

The Commonwealth of Virginia

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

Implementation Guidelines

Edits to the guidelines address the following new legislation:

Chapter 936 of the 2006 General Assembly Session, and
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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 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’s Administrator or his/her designee. For example, the Commonwealth Transportation Commissioner is the Department Administrator for the Department of Transportation. 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 goal of these guidelines is to specify a PPTA 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 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 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.

1
2 • Proposals must include specific actions that share cost and/or risk between the parties beyond
3 those commonly obtained through the competitive bidding or competitive negotiation
4 process, including but not limited to, one or more of the following:

- 5
6 • Direct capital investment;
7 • Dedicated revenue sources such as tolls or special tax districts;
8 • Lower project cost;
9 • Decreased delivery time due to pooling of funding resources;
10 • Project cost guarantees;
11 • Project schedule guarantees; and
12 • Product quality warranties.

13
14 Proposals must fully disclose all public sector financial commitments, including any federal,
15 state, regional or local public funds. Proposals must also identify the development of user fees or
16 any long-term public sector commitments including, but not limited to, operations and
17 maintenance costs.

18
19 • Proposals should reflect the Commonwealth's policy of multimodal and intermodal
20 solutions to transportation problems;

21
22 • Proposals must support and promote the overall transportation goals and priorities as
23 identified in the appropriate state, regional, or local transportation plans. Proposals that do
24 not support and promote the overall transportation goals and priorities of the Department, or
25 fail to provide substantial justification to alter these goals and priorities, will be returned
26 promptly to the proposer to avoid the unnecessary expenditure of both public and private
27 funds;

28
29 • Proposals must be in compliance with or specify how it will satisfy all applicable state and/or
30 federal laws and regulations including the National Environmental Policy Act (NEPA) of
31 1969;

32
33 • Proposals will be evaluated in conjunction with a structured opportunity for public
34 participation as set forth in these guidelines;

35
36 • Proposals should reflect the goals of transparency and accountability and, therefore, should
37 contain confidential information only when necessary to provide information to the
38 Department for evaluation of the proposal. All information will be made public unless its
39 release would clearly and adversely affect the financial interest of the public or the private
40 entity, or the bargaining position of either entity, as determined by the Department in its sole
41 discretion;

42
43 • To strengthen the integrity of the procurement process under the Act, as a condition of
44 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 in these guidelines and/or any solicitation documents. The goal of this condition is to ensure the integrity of the procurement process.

- Operators 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 by the operator.

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

1 Within 30 days of the close of the competition period for unsolicited proposals, the Department
2 will review any competing proposals for quality control and determine whether the proposal is
3 competing and compliant with applicable laws and these guidelines. All proposals that pass the
4 quality control review will be forwarded immediately to the Secretary of Transportation. During
5 quality control review, the Department will name a representative who will be the single point of
6 contact for the Department. That representative will manage all communication regarding
7 proposal evaluations.
8

9 Within 30 days of the close of the period for solicited proposals, the Department will review all
10 proposals to determine whether the proposal (s) meet the requirements of the SFP. All proposals
11 which meet the requirements of the SFP shall move forward to the Secretary of Transportation.
12

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

19 The IRP will review the proposals, any comments received from affected jurisdictions or the
20 general public, and any analysis made available to the IRP. The IRP will evaluate the proposals
21 in accordance with selection criteria specified herein or as specified in the Department's
22 solicitation; and will make recommendations to the Department's or public entity's Oversight
23 Board. For the Virginia Department of Transportation (VDOT) and the Virginia Department of
24 Rail and Public Transportation (DRPT), the Oversight Board would be the Commonwealth
25 Transportation Board (CTB). For the Virginia Department of Aviation (VDOA) it would be the
26 Aviation Board, and for the Virginia Port Authority, the Board of Commissioners. The
27 recommendation would include whether to advance none of the proposals, or one or more
28 proposals to the detailed stage, any specific issues that should be addressed in a detailed
29 proposal, any substantive or procedural changes to the proposal itself, or any substantive or
30 procedural changes to be affected by the Department or the Oversight Board. The IRP may
31 recommend that the proposal(s) is/are an adequate basis to begin negotiations of an interim or
32 comprehensive agreement consistent with the provisions in Section 5.1.4.
33

34 ***2.5 Project Selection and Comprehensive Agreement***

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

39 Final authorization to develop and/or operate any qualifying transportation facility will be
40 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, and in accordance with the PPTA and the Virginia Freedom of Information Act (FOIA).

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 (~~▼~~FOIA) (§2.2-3700 et seq.). Proposers are advised to familiarize themselves with the ~~▼~~FOIA provisions to ensure that records~~documents~~ identified as being exempt from disclosure under FOIA~~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 records~~requested materials~~ are exempt from disclosure. In the event the Department elects to disclose the records~~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 believes certain records are exempt from disclosure under FOIA ~~has special concerns about confidential or proprietary information that it would desire to make available to the Department, prior to submission of its proposal, then the~~ such proposer may wish to ~~shall~~:

1. Make a written request to the Department identifying with specificity the data or other material for which protection is sought and a clear statement of the reasons for invoking the protection with reference to one or more of the classes of records listed under §2.2-3705.6(11). If necessary, the proposer may request a meeting to specify and justify why such records are exempt from disclosure.;
- ~~1. Make a written request to the Department for a meeting to specify and justify proposed confidential or proprietary documents;~~
2. Upon request, the proposer will mMake an oral presentation to Department staff and legal counsel regarding the requested exemption. The Department will make a written determination on the request and provide that determination to the proposer;
- ~~3. Receive written notification from Department accepting/rejecting confidentiality request; and,~~
3. Conduct similar process with affected jurisdictions. Once a written determination is made by the Department related to the nature and scope of the protection, the records afforded protection under subdivision 11 of § 2.2-3705.6 shall continue to be protected from disclosure when in the possession of the responsible public entity or any affected jurisdiction to which such records are provided. If the written determination provides less protection than requested by the proposer, the proposer shall have the opportunity to withdraw the proposal.

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

§2.2-3705.6 and §56-573.1:1, 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 bargaining of other interim agreements related to the qualifying transportation facility or the process of bargaining and the process of negotiating all phases or aspects of the comprehensive agreement is complete, the Department will make available for public inspection procurement records, in accordance with § 2.2-4342 of the Code of Virginia; Procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.), (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise, or (iii) cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity.
- ~~• ; 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 memorandum, staff evaluationseconfidential and proprietary information, and related records, where, if the records were made public prior to the execution of an interim or comprehensive agreement, may remain confidential if for as long as the financial interest or

bargaining position of the Department or the private entity would be adversely affected; provided, however, that a written basis for this determination has been made by the Department.

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.

Proposals not accepted by the Department or withdrawn by the private entity prior to acceptance shall be returned to the private entity in their entirety and no disclosure of any documents not accepted or withdrawn shall be made.

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.

Conceptual proposals shall be posted on the Department's website and the Department of General Services web-based electronic procurement program "eVA" within 10 working days after acceptance by the Department. The Department may also post the proposal by additional means as deemed appropriate so as to provide maximum notice to the public. In addition, one copy of the proposal(s) will be made available for public inspection at the Department's or local jurisdiction's central office location.

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 for a minimum of 30 days 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. The public comment period may be concurrent with the affected local jurisdiction comment period.

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 interim or comprehensive agreement, the Administrator of the coordinating public entity will present to the Oversight Board, *at a regularly scheduled meeting of the Oversight Board that is open to the public*, 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.

|

DRAFT 8/15/06

APPENDICES

APPENDIX A

DEPARTMENT RIGHTS AND DISCLAIMERS

Rights Reserved

The Department reserves all rights available by law in processing PPTA proposals, including, without limitation, the sole and unfettered right to:

- Reject any and all proposals at any time;
- Terminate evaluation of any and all proposals at any time;
- Suspend, discontinue and/or terminate interim or comprehensive agreement negotiations with any proposer at any time prior to the actual authorized execution of such agreement by all parties, subject to appropriate documentation;
- Negotiate with a proposer without being bound by any provision in the proposal;
- Request or obtain additional information about any proposals;
- Issue addenda to, and/or cancel, any Solicitation for Proposal (SFP);
- Revise, supplement or withdraw all or any part of these guidelines;
- Decline to return any and all fees required to be paid by proposers as part of the evaluation process; and
- Request revisions to conceptual or detailed proposals.

Disclaimers and Conditions for PPTA Proposals

- Neither the Commonwealth nor any of its political subdivisions, agencies, or employees shall be liable for, or reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements;
- Any and all information made available to proposers is made for convenience purposes only, and is without representation or warranty of any kind;

- Proposers must submit questions concerning the PPTA process in writing to the designated representative of the Department, who will coordinate a response in writing; proposers may not rely on oral responses to inquiries;
- The proposal must be submitted to the responsible public entity that has, or may assert, the power itself to perform the functions the proposer seeks to perform with respect to at least part of the specified transportation facilities. The Department reserves the sole right to make this determination for any proposal submitted to the Department.

APPENDIX B

ADDITIONAL INTERNET RESOURCES

Other information is available from one or more of the following resources:

Virginia Department of Transportation - VDOT (transportation information, contacts):

<http://www.virginiadot.org>
~~http://www.virginiadot.org~~

Department of Rail and Public Transportation - DRPT (transportation information, contacts):

<http://www.drpt.virginia.gov>

Virginia Department of Aviation - VDOA (transportation information, contacts):

<http://www.doav.virginia.gov/>

Department of Motor Vehicles – DMV (vehicle information, locations, contacts):

<http://www.dmv.state.va.us/>

Virginia Port Authority – VPA (facilities, port information, contacts):

<http://www.vaports.com>

~~http://www.vaports.com~~

Secretary of Transportation (transportation information, contacts):

<http://www.transportation.virginia.gov>

Secretary of Administration (related information, PPEA, contacts):

<http://www.administration.virginia.gov>

Department of the Treasury (debt management information, contacts):

<http://www.trs.virginia.gov>

Department of Planning and Budget (procedural information, contacts):

<http://www.dpb.virginia.gov/index.htm>

Legislative Information System (Code of Virginia, current and past legislative activity, legislator contacts): <http://legis.state.va.us/lis.htm>

Public Private Transportation Act (PPTA) of 1995 (Link is within Legislative Information System) <http://leg1.state.va.us/cgi-bin/legp504.exe?051+ful+CHAP0504>

The Virginia Freedom of Information Act (Under the Code of Virginia at §2.2-3700)

<http://leg1.state.va.us/cgi-bin/legp504.exe?000+cod+2.2-3700>

The Transportation Partnership Opportunity Fund (TPOF)

<http://www.viriniadot.org/projects/tpof.asp>

APPENDIX C

DISCLOSURE AGREEMENT/CERTIFICATION FORM

This completed form must accompany all proposals submitted under the provisions of the Public-Private Transportation Act (PPTA). If omitted, the proposal will not be processed until the responsible public entity receives a completed form. A copy of this form will be included in the permanent file maintained by the Department for all proposals.

Freedom of Information Act:

- ☐ I (we) certify that I (am) we (are) familiar with the statute that deals with the release of information submitted under the Freedom of Information Act (§ 2.2-3700 et seq.) as it relates to PPTA proposals, and will not hold the Commonwealth, any of its political subdivisions, agencies, or employees liable for the disclosure of all or part of a PPTA proposal. I (we) understand that if a FOIA request is made for confidential records in a proposal:
- Public entity will contact the proposer to allow a claim for exemption to be made pursuant to the Code of Virginia;
 - Public entity will determine whether the exemption has been properly claimed; and
 - Public entity will attempt to provide advance notice to the proposer if the requested records are disclosed.¹

Communication:

- ☐ I (we) agree to limit all communications within the Executive Branch, including advocacy efforts, to the individuals or entities designated in these guidelines and/or any solicitation documents. The goal of this condition is to ensure the integrity of the development, evaluation and negotiation process.

Debt Issues:

This proposal does ☐ does not ☐ require the creation of state-supported debt.

- ☐ If the proposal does require state-supported debt, I (we) understand that procedures established by the General Assembly, Governor, Department of the Treasury, and the Department of Planning and Budget must be followed.

¹ Prior to submission of a proposal, proposers may make written request to the Department for a meeting to identify and justify status of proposed confidential documents; make an oral presentation to Department; and follow similar procedure with affected local jurisdictions to determine if FOIA exemptions apply. The public entity will notify the proposer of the decision.

Environmental Requirements: ☐ I (we) understand that the proposal must comply with all applicable state and/or federal laws and regulations concerning the environment, and agree to follow any procedures to implement them.

Oral Presentations (at option of the Department):

☐ I (we) understand that one or more oral presentations to explain details of the project may be required.

Signature of Proposer

Signature of Proposer

Title

Title

Company/Consortium

Company/Consortium

Received by: _____
Name and Title

Date

Proposal Identification Number: _____

PROCUREMENT APPROVAL FORM

Under § 56-573.1 (2) of the PPTA, responsible public entities must follow the provisions of § 56-573.1 (1) unless they determine that there is mutual advantage to the entity and the public based on (i) the probable scope, complexity, or urgency of a project or (ii) risk sharing, including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity or (iii) an increase in funding, dedicated revenue sources or other economic benefit that would not otherwise be available. This determination must be made in writing, and, if the responsible public entity is a state agency, the Secretary of Transportation must approve the decision before the comprehensive agreement is signed. In most cases, this approval should be secured before significant public and private investment occurs in the development of a detailed proposal.

State Agency: _____

Project: _____

Location: _____

Proposer: _____

Description of Proposal:

Reasons for Departing from Provisions of § 56-573.1(1):

Secretary's Review:

I have reviewed the appropriate documentation related to this proposal, and I do ☐ do not ☐
approve the state agency's decision to proceed with the procurement as competitive sealed bids ☐ or
competitive negotiations ☐ under §56-573.1 of the Code of Virginia and as outlined above.

Name
Secretary of Transportation

Date

APPENDIX D

CHECKLIST FOR PROPOSALS

Yes No

- | | | |
|--------------------------|--------------------------|--|
| <input type="checkbox"/> | <input type="checkbox"/> | Is proposal content complete, clear, and concise? Proposals should include a comprehensive scope of work, and have enough detail to permit the responsible public entity to determine if pertinent PPTA criteria are met, including financial information. Incomplete proposals may result in lowered evaluation or the proposer may be allowed to submit omitted information. |
|--------------------------|--------------------------|--|

Yes No

- | | | |
|--------------------------|--------------------------|---|
| <input type="checkbox"/> | <input type="checkbox"/> | Have proposal requirements listed below been met? |
|--------------------------|--------------------------|---|

Conceptual Proposal Items (separated by tabs):

Qualifications and Experience – Tab 1

- ☐ Identify the legal structure of the firm, or consortium of firms making the proposal, including the specific liability structure (e.g. individual or joint and several). Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- ☐ Describe the experience of each firm and the key principals involved in the proposed project. Describe the length of time in business, business experience, public sector experience and other engagements of the firm(s). Describe experience with projects similar to the proposed project. Did the firm and key principles complete these projects within original contract completion dates and within original contract amount? Did the owner assess liquidated damages? Did the firm and key principles certify that it is not currently debarred or suspended by any federal, state or local entity? Has the firm and key principles provided a statement that covers items in Section 6.1 Item (2) (2) ? The lead organization must be identified.
- ☐ Identify the Project Manager, and if the person works 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?
- ☐ Include the address, telephone number, and the name of a specific contact person for an entity for which the firm/consortia or primary members of the consortia have completed a similar project.
- ☐ 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?

- ☐ Include the history and level of commitment of the key principles to use small, minority and women-owned business enterprises in implementing this project. What is the planned participation of small, women, and minority-owned businesses during project development and implementation. To what extent will local subcontractors and suppliers participate in this project? Are job training opportunities offered to support the development and retention of an effective labor force during the life of the project? How will the proposer document and report on this commitment?
- ☐ Provide a safety record (minimum of five years) for lead construction partners and subcontractors, as well as a safety plan for project implementation. Do these records include: 1. The numeric Experience Modification Rating, the rating year, and name of issuing insurance company? 2. A list of OSHA violations to include dates and disposition? 3. Recordable Incidence Rates and Lost Time Incidence Rates? 4. OSHA 200 and 300A Summary Forms or the information contained in these forms in a combined format? Are the results of these records satisfactory? Does the proposed safety plan provide adequate means and methods for effective implementation and sustainability?
- ☐ Specify the liability structure among the team members. Provide a written commitment to joint and several liability and adequate evidence of parent company guarantees. Are there limits or caps on the proposer's liability and indemnification of the Department?

Project Characteristics – TAB 2

- ☐ Provide a description of the transportation facility or facilities, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the project in sufficient detail so the type and intent of the project, the location, and the communities that may be affected are clearly identified. Describe the assumptions used in developing the project. The project description should be prepared in a way that fully recognizes any federal and/or Commonwealth requirements to analyze other project alignments and alternatives.
- ☐ 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?
- ☐ Identify and fully describe any work to be performed by the Department or other public or private entities.
- ☐ Include a list of all federal, state and local permit and approvals required for the project, a schedule for obtaining such permits and approvals, and how any regulatory issues will be addressed. Identify

- which, if any, permits or approvals are to be obtained by the Department and have specific oversight requirements.
- ☐ Without completing the anticipated Environmental Document, identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts. Identify the projected positive social, economic and environmental impacts of the project.
 - ☐ List the critical factors for the project's success.
 - ☐ 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?
 - ☐ Propose allocation of risk and liability for post agreement work, and assurances for timely completion and safe operation of the project.
 - ☐ Clearly state the assumptions related to ownership, legal liability, law enforcement and operation of the facility.
 - ☐ Provide information on any phased (partial) openings proposed prior to final completion of the work.
 - ☐ Include 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?

☐ **Project Financing – TAB 3**

- ☐ Provide a preliminary estimate and estimating methodology of the cost of the work by phase and/or segment (e.g. planning, design, construction).
- ☐ Submit a plan for the development, financing and operation of the project, showing: the anticipated schedule on which funds will be required; and proposed sources and uses for such funds, including any grants or loans requested by the private entity for the development and/or operation of a qualifying transportation facility.
- ☐ Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the plan.
- ☐ Identify the proposed risk factors for all participating entities and methods for dealing with these factors.
- ☐ Provide the proposed total life-cycle cost-specifying methodology and assumptions of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. Include in the life-cycle cost analysis a detailed analysis of the projected return and/or rate of return.
- ☐ Identify any local, state or federal resources that the proposer contemplates requesting for the project and investments the proposer anticipates making towards the project. Describe the total commitment (financial, services, grant, loans, property, etc.), if any, expected from governmental sources, private investors and the timing of any anticipated commitment (e.g., preliminary estimate and methodology of cost by phase and/or segment (planning, design, construction); plan for development, financing, and operation of facility, including funding schedule and proposed sources and uses of funds; list and discussion of assumptions supporting all major plan elements; risk factors and strategies for dealing with them; local/state/federal resources that may be requested for the project, along with total commitment, if any from public sector sources, and when these resources may be needed.
- ☐ Provide a financial statement of the firm/consortia and each major partner. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed.

Public Support –TAB 4

- |
- ☐ What are the transportation ~~and~~ economic benefits of this project to the community,, region and state? Do these benefits include impacts upon tax revenues, number of jobs generated and related pay and benefits of such jobs, training opportunities and programs, and the number and value of subcontracts generated for Virginia subcontractors? Identify who will benefit from the project, how they

will benefit and how the project will benefit the overall transportation system.

- ☐ Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, etc.
- ☐ Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

Project Benefit/Compatibility – TAB 5

- ☐ Describe the project's significant benefits to the community, region or state. Identify any state benefits resulting from the project including the achievement of state transportation policies or other state goals and compatibility with existing and planned multi-modal facilities.
- ☐ Describe significant benefits to the state's economic condition to include steps taken for coordination with local land use and comprehensive plans. Discuss whether this project is critical to attracting or maintaining competitive industries and businesses to the state or region. What is the impact upon local economy, jobs and job market?
- ☐ Describe how the project has been coordinated with local land use and comprehensive plans. What steps have been taken with local officials to coordinate land use and proposed transportation facilities? Does the project support improving safety, reduce congestion, increase capacity, and/or enhance economic efficiency?

Specific Deliverables (delivery dates to be determined on case-by-case basis):

- ☐ Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed facility or facilities.
- ☐ Provide a list of public utility facilities that will be crossed or affected by the transportation facility and a statement of the private entity's plans to accommodate such utility facility.
- ☐ Provide a statement setting out the plan for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the property as well as a list of any property the proposer intends to request the Commonwealth to condemn.
- ☐ Provide a detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties. Include a brief description of the guarantees and warranties.

- ☐ Provide the proposed total life-cycle cost-specifying methodology and assumptions of the facility or facilities and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. Include in the life-cycle cost analysis a detailed analysis of the projected return and/or rate of return.
- ☐ Include a detailed discussion of assumptions about user fees or toll rates, and usage of the facility such as traffic forecasts and assumptions.
- ☐ Identify any known government support or opposition, or general public support or opposition for the project. Government/public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, etc.

- ☐ Demonstrate how the proposal will address the needs identified in the state or local transportation plans and local comprehensive plan by improving safety, reducing congestions, increasing capacity, or enhancing economic efficiency. Proposer will also indicate if necessary, the steps required for acceptance into such plans.
 - ☐ Provide an explanation of how the proposed transportation facility would impact local transportation plans of each affected locality.
 - ☐ Include a detailed discussion that provides the means and methods that the private entity will implement to guarantee cost and completion of the project within the schedules identified in project characteristics.
 - ☐ Such additional material and information as the Independent Review Panel or the Department may reasonably request.
-

Format/Submittal Items:

- ☐ Proper format followed:
 - Executive summary;
 - Pages numbered, cross-referenced by citing tab number, subletter, and repeating text of requirement;
 - If response covers more than one page, tab number and subletter should be repeated at top of next page;
 - Table of contents should be included, with cross-references requirements by category
 - Supplemental information not required may be inserted where appropriate or placed at the end and designated as additional material; and
 - Each copy of a proposal must be bound or otherwise contained in a single volume, where practical, with all necessary documentation included.

Note: Proposals deviating from this format may be eliminated from consideration.

- ☐ Non-refundable, non-negotiable minimum Proposal Review Fee, for unsolicited proposals only, assessed as follows:
 - For projects whose total cost is expected to exceed \$50 million, a fee of \$50,000 is assessed to offset review costs. This fee will be broken down into two components based on progression of the proposals through the combined evaluation and selection process. A fee of \$10,000 must accompany each conceptual proposal submitted for the first part of the combined review phase; prior to entry into the fourth phase, the balance of \$40,000 must be submitted for each proposal.

- For projects whose total cost is expected to be equal or less than \$50 million, a \$5,000 fee is assessed at the conceptual proposal stage and a \$20,000 fee is assessed at the detailed proposal stage.
- Proposers submitting multiple project proposals must submit a Proposal review fee for each project.
- If the cost of reviewing the detailed proposal exceeds the fees noted above, the Department may assess the proposer the additional state cost to evaluate the detailed proposal.

Note: Failure to submit all fees will result in suspension of consideration of a proposal.

- ☐ Fee submitted in the form of a cashier's check payable to the Treasurer of Virginia.
- ☐ Proposal signed by authorized representative of firm/consortium.
- ☐ Twenty paper copies and one electronic copy in PDF format of proposal, sealed in a mailing envelope or package bearing proposer's name, address, and the phrase "Public-Private Transportation Proposal" clearly shown on the outside of proposal shall be delivered to the coordinating public entity. The Department or responsible coordinating public entity 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 Agency Administrator.
- ☐ Copies of proposal also prepared and sent directly to the governing body of each jurisdiction (city, county, town, etc.) affected by the proposed project. A list of all jurisdictions provided a proposal must accompany the conceptual proposal, with name and address of recipient and date delivered.

Proposers should send more detailed proposals developed during review and advisory phase to affected jurisdiction at the same time it is submitted to Department.

CHECKLIST FOR SELECTION AND EVALUATION CRITERIA

The proposal evaluation and selection criteria contained in these guidelines have been developed so the Department can critically evaluate the attributes each proposer submits in their proposal. Each conceptual unsolicited proposal submitted to the Department should follow the attached evaluation and selection criteria. Solicited proposals can utilize the attached evaluation criteria or develop specific criteria that are consistent with the priorities of the Department and the attributes and merits of the RFP. Any modifications in the evaluation and selection criteria will be noted in the RFP 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.

Satisfactory Assessment?	Criteria
Yes No <input type="checkbox"/> <input type="checkbox"/>	A. Qualifications and Experience - Does the proposer propose a team that is qualified, led, and structured in a manner that will clearly enable the team to complete the proposed project?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Experience with Similar Infrastructure Projects</i> - Have members of this team previously worked together constructing, improving or managing transportation infrastructure? Has the lead firm managed, or any of the member firms worked on, a similar privatization project? Has the proposer experience with similar projects and were these completed within original contract completion dates and within original contract amounts? Did the owner assess liquidated damages?
Yes No	<i>Past Performance</i> – Has the firm and key principles provided certification that it is not currently debarred or suspended by any federal, state, or local government entity? Has the firm and each key principle provided a statement that confirms its business integrity to include bonding capacity, insurance and available equipment? Does this statement provide the disclosure of information as listed in Section 6.1 item (2) (2)?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Demonstration of Ability to Perform Work</i> - 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 success and follow-through on this project?

Satisfactory Assessment?	Criteria
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Leadership Structure</i> - Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there a written agrmt. in place between members?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Project Manager's Experience</i> - 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?
<u>Yes No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Management Approach</i> - 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?</u>
<u>Yes No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Project Ownership</i> - 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?</u>
<u>Yes No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Participation of Small Businesses and Businesses Owned by Women and Minorities and local firms</i> -What is the history and level of commitment by the proposers to use small, minority-, and women owned business enterprises in developing and implementing the project? To what extent will small, minority and women owned businesses and local subcontractors and suppliers be expected to participate in project development and implementation? Are job training opportunities offered to support the development of an effective workforce throughout the life of the project? How will this commitment be documented and reported?</u>

Satisfactory Assessment?	Criteria
Yes — No <input type="checkbox"/> — <input type="checkbox"/>	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?
Yes — No <input type="checkbox"/> — <input type="checkbox"/>	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?
Yes — No <input type="checkbox"/> — <input type="checkbox"/>	Participation of Small Businesses and Businesses Owned by Women and Minorities and local firms — What is the history and level of commitment by the proposers to use small, minority, and women owned business enterprises in developing and implementing the project? To what extent will small, minority and women owned businesses and local subcontractors and suppliers be expected to participate in project development and implementation? Are job training opportunities offered to support the development of an effective workforce throughout the life of the project? How will this commitment be documented and reported?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Safety Record and Plan</i> – To what extend does the proposal identify the construction partners and subcontractors safety records for a minimum of five years? Do records include Experience Modification Rating, OSHA citation, Recordable and Lost Time Incidence Rates, and OSHA 200 and 300A forms or comparable information in combined similar format? Do these records indicate a satisfactory rating for all activities? Was a safety plan developed and does it include means and methods for implementation and sustainability?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Liability</i> - Is the liability structure among the team members clearly specified? Is there a written commitment to joint and several liability? Are there adequate parent company guarantees? Are there limits or caps on the proposer's liability and indemnification of the Department
Yes No <input type="checkbox"/> <input type="checkbox"/>	B. Project Characteristics - Is the proposed transportation facility technically feasible?

Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Project Definition</i> - Is the project described in sufficient detail to determine the type and size of the project, the location, all proposed interconnections with other transp. facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated?
<u>Yes No</u> <u><input type="checkbox"/> <input type="checkbox"/></u>	<u><i>Proposed Project Schedule</i> - 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?</u>
<u>Yes No</u> <u><input type="checkbox"/> <input type="checkbox"/></u>	<u><i>Operation</i> - Does the proposer present a reasonable statement setting forth plans for operation of the facility, including a schedule defining initiations of operations?</u>
<u>Yes No</u> <u><input type="checkbox"/> <input type="checkbox"/></u>	<u><i>Technology</i> - 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?</u>

Satisfactory Assessment?	Criteria
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Conforms to Laws, Regulations, and Standards</i> - Is 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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Federal Permits & Oversight</i> – Will the project require some level of federal involvement or oversight? Does the proposal include how federal regulatory and approval requirements will be met and how issues will be addressed?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Meets/Exceeds Environmental Standards</i> - 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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>State and Local Permits</i> - 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?
<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Rights of Way</i> - Does the proposal set forth the method by which the private entity proposes to secure all property interests required for the transportation facility?</u>
<u>Yes</u> <u>No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Maintenance</i> - Does the proposer have a 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?</u>

Satisfactory Assessment?	Criteria
Yes No <input type="checkbox"/> <input type="checkbox"/>	C. 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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Financing</i> - Did 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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Financial Plan</i> - 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 dealt with sufficiently? 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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Estimated Cost</i> - 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.
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Life Cycle Cost Analysis</i> - 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?
<u>Yes No</u> <input type="checkbox"/> <input type="checkbox"/>	<u><i>Concessions</i> - Does the proposer clearly quantify the public sector commitments for financing and duration of operations?</u>
<u>Yes No</u> <input type="checkbox"/> <input type="checkbox"/>	D. Public Support - <u>Has the proposer garnered sufficient public support for the proposed project?</u>

Satisfactory Assessment?		Criteria
Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Community Benefits</i> - Will this project bring a significant transportation and economic benefit to the state, region, and/or localities? Do these benefits include increases to tax revenue, the number of jobs, available training opportunities and programs, and subcontracts awarded to Virginia subcontractors? Are there ancillary benefits to the communities because of the project?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Community Support</i> - 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?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Public Involvement Strategy</i> - What strategies are proposed to involve local and state 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?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	E. Project Compatibility - Is the proposed project compatible with appropriate transportation and land-use plans?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Compatibility with the Existing Transportation System</i> - 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 plans and facilities?
Yes <input type="checkbox"/>	No <input type="checkbox"/>	<i>Fulfills Policies and Goals</i> - Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Is the project compatible and coordinated with existing and planned multi-modal facilities and does the project improve connections among the transportation modes?

Satisfactory Assessment?	Criteria
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Enhance Community-Wide Transportation System</i> - Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Address the needs of the Local, Regional and State Transportation Plans</i> - Does the project addressing the needs of the state, regional and local transportation plans? Does the project improve safety, reduce congestion, increase capacity, and/or enhance economic efficiency? Is this project addressing 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?
Yes No	<i>Land Use Impacts</i> –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?
Yes No <input type="checkbox"/> <input type="checkbox"/>	<i>Economic Development</i> - 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?

**CHECKLIST FOR TERMS AND CONDITIONS OF COMPREHENSIVE
AGREEMENT**

Specific terms and conditions will vary, depending on the circumstances and situations unique to each proposal. However, the following terms and conditions must be included:

- ☐ Private entity's rights to acquire, construct, improve and /or operate the transportation facility, duration of rights, and conditions under which the facility will be dedicated to the responsible public entity;
- ☐ Method by which user fees (if any) may be established, plus:
 - Copy of any service contract must be forwarded to the Department;
 - Schedule of current user fees shall be made available by the private entity to any number of the public on request;
 - Classifications according to reasonable categories for assessment of user fees may be made.
- ☐ Performance milestones required of the private entity;
- ☐ Right of the private entity to cross, as granted by permit or other laws or regulations, any canal or navigable water course;
- ☐ Issues regarding utilities, including crossings, relocations, related cost obligations;
- ☐ Method by which the private entity and the Department will incorporate the transportation into the existing transportation system;
- ☐ Procedures and conditions under which the Commissioner may exercise the power of eminent domain;
- ☐ Design, construction, operation and maintenance standards the private entity must follow;
- ☐ Requirements of the private entity to submit plans and specifications for the transportation facility to the Department for approval;
- ☐ Rights of Department to inspect construction or improvements to the transportation facility, plus the right of Department to monitor maintenance to ensure private entity obligations are met;
- ☐ Right of the private entity, with Department approval, to make and enforce rules for the transportation facility;

- ☐ Terms for Reimbursement from the private entity to the responsible public entity for services provided;
- ☐ Reasonable maximum rate of return or return on investment authorized for the private entity to earn, along with the formula used to calculate this rate and the manner in which revenues will be distributed;
- ☐ Terms and conditions under which the Department may contribute resources (e.g., financial, in-kind, etc.) for the transportation facility;
- ☐ Events that will be considered defaults, plus the rights to notice and cure, and the remedies available to the Department and the private entity, respectively;
- ☐ Lender's rights and remedies with respect to private entity defaults and the Department's remedies;
- ☐ Events that will constitute *force majeure* and the remedies the parties will have if these events occur;
- ☐ Insurance and bonding requirements the private entity must meet at each stage;
- ☐ Allocation between the private entity and the Department of liabilities for items such as (but not limited to) property damage, personal injury, transportation facility repair and hazardous waste remediation;
- ☐ Private entity's obligation to maintain records, to allow inspection and audit and provide regular reports to the Department or appropriate state or federal regulatory agency that may be providing funding or oversight;
- ☐ Conditions under which the private entity may assign its rights under the comprehensive agreement and/or its rights to the transportation facility; and
- ☐ Other requirements of the PPTA (specify):
