th>Expected benefits of Project Development</th>
<th>FOPI (January and May 2018)</th>
<th>CERTIFICATION (March 2019)</th>
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</table>

| Maximum public contribution | Public Sector Analysis & Competition (PSAC) concluded that this does not apply because there is no private financing | Updated PSAC concluded that there has been no material changes. |

| Benefits of PPTA Delivery | Flexibility in contracting terms | Benefit realized through RFP development process |

| Risks, Liabilities, and Responsibilities | Design and construction risk – private sector O&M and revenue risks – public sector | Same |

| Level of Project Delivery Risk | Medium due to VDOT’s experience with similar projects, close engagement with stakeholders) based on internal risk workshop done in May 2017, January and February 2018 | Same based on FHWA Risk Workshops on September (Pre-CER) and November (CER) 2018. Risk assessment will continue through the construction phase. |

| Use of competitive negotiation | Procurement to follow 2017 PPTA Implementation Manual and Guidelines | Complied |

| Comprehensive Agreement | Per Major Business Terms issued on December 2017 | Major Business Terms presented to the CTB on June 2018 has not altered materially. |
Certification to the Governor and General Assembly

• Pursuant to Va. Code § 33.2-1803(D), the FOPI was updated and the Commissioner requests the CTB’s endorsement of his certification, indicating support for the execution of the Comprehensive Agreement with the Apparent Best Value Proposer:

1. The FOPI, re-affirmed in May 2018, is still valid.

2. The risk transfer profile set out in the draft Comprehensive Agreement has not materially changed since the original FOPI was issued.

3. The concept of maximum public contribution required by Virginia Code § 33.2-1803.1:1 does not apply because there is no element of private financing.
4. PROJECT AGREEMENT ON FUNDING AND ADMINISTRATION (PAFA)
• VDOT and HRTAC have worked collaboratively to develop a draft Project Agreement for Funding and Administration (PAFA)
  • Broad terms agreed to on February 8, 2019 and the Term Sheet was presented to CTB and HRTAC HRBT Funding Agreement Advisory Committee in their respective meetings in February 2019
  • PAFA has been drafted in accordance to the Term Sheet and in coordination with HRTAC

• PAFA can be executed by the HRTAC Chairman and Commissioner of Highways after CTB and HRTAC Board take actions to authorize execution of PAFA
ARTICLE 1. DEFINITIONS, INTERPRETATION, AND PRECEDENCE

ARTICLE 2. PROCUREMENT OF THE PROJECT

ARTICLE 3. PROJECT FUNDING

- Outlines the rights and obligations of the parties
- Sets out HRTAC’s Maximum Financial Commitment – $3.217 Billion
- How the Maximum Financial Commitment will be adjusted for SMART SCALE and/or toll-backed bond proceeds if issued by HRTAC
- Defines the anticipated project Administration Costs included in the project budget
- Availability of Contingency Reserves through project allocations
- How risk of Additional Costs will be managed
- Provides for the limitation of funding for Early Work and HRTAC’s related protection
  - Limited to $250M
  - Can be increased by $75M if defined conditions are met
  - Department will reimburse the increased amount project terminated prior to issuance of NTP
Summary of Major Terms of PAFA

ARTICLE 4. DELIVERY OF THE PROJECT
• Provides the General Obligations of the Department
• Outlines the process for Work Orders, including approval requirements
• Defines the Optional Work item for the I-564 Direct Connections and the Bridge Repair Option Work

ARTICLE 5. ADMINISTRATION OF THE AGREEMENT
• Outlines the Payment of Requisitions process
• Provides for right to Periodic Compliance Reviews

ARTICLE 6. DISPUTE RESOLUTION

ARTICLE 7. MISCELLANEOUS
• Includes general information about the term and termination of the PAFA
• Reaffirms Department’s commitments made in the January 22, 2019 Letter to work in good faith with the Commission to finalize the Master Tolling Agreement after operational analysis and traffic and revenue study are completed.
## Next Project Milestones

<table>
<thead>
<tr>
<th>ACTIVITY</th>
<th>DATE</th>
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<tbody>
<tr>
<td>CTB actions:</td>
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<tr>
<td>1. Endorsement of Certification to Governor and General Assembly</td>
<td>March 21, 2019</td>
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<tr>
<td>2. Authorization for Commissioner to execute PAFA</td>
<td></td>
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<tr>
<td>Anticipate HRTAC action to authorize PAFA execution</td>
<td>March 28, 2019</td>
</tr>
<tr>
<td>PAFA Execution</td>
<td>Prior to CA Execution</td>
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<tr>
<td>Comprehensive Agreement Execution</td>
<td>NLT April 15, 2019</td>
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<tr>
<td>PPTA Steering Committee Briefing</td>
<td>NLT 60 days after CA execution</td>
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<tr>
<td>Issue LNTP 1</td>
<td>April 2019</td>
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<tr>
<td>Final Completion</td>
<td>November 1, 2025</td>
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