

1.0 INTRODUCTION

The Public-Private Transportation Act of 1995, as amended (the Act, or PPTA) is the legislative framework enabling the Commonwealth of Virginia, local governments, and certain other public entities as defined in the Act, to enter into agreements authorizing private entities to develop and/or operate qualifying transportation facilities. These implementation guidelines are for the Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Department of Motor Vehicles, the Virginia Port Authority and other transportation agencies and offices of the Commonwealth (all referred to herein as “the Department”). Appendix A lists the Department’s Rights and Disclaimers. Links to the Act and relevant sections of the Virginia Freedom of Information Act (FOIA) are identified in Appendix B.

1.1 Department Authority

When the term “Department” is used in these guidelines, decisions to be made by the Department are at the direction of the Department Administrator or his/her designee. For example, the Commonwealth Transportation Commissioner is the Department Administrator for the Virginia Department of Transportation. For the Virginia Port Authority, the Chairman of the Board of Commissioners is the Department Administrator. These guidelines may be used by other responsible public entities, including local governments and transportation authorities, if adopted in accordance with pertinent laws and regulations of the authority having jurisdiction.

1.2 PPTA Goals and Principles

The purpose of the guidelines is to outline a process that is consistent, transparent, stable and that encourages and supports a climate for private sector innovation and investment to address specific transportation needs of the Commonwealth. The process will be used in reviewing proposals and, ultimately if approved, entering into an interim or comprehensive agreement. While the specific processes to be used by the Department are addressed later in these guidelines, some general principles are outlined below.

- The Act provides for procurement procedures consistent with either “competitive sealed bidding” or “competitive negotiation.” The Department may not use procedures consistent with competitive negotiation unless the Department provides a written determination to the Secretary of Transportation that such procedures are advantageous to the Department and to the public based on (1) the probable scope, complexity, or urgency of a project; (2) risk sharing including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity; or (3) an increase in funding, dedicated revenue source or other economic benefit from the project that would not otherwise be available. Written approval of the procurement process is required by the Secretary of Transportation before the Department Administrator may sign an interim and/or a comprehensive agreement.

- Proposals must include specific actions that share cost and/or risk between the parties beyond those commonly obtained through the competitive bidding or competitive negotiation process, including but not limited to, one or more of the following:
 - Direct private capital investment;
 - Dedicated revenue sources such as tolls or special tax districts
 - Lower project cost;
 - Decreased delivery time due to pooling of funding resources;
 - Project cost guarantees;
 - Project schedule guarantees; and
 - Product quality warranties.

- Proposals must fully disclose all public sector financial commitments, including any federal, state, regional or local public funds. Proposals must also identify the development of user fees or any long-term public sector commitments including, but not limited to, operations and maintenance costs.

- Proposals should avoid the creation of state-supported debt; however, should a proposal include such debt, procedures to secure specific, project-level approval by the Governor, General Assembly, the Department of Planning and Budget, the Department of the Treasury, and any other appropriate entities must be included in the proposal. Furthermore, a clear alternative if such approval is not achieved must also be detailed.

- Proposals should reflect the Commonwealth's policy of multimodal and intermodal solutions to transportation problems;

- Proposals must support and promote the overall transportation goals and priorities as identified in the appropriate state, regional, or local transportation plans. Proposals that do not support and promote the overall transportation goals and priorities of the Department, or fail to provide substantial justification to alter these goals and priorities, will be returned promptly to the proposer to avoid the unnecessary expenditure of both public and private funds;

- Proposals must be in compliance with or specify how it will satisfy all applicable state and/or federal laws and regulations including the National Environmental Policy Act (NEPA) of 1969;

- Proposals will be evaluated in conjunction with a structured opportunity for public participation as set forth in these guidelines;

- Proposals should reflect the goals of transparency and accountability and, therefore, should contain confidential or proprietary information only when necessary to provide information to the Department for evaluation of the proposal. All information will be made public unless its release would clearly and adversely affect the financial interest of the public or the private

entity, or the bargaining position of either entity, as determined by the Department in its sole discretion.

1.3 Conflict of Interest and Other Considerations

To assure transparency, accountability, and objectivity, any proposal and any responsible public entity for which the Secretary of Transportation is responsible will follow the pertinent state and federal laws, regulations, and guidelines regarding potential organizational conflicts of interest. Such requirement will extend to consultants and staff. Examples of such federal laws, regulations, and guidelines are 23 CFR §636.116 , 48 CFR §9.5, the Committee on Foreign Investment in the United States (CFIUS) processes, and §2.2-4373 of the Code of Virginia.

To strengthen the integrity of the procurement process under the Act, as a condition of submitting a proposal, the proposer must agree to limit all communications regarding the proposal within the Executive Branch, including advocacy efforts, to the individuals or entities designated by the Secretary of Transportation or the Department Administrator. The goal of this condition is to ensure the integrity of the procurement process.

Any private entity proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience or other contents of their proposals, including all specific aspects of proposed plans to be performed.

1.4 Commonwealth Priorities

To assure that any proposal is in keeping with the Commonwealth's goals, principles and priorities, the Office of the Secretary of Transportation will review all proposals submitted to a responsible public entity for which the Secretary of Transportation is responsible in accordance with this Section 1.4.

- Prior to the solicitation of proposals, the Department shall submit the proposed solicitation to the Office of the Secretary of Transportation for review and the Secretary's written determination as to whether the solicitation is consistent with the goals, principles, and priorities of the Commonwealth. Such determination shall set forth: (1) the Secretary's concerns; (2) the Secretary's recommendations as to whether or not such solicitation should proceed; and (3) if such solicitation may proceed, the modifications to the evaluation process set forth in these Guidelines, if any, deemed appropriate by the Secretary. The Department shall then proceed only as so determined by the Secretary.
- Prior to the submission of an unsolicited proposal to any Department, the proposer is encouraged to submit its anticipated proposal to the Office of the Secretary of Transportation for review. The Secretary will have 10 business days to review the unsolicited proposal and provide written determinations to the relevant Department as to whether the unsolicited proposal is consistent with the Commonwealth's goals, principles, and priorities. Such determination shall set forth: (1) the Secretary's concerns; (2) the Secretary's recommendations as to whether the proposal should be rejected or accepted in the event that the proposer chooses to formally submit its proposal pursuant to VA Code Section 56-560; and (3) if such proposal is formally submitted by the proposer and accepted by the Department, the modifications to the evaluation process in these Guidelines, if any, deemed

appropriate by the Secretary. In the event that the proposer formally submits its proposal pursuant to VA Code Section 56-560, the Department shall then only proceed as so determined by the Secretary. In the event that an unsolicited proposal is formally submitted to the Department, without having been previously submitted to the Office of the Secretary as set forth above, the Department shall immediately forward such proposal to the Office of the Secretary for its review and a determination as to how to proceed prior to taking further action with respect to such proposal.