

OVERVIEW OF THE VIRGINIA PUBLIC PRIVATE TRANSPORTATION ACT OF 1995 (AS AMENDED) and GUIDELINES

Jo Anne Maxwell
Senior Assistant Attorney General
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Background

Virginia PPTA, §56-556

- Broadly stated legislative authority
- Policy:
 - Public need for timely development and/or operation of transportation facilities in the Commonwealth
 - Traditional methods may not be adequate
 - P3 may be more timely or effective
 - Encourage private investment
 - Afford “greatest possible flexibility” in contracting

The Public-Private Transportation Act of 1995 [PPTA]

- **The PPTA:**
 - Flexible procurement authority
 - Authorizes contracts with private entities to develop and/or operate transportation facilities ... when it is more timely, more efficient, or less costly
- **The PPTA is not:**
 - All inclusive
 - Relevant statutes and regulations depend on project type and funding sources
 - Federal oversight
 - State oversight
 - Virginia FOIA
 - Suited or intended for all projects

Virginia PPTA – General / Mandatory Requirements

- Responsible Public Entity must:
 - Adopt and implement guidelines
 - Make written determination of procurement method [a finding of public interest]
 - Provide public information (transparency and accountability)
 - Post proposals and make available to public
 - Provide public comment period prior to execution
 - Audit of private entity's traffic and cost estimates and of public liabilities (Projects valued at \$50 million or more)
 - Present key business points to oversight board
 - Make procurement records available after signing contract

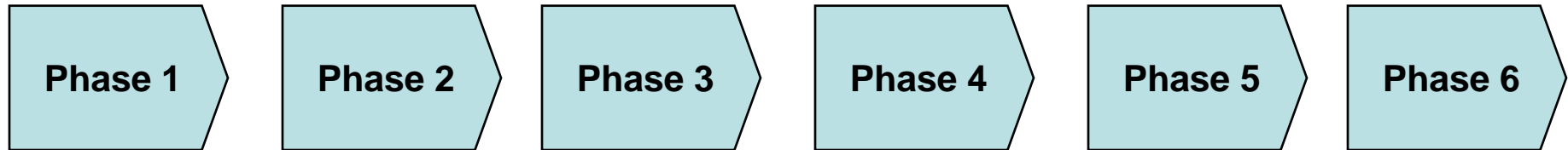
Overview of PPTA Guidelines

- Document setting forth requirements for Commonwealth's transportation-related agencies in dealing with PPTA proposals: VDOT; DRPT; Dep't of Aviation; DMV; & Va. Port Authority
- Like the Act, the PPTA Guidelines cover both Solicited & Unsolicited Proposals

Overview of PPTA Guidelines

- The major steps for evaluating, selecting & implementing projects are similar for both Solicited & Unsolicited Proposals
- While the Act and the Guidelines seek to promote competition-- the Act specifically exempts PPTA proposals from the terms of the Va. Public Procurement Act (§ 56-573.1)

VA PPTA Guidelines – Six Phase Process Timeline



<ul style="list-style-type: none"> •Proposals meet requirements of law, guidelines, and solicitation 	<ul style="list-style-type: none"> •IRP appointed by Secretary of Transportation •IRP reviews and evaluates proposals and allows for public comment •IRP recommends advancing none, one or more proposals 	<ul style="list-style-type: none"> •Oversight board reviews proposals and IRP recommendation •Oversight Board recommends advancement or rejection of one or more proposals 	<ul style="list-style-type: none"> •RPE requests detailed proposals •RPE evaluates detailed proposals •RPE selects one or more proposals for negotiation of Interim and/or Comprehensive Agreement 	<ul style="list-style-type: none"> • RPE and private entity negotiate multiple aspects of a contract 	<ul style="list-style-type: none"> •Interim and/or Comprehensive Agreement is executed •Project begins
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PPTA Process – Phase One

Quality Control

- Quality Control review consists of, but is not limited to, these criteria:
 - Does the proposal address needs identified in the appropriate local, regional or state transportation plan?
 - Does the proposal identify public needs that may not be wholly satisfied with existing procurement methods?
 - Does the proposal result in the availability of a facility to the public in a more timely, more efficient or less costly fashion?
 - Does the proposal provide for cost and/or risk sharing with private entities?
- Within 30 days of the close of competition (or the deadline for submission of Solicited Proposals), RPE forwards proposals that have passed the Quality Control Review to the Secretary of Transportation and advises proposers whether their proposals have passed or failed the Quality Control Review
- RPE notifies each affected local jurisdiction that it will be receiving a copy of the Conceptual Proposal and that it will have 60 days from receipt to comment

PPTA Process – Phase Two

Independent Review Panel

- IRP is chaired by the Secretary of Transportation (or his or her designee) and consists of the following members:
- Members of the agency's Oversight Board (for VDOT & DRPT, the Guidelines specify at least 3 members of the CTB);
- The chief planning, financial & engineering officers of the affected agency;
- Local or regional transportation professionals;
- Members of the academic community;
- Representatives of public or private interests, agencies or boards affected by the proposal;
- Other technically qualified appointees the Secretary of Transportation deems appropriate

PPTA Process – Phase Two

Independent Review Panel

To recommend advancement to detailed review phase an IRP:

- ***Must determine the proposer has:***
 - submitted a complete proposal;
 - assembled a qualified and capable team;
 - developed a technically feasible conceptual plan; and
 - has a financial plan providing the necessary public & private capital to finance the facility proposed
- ***Must consider written comments from affected jurisdictions***
- ***Must consider oral & written public comments***
- ***Must consider appropriate advice of the Oversight Board’s financial advisor & legal counsel***
- ***May include specific recommendations for issues to be considered during agency review of the detailed proposal***
- ***May include specific recommendations regarding policy, program, financial or project development it believes necessary or desirable to implement the project***

PPTA Process – Phase Three

Oversight Board Recommendation

- Within 60 days of receipt of the IRP's recommendations, the Oversight Board reviews the conceptual proposal & the IRP's recommendations and determines whether to advance the proposal to the detailed proposal stage
- If public funds are anticipated to be used for the project, the Oversight Board will be asked for a determination to support necessary future funding allocations

PPTA Process – Phase Four Submission and Selection of Detailed Proposal

- RPE forms a proposal review committee to review the recommendations of the IRP and Oversight Board and, within 45 days, may request one or more proposers to submit detailed proposals
- RPE is to complete its review of detailed proposals within 60 days of receipt
- RPE may select none/one or more detailed proposals for competitive negotiations
- RPE may proceed directly from the Oversight Board's recommendations to the negotiation phase – only if the agency determines:
 - a conceptual proposal adequately describes the project scope;
 - the planning engineering & environmental review processes are sufficiently advanced to enable an objective procurement or selection; and
 - the private entity has clearly presented an innovative risk profile and financial proposal that is sufficient to satisfy a critical transportation need

PPTA Process – Phase Five

Negotiations

- Affected agency may initiate negotiations when it determines:
 - a detailed proposal meets the selection criteria for evaluation; and
 - negotiations are in the public interest
- Among other things, negotiations cover the following subjects:
 - outline rights and obligations of parties;
 - set a maximum return or rate of return to private entity;
 - determine liability;
 - establish dates for termination of private entity's control and dedication of facility to the Commonwealth
- Agency is directed to establish a publicly accessible list of major issues for negotiation and an anticipated schedule for negotiations

PPTA Process – Phase Six

Interim and/or Comprehensive Agreement

- Once negotiations have been completed with respect to the draft language of the interim or comprehensive agreement, before the agency's Administrator executes the agreement:
 - the draft agreement is forwarded to the OAG for review; and
 - the Administrator of the affected agency advises the agency's Oversight Board of the agreement's major business points

PROPOSAL EVALUATION AND SELECTION CRITERIA

Guidelines Provide the
following Criteria for Review of Proposals:

Proposal Evaluation and Selection Criteria

- **Qualifications and Experience**
 - Experience with similar infrastructure projects
 - Past performance
 - Demonstration of ability to perform work
 - Leadership structure
 - Project manager's experience
 - Management approach
 - Project ownership
 - Participation of small, women and minority owned businesses
 - Safety record
 - Liability

Proposal Evaluation and Selection Criteria

- **Project Characteristics**
 - Project definition
 - Proposed project schedule
 - Operation
 - Technology
 - Conformity to laws, regulations and standards
 - Federal permits and oversight
 - Meets/exceeds environmental standards
 - State and local permits schedule
 - Rights of way
 - Maintenance

Proposal Evaluation and Selection Criteria

- **Project Financing**
 - Financing
 - Financial Plan
 - Estimated Cost
 - Life Cycle Cost Analysis
 - Concessions

Proposal Evaluation and Selection Criteria

- **Public Support**
 - Community benefits
 - Community support
 - Public involvement strategy

Proposal Evaluation and Selection Criteria

- **Project Compatibility**
 - Compatibility with existing transportation system
 - Fulfills policies and goals
 - Enhance community-wide transportation system
 - Address needs of local, regional or state transportation plans
 - Land use impacts
 - Economic development

Proposal Evaluation and Selection Criteria

Guidelines prescribe a non-exclusive list of 28 issues to be considered for inclusion in an agreement with a private entity