

*The Commonwealth of Virginia*

*Public-Private Transportation Act of 1995, (as  
Amended)*

*Implementation Guidelines*

**Revised October 31, 2005**

**(Addendum Issued December 5, 2008)**

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## ADDENDUM

Section 1 of the PPTA Guidelines has been amended to reflect the incorporation of the conflict of interest procedures and a written process to enable the Office of the Secretary of Transportation to make an early determination that a proposal meets the goals, principles, and priorities of the Commonwealth.

This section is effective December 5, 2008 and shall apply to all transportation agencies.

Additional modifications to the PPTA Guidelines will be made to support this amendment, along with other updates, in 2009 and will be posted for public comment prior to implementation.

## ***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.

## ***2.0 EXECUTIVE SUMMARY***

The following are procedural guidelines for the evaluation and possible implementation of proposals received under the PPTA by the transportation agencies of the Commonwealth. Other responsible public entities (cities, counties, transportation authorities, etc.) are invited to use or adopt the same or similar guidelines in order to provide the greatest degree of uniformity and consistency in the application of the Public-Private Transportation Act of 1995, as amended.

Throughout this document, references to the "Department" include the Virginia Department of Transportation, the Department of Rail and Public Transportation, the Department of Aviation, the Virginia Port Authority, the Department of Motor Vehicles, and other transportation agencies of the Commonwealth. Reference to "responsible public entities" or "public entities" includes all state transportation agencies, local governments and regional authorities that have the power to develop and/or operate the qualifying transportation facility.

The Public-Private Transportation Act of 1995, as amended, allows both solicited and unsolicited project proposals. The major steps involved in evaluating, selecting, and implementing the projects are similar for both solicited and unsolicited proposals. It is anticipated that the private sector may identify prospective projects. State agencies and responsible public entities are empowered and encouraged to solicit proposals generally or for specific projects.



Public and private entities may also propose innovative financing methods, including the imposition of user fees or service payments under the provisions of the Act. Financing arrangements may include the issuance of debt, equity or other securities or obligations. A proposer may enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

While procedures incorporated in these guidelines are consistent with those of the Code of Virginia § 2.2-4301, per § 56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

## ***2.1 Coordinating Public Entity***

If the Department solicits proposals from private entities for the development and/or operation of a qualifying transportation facility or a multimodal transportation facility, the Solicitation for Proposal (SFP) shall identify, which public entity shall serve as the coordinating responsible public entity. Within the SFP, the public entity will identify a designated point of contact for that project. All communication between the public entity and any potential proposer shall be with and through the designated point of contact.

If the Department or responsible public entity receives unsolicited proposals to develop and/or operate a qualifying transportation facility or a multimodal transportation facility that may require approval by more than one public entity, representatives of each of the affected public entities shall, prior to acceptance of such proposal, convene and determine which public entity shall serve as the coordinating responsible public entity. The public entity that receives the unsolicited proposal shall contact all other affected public entities in writing and schedule a meeting to determine the coordinating responsible public entity. Such determination shall occur within 60 days of receipt of a proposal after which time the coordinating public entity will designate a point of contact for all communication. The designated point of contact for the coordinating public entity shall notify the proposer in writing. If the coordinating public entity is the Department, the process set forth for unsolicited proposals in these guidelines shall then be followed.

## ***2.2 Solicited Proposals***

The Department may issue a solicitation inviting proposals from private entities to develop and/or operate qualifying transportation facilities as defined in the Public-Private Transportation Act of 1995. The SFP will specify information and documents which must accompany the proposals, times for submission of the proposals, the factors which will be used in evaluating the proposals, the designated single point of contact, and contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications which will be

required of private entities submitting proposals (proposers). Such SFPs may invite proposers to identify projects or may solicit proposals on specific projects.

The Department also may issue Requests for Information (RFI), inviting private entities to express a potential interest in developing and/or operating one or more qualifying transportation facilities. The issuance of an RFI does not require the Department to issue an SFP for the same project. The Department will not accept unsolicited proposals for a project that is the subject of some, or all of an RFI, until the Department makes a determination to accept unsolicited proposals.

No fees shall be charged for the processing, reviewing, or evaluating an expression of interest or solicited SFP.

### ***2.3 Unsolicited Proposals***

The Act permits responsible public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop and/or operate qualifying transportation facilities under their jurisdiction. The Department may receive such unsolicited proposals at any time pursuant to these guidelines. Except for those proposals that require the designation of a coordinating public entity, within 30 days of the receipt of an unsolicited proposal, the Department will initiate a review to determine if the proposal meets all legal and policy requirements for further evaluation, as set out in § 56-558 and §56-560 of the Code of Virginia and these guidelines.

The Department may also determine that an unsolicited conceptual proposal should be modified or amended to meet Department priorities. The Department will publish a notice accepting such proposal for evaluation or accept such proposal for evaluation as amended or modified and inviting others to submit competing proposals. If the proposal is modified or amended, the initial proposer will also be given the opportunity to add information during the competing period. The Department will also notify the appropriate federal agency. The deadline for receipt of any such competing proposals will be 10:00 a.m., prevailing local time, in Richmond, on the last day of the competition period after the Department's initial publication of the notice.

The Department will also notify the appropriate federal agency. Proposals that do not anticipate federal oversight, financial participation and approval shall be posted for at least 90-days. Proposals anticipating federal oversight, financial participation, or approval of PPTA contracting method, such as under Special Experimental Project -15 (SEP-15), shall be posted for at least 120-days. Notices for competing proposals and those proposals received shall be posted or linked to the state eVA system. Only those competing, compliant proposals submitted by such deadline will be considered, unless and until the Department terminates consideration of, or negotiation on, the original unsolicited proposal and any competing, compliant proposals that

were timely received. All rejected proposals will be returned to the private entity with a written notice within 14-days of the Department's determination to reject.

## ***2.4 Proposal Submission and Review***

These guidelines describe a six-phase proposal process:

- Phase 1** – Quality Control
- Phase 2** – Independent Review Panel
- Phase 3** – Oversight Board Recommendation
- Phase 4** – Submission and Selection of Detailed Proposal
- Phase 5** – Negotiations
- Phase 6** – Comprehensive Agreement

Within 30 days of the close of the competition period for unsolicited proposals, the Department will review any competing proposals for quality control and determine whether the proposal is competing and compliant with applicable laws and these guidelines. All proposals that pass the quality control review will be forwarded immediately to the Secretary of Transportation. During quality control review, the Department will name a representative who will be the single point of contact for the Department. That representative will manage all communication regarding proposal evaluations.

Within 30 days of the close of the period for solicited proposals, the Department will review all proposals to determine whether the proposal (s) meet the requirements of the SFP. All proposals which meet the requirements of the SFP shall move forward to the Secretary of Transportation.

The Secretary of Transportation will then have 60 days to appoint and designate a Chair for an Independent Review Panel (IRP) to evaluate the proposals and establish a meeting schedule for the IRP. The IRP shall be composed of senior state transportation officials and other individuals having appropriate expertise to evaluate which PPTA projects and proposals would support and promote state, regional, and local transportation plans and advance the public interest, as defined in the Act and these guidelines.

The IRP will review the proposals, any comments received from affected jurisdictions or the general public, and any analysis made available to the IRP. The IRP will evaluate the proposals in accordance with selection criteria specified herein or as specified in the Department's solicitation; and will make recommendations to the Department's or public entity's Oversight Board. For the Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (DRPT), the Oversight Board would be the Commonwealth Transportation Board (CTB). For the Virginia Department of Aviation (VDOA) it would be the Aviation Board, and for the Virginia Port Authority, the Board of Commissioners. The

recommendation would include whether to advance none of the proposals, or one or more proposals to the detailed stage, any specific issues that should be addressed in a detailed proposal, any substantive or procedural changes to the proposal itself, or any substantive or procedural changes to be affected by the Department or the Oversight Board. The IRP may recommend that the proposal(s) is/are an adequate basis to begin negotiations of an interim or comprehensive agreement consistent with the provisions in Section 5.1.4.

## ***2.5 Project Selection and Comprehensive Agreement***

The Oversight Board will consider the recommendations of the IRP and recommend for or against advancement of one or more proposals for further development. If public funds are proposed, the Oversight Board will be asked for a determination to support future allocations for such funding within the limits of pertinent distribution formulas for State appropriations.

Final authorization to develop and/or operate any qualifying transportation facility will be contingent on successful negotiation and execution of a comprehensive agreement between the private entity and the Department. The Department's Administrator has the contractual authority to enter into a comprehensive agreement under the PPTA once the Department has received written approval of the procurement method from the office of the Secretary of Transportation. The comprehensive agreement will, at a minimum, outline the rights and obligations of the parties, set a maximum return or rate of return to the private entity if applicable to the project, allocate risk and liabilities, and establish dates for termination of the private entity's authority and dedication of the facility to the Commonwealth, in accordance with §56-566 of the Code of Virginia.

## ***2.6 Interim Agreement***

Consistent with § 56-566.1 of the Code of Virginia, prior to or in connection with the negotiation of the comprehensive agreement, the Department may enter into an interim agreement with the private entity proposing the development and/or operation of the qualifying transportation facility or facilities. Such interim agreement may include, but is not limited to:

- Permitting the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including project planning and development, advance right of way acquisition, design and engineering, environmental analysis and mitigation, survey, conducting transportation and revenue studies, and ascertaining the availability of financing for the proposed facility or facilities;
- Establishing the process and timing of the negotiation of the comprehensive agreement; and
- Containing any other provisions related to any aspect of the development and/or operation of a qualifying transportation facility that the parties may deem appropriate.

Notwithstanding anything to the contrary in these guidelines and the Act, a responsible public entity may enter into an interim agreement with multiple private entities if the responsible public entity determines in writing that it is in the public interest to do so. Development of an interim agreement is in the sole discretion of the Department and in no way limits the rights reserved by the Department to terminate the evaluation of any and all proposals at any time. The Department Administrator has the contractual authority to enter into an interim agreement under the PPTA once the Department has received written approval of the procurement method from the Secretary of Transportation.

## ***2.7 Timeline***

The Department will make every attempt to complete the procurement process expeditiously. However, variations in any schedule may be necessary due to the volume, complexity of proposals received, the need for further information, timely cooperation by proposer, or other unanticipated circumstances. Any solicitations pursuant to these guidelines will contain estimated schedules for each phase. For unsolicited proposals, the Department, in consultation with the Secretary of Transportation, will establish estimated schedules for the evaluation and negotiation process. All proposers advanced to Phase Two will be provided a schedule for evaluation of the proposals.

### **Guideline – Schedule**

1. Quality Control	5 to 6 months (m)
a. Proposal meets requirements of Act	1m
b. Public Notice	3 to 4m (minimum)
c. QC review	1m
2. Independent Review Panel	5 to 8m**
a. Assemble Panel and schedule meetings	1 to 2m
b. Panel Meetings	4 to 6m
3. Oversight Board Recommendation	2m
4. Submission and Selection of Detailed Proposals	8 to 14m**
a. Department develop and issue Request for Detailed Proposals	2m
b. Develop and submit proposals	4 to 8m
c. Department evaluation and selection	2 to 4m
5. Negotiations	2 to 6m**
6. Review and Signing of Interim or Comprehensive Agreement	1m

\*\* The following are schedule goals, which are contingent on project complexity and private sector objectives.

If the Department has evaluated the proposal and finds that the qualifying transportation facility has approved or pending state and federal environmental clearances, secured significant right of

way, has previously allocated significant state or federal funding, or exhibits other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility in accordance with the purpose of this Act, the Department shall prioritize the procurement schedule.

### ***3.0 PROJECT PROPOSALS***

#### ***3.1 Solicited Proposals***

The Department may solicit proposals. An SFP may invite private entities to propose to develop and/or operate either projects of their own choosing or Department specified transportation facilities in specific locations. Whether an SFP is for a general solicitation or for a specific project, proposers are encouraged to propose innovative solutions to the needs of the state and local transportation plans.

SFPs will outline the minimum qualifications and project selection criteria including any unique capabilities or qualifications which would be required of the proposer. The SFP will outline the independent process(es) for environmental review and compliance and will include requirements that, (1) any improvements must comply with the terms and conditions of the environmental review(s), and (2) reimbursement for any at-risk preliminary work performed by the proposer is contingent on completion of the environmental review process and any specific provisions within an executed interim or comprehensive agreement. Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the SFP. Proposers will be instructed as to the format in which to submit proposals and what minimum information and materials, must be submitted in order for the proposal to be considered complete.

Public notice of an SFP will be posted as noted earlier in these guidelines prior to the date set for receipt of proposals by posting in a public area normally used for posting of Department public notices and by publication in a newspaper or newspapers or other publications of general circulation within and/or outside the Commonwealth of Virginia, on the Department website, and the state eVA system. This will provide reasonable notice to the maximum number of proposers that can be reasonably anticipated to submit proposals. In addition, proposals may be solicited directly from potential proposers.

#### ***3.2 Unsolicited Proposals***

The Act permits responsible public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop and/or operate qualifying transportation facilities. The Department will evaluate unsolicited proposals whenever received so long as the

proposals meet the requirements of the Act and these guidelines. Generally, the Department will give priority to the evaluation of solicited proposals.

Upon receipt of an unsolicited proposal and a subsequent determination by the Department that the unsolicited proposal, as submitted or amended, meets quality control criteria, the requirements of law and these guidelines, the Department will post a notice as noted earlier in these guidelines, in consultation with the Secretary, in a public area it normally uses for posting of public notices and will publish the same notice in one or more newspapers or periodicals of general circulation as appropriate to notify proposers who might be interested. The notice will state that the Department has received and accepted an unsolicited proposal under the Act, that it intends to evaluate the proposal, that it may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing and compliant proposals the Department receives in accordance with these guidelines within the deadline posted in the notice.

The Department may also determine that an unsolicited conceptual proposal should be modified or amended to meet Department priorities. The Department will publish a notice accepting such proposal for evaluation or accept such proposal for evaluation as amended or modified and inviting others to submit competing proposals. If the proposal is modified or amended, the initial proposer will also be given the opportunity to add information during the competing period.

Copies of proposals will be made available on the Department's website and no copies will be generated by the Department. The notice will summarize the proposed transportation facility or facilities and identify the proposed location and interconnections with other transportation facilities. The Department will make available the entire proposal except for those portions that would clearly and adversely affect the financial, competitive, or bargaining position of the Department and/or the proposer as determined by the Department at its sole discretion.

Failure by a prospective proposer to submit a competing and compliant proposal within the noted competition period shall preclude such proposal from consideration unless and until the Department terminates consideration of, or negotiations on, the original proposal and any and all competing proposals received within the competition period. The Department reserves the right to extend the competition period. The receipt of one or more competing proposals during such period will not trigger the posting or publication of a new notice or the start of any new competition period.

The Department recognizes that it may receive proposals which have certain characteristics in common, yet differ in meaningful ways. In such cases, the Department reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal. Because of the consequences to a proposer for failing to submit within the competition period, a proposal which the Department could later deem a competing proposal, prospective proposers are strongly

urged to monitor Department websites for any notices of proposals received, and to be prepared to submit within such competition period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the Department a written request for a preliminary determination of whether its proposal would be deemed a competing proposal in whole or in part. The Department will respond no later than fourteen (14) days thereafter with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination.

In the event the Department elects to treat a proposal, or part of a proposal, received within the competition period as a non-competing proposal, the Department will follow the above notice procedure to permit competing proposals to be submitted.

Upon the expiration of such competition period, the Department will subject the original proposal, together with any and all properly received compliant and competing proposals, to the evaluation and selection process set forth below.

### ***3.3 Qualifying Transportation Facilities***

To qualify for the evaluation and selection process, the Act requires a proposal to meet, among others, three criteria. First, the proposal must seek approval for a private entity to develop and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility. Third, the proposal must be submitted to the public entity that currently has or may assert the power itself to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.

### ***3.4 Transportation Partnership Opportunity Fund***

The Transportation Partnership Opportunity Fund (TPOF or the “Fund”) provides financial assistance to encourage the development of transportation projects pursuant to the PPTA and through the design-build provisions of the Code of Virginia. Assistance from the Fund can also be used for transportation aspects of an economic development project. A link to the TPOF Implementation Guidelines is included in Appendix B.



## ***4.0 PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS - UNSOLICITED PROPOSALS***

### ***4.1 Proposal Submission***

Proposers submitting to the Department are required to deliver 20 hard copies and 1 electronic copy in PDF format, unless otherwise noted in writing by the Department, of their conceptual proposal and, if requested, detailed proposal. The Department shall designate one individual to receive all proposals and to act as the point of contact. In the absence of such a designation, proposals shall be delivered to the Department's Administrator.

Proposals are to be sealed in mailing envelopes or packages bearing the proposer's name, address and the words "Public-Private Transportation Proposal" clearly written on the outside. The cover page must include the title of the proposal, the name and address of the proposing entity, the person authorized to act on behalf of the proposer and his or her email address and telephone and facsimile numbers.

Also pursuant to the Act, once the proposal has passed the quality control review, copies of proposals must be provided directly to all affected jurisdictions, including the governing body of each jurisdiction (city, county, town, etc.) or regional entity (MPO, Transit District, Airport Authority, etc.) affected by the proposed project. A list of all affected jurisdictions which will be provided a copy of the proposal must accompany the conceptual proposal.

### ***4.2 Proposal Review Fee***

A non-refundable, non-negotiable minimum Proposal Review Fee of \$50,000 will be required to offset the costs of processing, reviewing and evaluating the proposals where total cost is estimated to exceed \$50 million. In recognition of time and cost factors affecting proposers, a two-part process is permitted involving a conceptual project proposal for consideration by the Independent Review Panel and Oversight Board and a detailed project proposal to be completed for review and consideration by the Department.

The total fee of \$50,000 will be subdivided into two payments based on progression of the project proposal through the conceptual and detailed proposal process. A fee of \$10,000 must accompany each conceptual proposal submitted to the Department for the first phase review. Prior to entering the fourth phase of the evaluation process, the remaining \$40,000 must be submitted to the Department for each proposal. For projects where total cost is estimated to be \$50 million or less, proposers will be required to submit a \$5,000 fee with the conceptual proposal and a \$20,000 fee with the detailed proposal.

If the cost of reviewing the detailed proposal exceeds the fees noted above, the Department or responsible public entity may assess the proposer a reasonable additional cost to evaluate the detailed proposal. Failure to submit all fees shall suspend consideration of a proposal. All fees shall be submitted in the form of a cashier's check made payable to the Treasurer of Virginia. Proposers submitting multiple proposals affecting unrelated qualifying transportation facilities will be required to submit a Proposal Review Fee for each proposal submission.

### ***4.3 Proposal Preparation***

Proposals must be signed by an authorized representative of the firm or consortium making the proposal. All information requested under " Proposal Requirements " must be submitted. Proposers failing to submit all information requested for conceptual or detailed proposals may be given an opportunity to promptly submit missing information or may be given a lowered evaluation of the proposal. Proposals that lack critical required information may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the proposed project. Emphasis should be placed on completeness and clarity of content.

Proposals submitted for consideration should include a comprehensive scope of work and provide enough information about the project to determine whether it satisfies the evaluation and selection criteria. In addition, the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed project financing is feasible. The financial plan must disclose the full extent of any public sector financing and/or concession commitments.

Proposals should be organized in the order requested herein. All pages of the proposal should be numbered. Evaluation of proposals will be facilitated if proposers cross reference responses by citing the tab number, and subletter, and repeating the text of the requirement not the text of the proposal. If a response covers more than one page, the tab number and subletter should be repeated at the top of the next page.

The proposal should contain a table of contents, which cross references the requirements by category. Information, which the proposer desires to present, that does not fall within any of the requirements should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner may be returned for revision.

Each copy of the proposal should be placed in a three-ring binder and contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume.

Proposers who submit a proposal may be required to give one or more oral presentation(s) of their proposal to the Independent Review Panel, the Oversight Board and/or the public. Such presentations will provide opportunities to educate the responsible public entity and the public, and/or clarify aspects of the proposal.

#### ***4.4 Virginia Freedom of Information Act***

All proposals submitted to the Department become the property of the Department and are subject to the Virginia Freedom of Information Act (VFOIA) (§ 2.2-3700 et seq.). Proposers are advised to familiarize themselves with the VFOIA provisions to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA. Refer to Appendix B for an Internet link to Code of Virginia §2.2-3700 (Virginia Freedom of Information Act).

The Department will determine whether or not the requested materials are exempt from disclosure. In the event the Department elects to disclose the requested materials, it will provide the proposer notice of its intent to disclose. In no event shall the Commonwealth or the Department be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these guidelines.

If a proposer has special concerns about confidential or proprietary information that it would desire to make available to the Department, prior to submission of its proposal, such proposer may wish to:

1. Make a written request to the Department for a meeting to specify and justify proposed confidential or proprietary documents;
2. Make oral presentation to Department staff and legal counsel;
3. Receive written notification from Department accepting/rejecting confidentiality request; and,
4. Conduct similar process with affected jurisdictions.

Failure to take such precautions prior to submission of a proposal may subject confidential or proprietary information to disclosure under the Virginia FOIA.

§ 2.2-3705.6 and §56-573.1, of the Code of Virginia outline the application of the Freedom of Information Act to the PPTA process:

- Once an interim or a comprehensive agreement has been entered into, and the process of negotiating all phases or aspects of the comprehensive agreement is complete, the Department will make available procurement records in accordance with § 2.2-4342 of the Code of Virginia;

- Procurement records shall not be interpreted to include proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications; and,
- Certain confidential and proprietary information, and related records, may remain confidential if the financial interest of the Department or the private entity would be adversely affected.

Where interpretation of these statutes is required, the policy goals of transparency and accountability in these guidelines shall prevail. The Department will consult with the Office of the Attorney General for legal determination of any request for exemption from FOIA.

#### ***4.5 Applicability of Other Laws***

The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPTA. In soliciting or entertaining proposals under the PPTA, agencies and institutions of the Commonwealth shall also comply with applicable federal, state and local laws not in conflict with the PPTA. Likewise, in submitting proposals and in developing or operating facilities under the PPTA, operators shall comply with applicable federal, state and local laws. Such laws may include, but not necessarily be limited to, requirements for workers compensation insurance coverage, performance bonds or payment bonds from approved sureties, compliance with prompt payment, compliance with ethics in public contracting, and compliance with environmental laws, workplace safety laws, and state or local laws governing contractor or trade licensing, codes and permit requirements.

#### ***4.6 Pledge of Confidentiality***

Each member of the Department that is associated with developing, reviewing or selecting the submitted proposal(s) has access to privileged and confidential material information. Misuse of this confidential information would be a breach of the fiduciary responsibility each team member has with the Department and a breach of the established business relationship with our industry partners. In an effort to maintain the highest levels of confidence and trust in these guidelines and in the procurement process, both the public and private entity's must be aware of their responsibilities to the public and remain vigilant of any misuse of confidential, non-public information.

#### ***4.7 Proposal Requirements – Two-Part Process***

Proposal development is defined as a two-part process. The information provided in the proposal will facilitate evaluation by the Independent Review Panel, Oversight Board and Department. The proposals should be both thorough and concise so that a proper evaluation can be made of the proposer's capabilities and intent to complete the proposed project. Proposals

should include an executive summary and use cross-referencing rather than repetition in explaining the proposed project.

#### ***4.7.1 Part One -Conceptual Proposal***

Contents of the conceptual proposal, which is detailed in Phase One noted below, include:

- TAB 1: Qualification and Experience
- TAB 2: Project Characteristics
- TAB 3: Project Financing
- TAB 4: Public Support
- TAB 5: Project Benefit and Compatibility

The Department is aware that at the conceptual stage of proposal development, specific details of the above noted topics may not be developed.

#### ***4.7.2 Part Two –Detailed Proposal (Specific Deliverables)***

Detailed Proposals (Specific Deliverables) will be included as part of Phase Four noted below. Appendix D (Checklist for Proposals) of these guidelines contains a detailed overview of all the items required for Detailed Proposals (Specific Deliverables). The Checklist is required as part of the proposals submitted to the Department.

## ***5.0 EVALUATION AND SELECTION PROCESS***

### ***5.1 Six Phase Process***

Proposals will be evaluated and implemented according to a six-phase process. Phase One is a Department-level quality control review to determine if a conceptual proposal meets the requirements of law and these guidelines. Phase Two is a review, evaluation, and recommendation of one or more conceptual proposals by an Independent Review Panel. Phase Three is a review and concurrence/rejection of the conceptual proposal(s) by the appropriate Oversight Board and a recommendation that the Department seek a detailed proposal for submission by the proposer(s). Phase Four is the final selection of the successful detailed proposal(s). Phase Five is the process of negotiating a draft interim and/or comprehensive agreement. Phase Six is the final stage of review prior to the execution of the interim and or comprehensive agreement by the appropriate Department Administrator and proposers.

### ***5.1.1 Phase One: Quality Control***

Within 30 days of the close of a competition period for unsolicited proposals or within 30 days of the close of a submission deadline for solicited proposals, the Department shall forward to the Secretary of Transportation all proposals that pass the Department's quality control review. Each proposer will be notified in writing by the Department that its proposal has either failed or passed the quality control review and whether it will be advanced to Phase Two. With the written concurrence of the Secretary of Transportation, the Department may extend the Phase One quality control review duration due to the volume of proposals, the complexity of proposals, the need for additional information, timely cooperation by proposer, or other unanticipated circumstances.

At the same time, the Department will notify each affected jurisdiction identified in the conceptual proposal that it will be receiving a copy of the conceptual proposal which has passed the quality control review and that the jurisdiction will have 60 days from receipt of the proposal to submit any comments they may have to the Department. Each proposer advancing to Phase Two will be required to send a copy of the proposal to each affected jurisdiction.

The Department's quality control evaluation will consist of, but not be limited to, the following criteria:

Does the proposal:

- address the needs identified in the appropriate local, regional, or state transportation plan;
- identify that public needs may not be wholly satisfied with existing methods of procurement;
- result in the availability of the facility to the public on a more timely, more efficient or less costly fashion; and
- provide for cost and/or risk-sharing with private entities.

The Department may return proposals:

- that do not address the current priorities of the Department;
- that pertain to a facility for which the Department plans to issue an SFP; or
- that do not meet the requirements of law and these guidelines.

In accordance with §56-573.1 and as part of the quality control review process, the Department will make a recommendation to the Secretary of Transportation whether the proposals should be

procured through competitive sealed bidding or competitive negotiations. If the determination is for competitive sealed bidding, the proposals will be returned to the proposers and advertised consistent with procurement through competitive sealed bidding as defined in § 2.2 – 4301 and subsection B of § 2.2 – 4310.

If a proposal is submitted during a period when the Department is unable to review and evaluate that proposal by virtue of being committed to the development, evaluation and negotiation of other priority proposals, or for any other reason as determined by the Department at its sole discretion, then the proposer will be notified so the proposal can be resubmitted at a later date or an extension of time for Phase One as may be mutually agreeable.

### ***5.1.2 Phase Two: Independent Review Panel***

#### ***Composition***

The Independent Review Panel will be chaired by the Secretary of Transportation or his/her designee and shall consist of the following: one or more members of the Oversight Board; chief planning, financial, operations and engineering officers of the responsible public entity; local or regional transportation professionals; members of the academic community; representatives of other public or private interests, agencies, boards, or commissions affected by the proposal; and such other technically-qualified appointees as the Secretary of Transportation may deem appropriate. When either the Virginia Department of Transportation or the Virginia Department of Rail and Public Transportation are the responsible public entities, the IRP will include three or more members of the Oversight Board. The Secretary of Transportation will have 60 days to designate a Chair and schedule the IRP meetings. The responsible public entity shall provide appropriate analysis and recommendations to the IRP.

Prior to appointing the IRP, the Secretary of Transportation will review the recommendation presented by the Department and make a written determination of the validity of the procurement method pursuant to § 56-573.1.2 of the Code of Virginia.

#### ***Purpose***

The IRP will review and evaluate all proposals based on the evaluation and selection criteria in these guidelines or as modified by the Department in the RFP. The IRP will then recommend to the Department and the Oversight Board whether none, one, or more proposals should be advanced to the detailed review phase by the Department or withheld from further consideration. In making a recommendation that a conceptual proposal be advanced to the detailed review phase, the IRP:

- Must determine that the proposer has:
  - i. Submitted a complete proposal;

- ii. Assembled a team which is qualified and capable of completing the proposed facility;
- iii. Developed a conceptual plan which is technically feasible; and
- iv. Provided a financial, plan, which will allow access to the necessary public and private capital to finance the facility.
  - Must consider any written affected jurisdiction comments;
  - Must consider any oral or written public comments;
  - Must consider the advice of the Oversight Board's financial advisor, legal counsel, other state agencies with appropriate technical expertise, where appropriate, in reaching its decision;
  - May include specific recommendations for issues to be included in a detailed proposal, or considered during the departmental review of the detailed proposal;
  - May include specific recommendations for policy, program, financial, or project development that may be necessary or desirable to successfully implement the proposed improvements.

The Chair of the IRP will file a written explanation of its decision with the Department, the Oversight Board and, if federal funding is anticipated, with the relevant federal agencies.

The IRP may request oral presentations and/or additional documentation or analysis in order to assess project feasibility and proposer's qualifications. If any proposer makes an oral presentation to the IRP, each proposer must be given that opportunity.

### ***Public Participation and Comment***

Consistent with the Act, each proposer shall provide each affected jurisdiction with a copy of the proposals. The IRP must consider all written affected jurisdiction comments that are submitted within 60 days of receipt of the proposal. In addition, the IRP must solicit additional public comment through the Internet, local advertisement or marketing efforts, public comment sessions accessible to the public, or other means deemed appropriate by the IRP Chair. The IRP must consider all written or oral public comments prior to its final recommendations.

### ***5.1.3 Phase Three: Oversight Board Recommendation***

Following review and recommendations by the IRP, the Oversight Board will review the conceptual proposals and any recommendations of the IRP and will recommend whether to advance to a detailed proposal and further evaluation and action by the Department under the PPTA, and these guidelines. The recommendations of the Oversight Board shall be made to the Department's Administrator within 60 days of receipt of the IRP's recommendation and by formal resolution. If public funds are proposed, the Oversight Board will be asked for a determination to support future allocations for such funding prior to advancing to the next phase.



#### ***5.1.4 Phase Four: Submission and Selection of Detailed Proposal***

The Department will form a proposal review committee to review the recommendations of the IRP and the Oversight Board, and within 45 days may request that none, one, or more proposer(s) submit detailed proposals to the Department. Detailed proposals should be consistent with the recommendations of the IRP, Oversight Board and the provisions and evaluation criteria as defined in the Department's Request for Detailed Proposals (RFDP).

The Department reserves the right to proceed directly from the Oversight Board recommendation to the negotiations phase in cases where:

1. A conceptual proposal adequately describes the proposed scope of a project;
2. The planning, engineering, and environmental review processes are sufficiently advanced to warrant and enable an objective procurement or selection, such as in accordance with § 56-560.D of the Act and;
3. The private entity has clearly presented an innovative risk profile and financial proposal that has sufficient potential to satisfy a critical transportation need.

The guidelines present proposal evaluation and selection criteria. Any modifications in the evaluation and selection criteria will be noted in the RFDP. The Department reserves the right, at its sole discretion, to modify the evaluation and selection criteria to meet the needs of the project and the Department.

Consistent with the policy goals of transparency and accountability, the Department will establish a publicly accessible schedule for the review of the detailed proposal(s). The Department will provide a publicly accessible evaluation of the detailed proposals based on the Act and these guidelines.

Based upon a review of the detailed proposals, the Department may select none, one, or more proposals for competitive negotiations. The Department will have 60 days to review the proposals. If none of the proposals are selected by the Department, each proposer who advanced to Phase Four will be notified in writing.

#### ***5.1.5 Phase Five: Negotiations***

If the Department, upon receipt and review of the detailed proposal, determines (1) that the proposal meets the selection criteria established for evaluation of the detailed proposal and (2) that initiation of the negotiation stage shall be in the public interest, the Department may initiate the negotiation stage. Components of the negotiations for the interim and/or the comprehensive agreement will, among other things, outline the rights and obligations of the parties, set a

maximum return or rate of return to the private entity, determine liability, and establish dates for termination of the private entity's authority and dedication of the facility to the Commonwealth.

The Department will establish a publicly accessible list of major issues to be resolved during negotiations and an anticipated schedule for the negotiation of the interim and/or comprehensive agreement.

### ***5.1.6 Phase Six: Interim and/or Comprehensive Agreement***

Once the Department and proposer have finalized the draft language of the interim and/or comprehensive agreement, the draft version will be forwarded to the Office of the Attorney General (OAG) for review and approval. Prior to signing the comprehensive agreement, the Administrator of the coordinating public entity will present to the Oversight Board the major business points of the comprehensive agreement. The Administrator has the statutory authority to enter into an interim or comprehensive agreement under the PPTA once the Department has received written approval of the procurement method from the Secretary of Transportation.

Final authorization by the Department to develop and/or operate any transportation facility will be contingent on successful negotiation and execution of an interim and/or comprehensive agreement between the private entity and the Department.

## ***6.0 PROPOSAL EVALUATION AND SELECTION CRITERIA***

Each unsolicited conceptual proposal submitted to the Department shall address the attached evaluation and selection criteria. Solicited proposals may utilize the evaluation criteria or develop specific criteria that are consistent with the priorities of the Department and the attributes and merits of the SFP. The SFP shall be consistent with the goals and principles of these guidelines. Any modifications in the evaluation and selection criteria will be noted in the SFP or the Request for Detailed Proposals (RFDP). The Department reserves the right, at its sole discretion, to modify the evaluation and selection criteria to meet the needs of the project and the Department.

### ***6.1 Qualifications and Experience***

Is the proposed team qualified, led, and structured in a manner that will clearly enable the team to complete the proposed project?

#### **1. Experience with Similar Infrastructure Projects**

Have members of this team previously worked together developing, constructing, operating, improving or managing transportation infrastructure? Has the lead firm

managed, or any of the member firms worked on, a similar privatization project? Describe experience with projects similar to the proposed project. Did proposer complete projects within the original contract completion date and within the original contract amount? Did the owner assess liquidated damages?

## **2. Past Performance**

Provide the following information for each firm or major subcontractor that will perform development and/or operation activities (dollar threshold for “major” subcontractor shall be specified in the SFP or RFDP):

(1) A sworn certification by an authorized representative of the firm attesting to the facts whether the firm is currently debarred or suspended by any federal, state or local government entity.

(2) A completed qualification statement in a form acceptable to the Department that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years, except as indicated, any of the following conduct:

- (A) bankruptcy filings
- (B) liquidated damages
- (C) fines, assessments or penalties
- (D) judgments or awards in contract disputes
- (E) contract defaults, contract terminations
- (F) license revocations, suspensions, other disciplinary actions
- (G) prior debarments or suspensions by a governmental entity
- (H) denials of prequalification, findings of non-responsibility
- (I) minimum five years safety performance data, including numeric “Experience Modification Rating” and issuing insurance company, “Recordable Incidence Rates,” “Lost Time Incidence Rates,” “OSHA 200 Summary and OSHA 300A Forms,” and OSHA violations, dates and disposition
- (J) violations of any federal, state or local criminal or civil law
- (K) criminal indictments or investigations
- (L) legal claims filed by or against the firm

## **3. Demonstration of Ability to Perform Work**

What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully

complete the project? Do the team and/or member firms have competing financial or workforce commitments that may inhibit successful completion and follow-through on this project? What is the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project? What training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State agency, are planned to be in place for employees of the firm and employees of any member of a consortium of firms?

**4. Leadership Structure**

Is one firm designated as lead on the project? Which firm is proposed to be the developer or operator under contract with the Department? Does the organization of the team indicate a well thought out approach to managing the project? Is there a written agreement in place between members?

**5. Project Manager's Experience**

Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?

**6. Management Approach**

Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the Commonwealth?

**7. Project Ownership**

Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

**8. Participation of Small Businesses, Businesses Owned by Women and Minorities and Local Firms**

What is the level of commitment and history of the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the project? To what extent will local subcontractors and suppliers be expected to participate in project development and implementation? Does the proposer offer job training opportunities to support the development and retention of an effective labor force throughout the life of the project? How will the proposer document and report on this commitment?

**9. Safety Record and Plan**

Does the proposal identify all construction partners and subcontractors safety records for a minimum of five years? Has a safety plan been developed and does it include means and methods for implementation and sustainability.

**10. Liability**

Is the liability structure among the team members clearly specified? Is there a written commitment to joint and several liability? If not, please explain why. Are there adequate parent company guarantees? Are there limits or caps on the proposer's liability and indemnification of the Department?

**6.2 Project Characteristics**

Is the proposed transportation facility technically feasible?

**1. Project Definition**

Is the project described in sufficient detail to determine the type and size of the project, the location of the project and all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives, (e.g. alignments) that may need to be evaluated?

**2. Proposed Project Schedule**

Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time?

**3. Operation**

Does the proposer present a reasonable statement setting forth plans for operation of the facility, including a schedule defining initiation of operations?

**4. Technology**

Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Does the technology proposed maximize interoperability with relevant local and statewide transportation technology?

**5. Conforms to Laws, Regulations, and Standards**

Is the proposed project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet appropriate state and federal standards?

**6. Federal Permits & Oversight**

Will the project require some level of federal involvement or oversight? Does the proposal include how federal regulatory and approval issues are addressed?

**7. Meets/Exceeds Environmental Standards**

Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does or will the proposed design meet appropriate state or Federal environmental standards? Does the proposal adequately address air quality conformity?

**8. Federal State and Local Permits and Approvals**

Does the proposal list the required permits and schedule to obtain them? Are there negative impacts known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

**9. Rights of Way**

Does the proposal set forth the method by which the private entity proposes to secure all property interests required for the transportation facility?

**10. Maintenance**

Does the proposer have a schedule and plan to maintain this facility in conformance with standards acceptable to the Department? Does the proposal clearly define assumptions or responsibilities during the operational phase including law enforcement, user fee collection and maintenance?

### **6.3 Project Financing**

Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility?

**1. Financing**

Does the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing? Is the financial information submitted on the proposer sufficient to determine the proposer's capability to fulfill its obligations described in the project proposal?

**2. Financial Plan**

Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and apportioned appropriately? Are the planned sources of funding and financing realistic? Does the proposer commit to sharing risk and/or cost on the project? Does the proposer clearly identify any necessary public funds to develop and/or operate the project?

**3. Estimated Cost**

Is the estimated cost of the facility reasonable in relation to the cost of similar projects? A significant portion of the final determination will rely on a cost/benefit analysis.

**4. Life Cycle Cost Analysis**

Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed project and/or facility?

**5. Concessions**

Does the proposer clearly quantify the public sector commitments for financing and duration of operations?

## **6.4 Public Support**

Has the proposer garnered sufficient public support for the proposed project?

**1. Community Benefits**

Will this project bring a significant transportation and economic benefit to the community, the region, and/or the state? Are there ancillary benefits to the communities because of the project? Are there adequate commitments to quantify and evaluate these benefits over the life of the project? What are the community benefits, including the economic impact the project will have on the Commonwealth and local community in terms of amount of tax revenue to be generated for the Commonwealth and political subdivisions, the number jobs generated and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts? Is the local workforce adequate to staff the development and operations activities?

**2. Community Support**

What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of the national and regional transportation issues and needs, as well as the impacts this project may have on those needs? Is there a demonstrated ability to work with the community?

**3. Public Involvement Strategy**

What strategies are proposed to involve local, state and federal elected officials in developing this project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating and obtaining community input through the development and life of the project?

## **6.5 Project Compatibility**

Is the proposed project compatible with appropriate transportation and land use plans?

**1. Compatibility with the Existing Transportation System**

Does this project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities? Is the project compatible with and connectable to existing and planned multi-modal facilities?

**2. Fulfills Policies and Goals**

Does the proposed project help achieve performance, safety, mobility, or transportation demand management goals? Does the project improve connections among the transportation modes?

**3. Enhance Community-Wide Transportation System**

Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?

**4. Address the needs of the Local, Regional and State Transportation Plans**

Does the project address the needs of the state, regional, and local transportation plans? Does the project support improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency? Does the project address the needs of plans and documents of the Virginia Multimodal Long Range Plan? If not, are steps proposed that will achieve coordination and meeting the needs with such plans?

**5. Land Use Impacts**

Has the proposed project been coordinated with local land use and comprehensive plans? What steps have been proposed with local planning officials to coordinate land use with proposed transportation facilities?

**6. Economic Development**

Will the proposed project enhance the state's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the region, consistent with stated objectives?



## ***7.0 THE COMPREHENSIVE AND/OR INTERIM AGREEMENT***

Prior to developing and/or operating a transportation facility, the private entity selected must enter into an agreement with the Department. The Department shall reserve the right to enter into either an Interim or a Comprehensive Agreement with the private entity. Each agreement will define the rights and obligations of the Department and the respective private entity with regard to the project. The Department will seek such policy, legal, financial, and technical advice as may be required to successfully negotiate the agreement(s). The Department also may seek the advice and involvement of affected state, local or regional public entities during the negotiation process.

### ***7.1 Comprehensive and/or Interim Agreement Terms***

If the Department determines that an interim agreement will create a framework for establishing a process or timing of negotiations or facilitate the commencement of activities related to the project, the Department Administrator has the contractual authority to enter into an interim or comprehensive agreement under the PPTA once the Department has received written approval of the procurement method from the Secretary of Transportation. Once the Department determines whether an interim or comprehensive agreement is warranted for the project, the agreement may include but not be limited to:

1. The right of the private entity to develop and/or operate the transportation facility, the date of termination of the private entity's authority, duties and rights to operate the transportation facility, and the conditions under which the transportation facility will be dedicated to the responsible public entity;
2. The mechanism by which user fees, if any, may be established from time to time upon agreement of the parties or following a process of public comment. Any user fees shall be set at a level that take into account any lease payments, service payments, and compensation;
  - a. A copy of any service contract shall be filed with the Department;
  - b. A schedule of the current user fees shall be made available by the private entity to any member of the public on request;
  - c. Classifications according to reasonable categories for assessment of user fees may be made;
  - d. Parties shall establish fees that are the same for persons using the facility under like conditions except as required by agreement between parties to preserve capacity and prevent congestion on the facility.

3. The performance milestones that will be required of the private entity;
4. The right of the private entity to cross, subject to applicable permit requirements and other requirements of law, any canal or navigable water course;
5. The manner in which utilities are to be crossed or relocated and the obligation to pay the cost thereof;
6. The manner in which the private entity and the Department will work together to establish interconnections and interoperability between the transportation facility and other public transportation facilities;
7. The procedures by and conditions under which the Commonwealth will exercise its power of eminent domain to facilitate the transportation facility;
8. The design, construction, operation and maintenance standards with which the private entity must comply;
9. The requirements of the private entity to submit plans, conforming to standards acceptable to the Department, for the development and/or operation of the transportation facility, for Department for approval;
10. The rights of the Department, its successor, or assignee to inspect construction of, or improvements to the transportation facility;
11. The obligation of the private entity to maintain the transportation facility and the rights of the Department, its successor, or assignee to monitor the private entity's maintenance;
12. The right of the private entity to make and enforce, with the consent of the Department, reasonable rules with respect to the transportation facility;
13. The terms under which the private entity will reimburse the responsible public entity for services provided;
14. The terms under which compensation to the private entity, which may include a reasonable development fee and/or reimbursement of development expenses, in the event of termination for convenience by the responsible public entity;
15. The reasonable maximum return or rate of return on investment authorized for the private entity to earn;

- a. The formula by which such rate of return will be calculated;
  - b. The distribution of any earnings in excess of the negotiated maximum rate of return; and
  - c. The payment of remaining revenues to the private entity upon the occurrence and during the continuation of material default, as remedy of such default, subject to the negotiated maximum rate of return.
16. The terms and conditions under which the Department may make grants or loans, or to contribute financial and/or in-kind resources, if any, for the development and/or operation of the transportation facility;
  17. The rights of the Department to dedicate property interest to the private entity for public use; conveyance of such property interests to the private entity in connection with a dedication under §56-564 of the Code of Virginia which may include licenses, franchises, easements, or any other right or interest the Department deems appropriate;
  18. The events that will constitute private entity defaults, private entity's rights to notice and cure and the remedies available to the Department;
  19. The events that will constitute Department defaults, the Department's rights to notice and cure and the remedies available to the private entity;
  20. Lender's rights and remedies with respect to private entity defaults and Department remedies;
  21. The events that will constitute force majeure and the remedies the parties will have in the event of occurrence;
  22. The insurance and bonding requirements the private entity will be required to meet at each stage of development and/or operation of the transportation facility;
    - a. Performance and payment bonds shall be in form and amounts satisfactory to the Department.
    - b. Insurance policies shall be filed and maintained by proposers in form and amounts satisfactory to the Department and reasonably sufficient to insure coverage of tort liability as set out in §56-566.4 of the Code of Virginia.
  23. The guaranteed cost and completion guarantees related to the development and/or operation of the transportation facility and payment of damages for failure to meet the completion guarantee;

24. The allocation between the private entity and the Department of liabilities for, among others, property damage, personal injury, transportation facility repair and hazardous waste remediation;
25. The obligations of the private entity to maintain records, to allow inspection and audit and to provide regular reports to the Department;
26. The obligations of the private entity to file appropriate financial statements in form and frequency acceptable to the Department;
27. The conditions under which the private entity or the Department may assign its rights under an interim or a comprehensive agreement and/or its rights to the transportation facility; and
28. Other requirements of the Public-Private Transportation Act of 1995, as amended.

If the Department determines that an interim agreement prior to or in connection with the negotiation of the comprehensive agreement should be used, it shall:

- a. Permit the private entity to commence activities for which it may be compensated relating to the proposed transportation facility, including:
  1. project planning and development,
  2. advance right of way acquisition,
  3. design and engineering, environmental analysis and mitigation,
  4. survey,
  5. conducting transportation and revenue studies,
  6. and ascertaining the availability of financing for the proposed facility or facilities;
- b. Establish the process and timing of the negotiation of the comprehensive agreement; and
- c. Contain any other provisions related to any aspect of the development and/or operation of a transportation facility that the private entity and the Department may deem appropriate.

Any changes in the terms of the interim and/or comprehensive agreement as may be agreed upon by the parties from time to time, shall be added to the interim and/or comprehensive agreement by written amendment.