

INTRODUCTION

The Public-Private Transportation Act of 1995 (the Act) is the legislative framework enabling the Commonwealth of Virginia, qualifying local governments and certain other political entities to enter into agreements authorizing private entities to acquire, construct, improve, maintain, and/or operate qualifying transportation facilities. Passage of the Act, which took effect July 1, 1995, followed a year-long collaboration among the General Assembly, representatives from the private sector, and the transportation agencies.

The Act

The Act grants responsible public entities the authority to allow private entities to construct and/or operate qualifying transportation facilities if the public entities determine there is a need for the facilities and private involvement may provide the facilities to the public in a timely or cost-effective fashion. The Act defines "responsible public entities" to include any public entity that has the power to acquire, construct, improve, maintain and/or operate the transportation facilities. Individually negotiated comprehensive agreements will define the respective rights and obligations of the responsible public entity and the private operator.

Pursuant to § 56-558 (A and C), it is the intent of the Act to encourage public/private ventures for transportation facilities which may result in the availability of facilities in a more timely or less costly fashion and to facilitate to the greatest extent possible the federal pooling and funding mechanisms to the end that transportation financing be expanded and accelerated and have the greatest possible flexibility in contracting between public and private entities.

The complete text of the Public-Private Transportation Act of 1995 has been included in the Appendix to these guidelines. Although guidance with regard to application of the Act is provided herein, it will be incumbent upon all entities--both public and private--to comply with the provisions of the Act.

EXECUTIVE SUMMARY

Following are procedural guidelines developed by the Commonwealth Transportation Commissioner (the Commissioner) to guide the selection of projects under the purview of the Virginia Department of Transportation (VDOT) and the Virginia Department of Rail and Public Transportation (DRPT). Other responsible public entities (other state agencies such as the Virginia Port Authority, and cities, counties, etc.) are invited to use or adopt the same or similar guidelines in order to provide the greatest degree of uniformity and consistency in application of the Public-Private Transportation Act of 1995, thereby encouraging greater industry participation.

Throughout this document, references to the responsible public entity specify the Virginia Department of Transportation; however for rail and mass transit project proposals, DRPT would be substituted when appropriate as the responsible public entity. In such instances, the composition of the Initial Review Committee and the Public-Private Transportation Advisory Panel will be reflective of DRPT as the responsible public entity and the Director of Rail and Public Transportation will act wherever the Commissioner is designated herein.

The Public-Private Transportation Act 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 will identify many prospective projects, although state agencies and qualifying localities are empowered to solicit proposals generally or for specific projects.

Private entities may also propose innovative financing methods, including the imposition of user fees or service payments under the provisions of the Act. The financing arrangements of the private entity may include the issuance of debt, equity or other securities or obligations. The 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 § 11-37, the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 11-35 et seq.).

Solicited Proposals

From time to time, on behalf of the Commissioner, VDOT may issue Requests for Proposals (RFPs) inviting proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities as defined in the Public-Private Transportation Act of 1995. The RFP will specify information and documents which must accompany the proposals, the factors which will be used in evaluating the proposals 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 RFPs may invite proposers to identify projects or may solicit proposals on VDOT identified projects.

Unsolicited Proposals

The Act permits responsible public entities to receive , evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities under their jurisdiction. VDOT will receive such unsolicited proposals at any time pursuant to these guidelines¹. Once a proposal is received and deemed by VDOT to meet all legal and policy requirements for initial review, as set out in §§56-558 and 56-560 and these Guidelines, VDOT will publish a notice accepting such proposal for initial review and inviting others to submit competing proposals. If federal aid funds are anticipated in the project, VDOT will also notify FHWA. The deadline for VDOT receipt of any such competing proposals will be 10:00 a.m. EST, or EDT if then applicable in Richmond, on the 45th day after VDOT's initial publication of the notice or such additional time as designated by the Secretary. Only those competing, compliant proposals submitted by such deadline will be considered unless and until VDOT terminates consideration of, or negotiation on the original unsolicited proposal and competing, compliant proposals that were timely received.

Proposal Submission and Review

VDOT requires that proposers follow a two-part proposal submission process, a conceptual proposal and a detailed proposal, all as outlined in more detail in the section in these guidelines entitled "***Proposal Preparation and Submission Requirements--Unsolicited Proposals***".

¹ Effective May 10, 1996, VDOT temporarily suspended acceptance of proposals offering maintenance and operation services for existing VDOT facilities.

Public-Private Transportation Act of 1995

The first submission is a conceptual proposal containing certain specified information on proposer qualifications and experience, project characteristics, project financing, public support and project compatibility. For unsolicited proposals, such information is specified in these guidelines. For solicited proposals, the information to be sought will be specified in the request for proposals.

After a 45 day period for receipt of competing proposals, VDOT will forward the conceptual proposals received to an Initial Review Committee (IRC), composed of VDOT staff, which will determine in its sole discretion in writing whether the one or more conceptual proposals are complete, whether the one or more proposers are qualified, and whether the project as proposed appears in one or more cases technically and financially feasible. The Initial Review Committee will forward only those proposals satisfying its standards to the Commonwealth Transportation Board. If approved by the Board, a Public-Private Transportation Advisory Panel (Advisory Panel) composed of individuals having appropriate expertise will evaluate which projects and proposals would promote the Commonwealth's transportation goals and advance the public interest.

VDOT will contact all proposers and notify them who will receive Advisory Panel consideration and will request that they submit, within a specified period of time, a detailed proposal containing deliverables VDOT will identify, examples of which are set forth in the section on "***Proposal Requirements***".

Upon receipt of the detailed proposal or proposals, the Advisory Panel will review the conceptual proposal or proposals, the findings and recommendations of the Initial Review Committee, the detailed proposal or proposals, and any comments received from affected local jurisdictions; will evaluate the proposal or proposals taken as a whole in accordance with detailed selection criteria specified herein; and will make final recommendations to the Commonwealth Transportation Commissioner.

Project Selection and Comprehensive Agreement

The Commissioner will consider the recommendations of the Advisory Panel, and select those projects and proposals which satisfy the goals of the Act. Final authorization to acquire, construct, improve, maintain and/or operate any qualifying transportation facility will be contingent on successful negotiation and execution of a comprehensive agreement between the private operator and VDOT. 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 operator, allocate risk and liabilities, and establish dates for termination of the private operator's authority and dedication of the facility to the Commonwealth.

VDOT Rights Reserved

VDOT reserves all rights available to it by law in administering these guidelines, including without limitation, the right in its sole and unfettered discretion to:

- A. Reject any and all proposals at any time.
- B. Terminate evaluation of any and all proposals at any time.
- C. Suspend, discontinue and/or terminate 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.
- D. Negotiate with a proposer without being bound by any provision in its proposal.
- E. Request or obtain additional information about any proposals.
- F. Issue addenda to and/or cancel any RFP.
- G. Revise, supplement or withdraw all or any part of these guidelines.
- H. Decline to return any and all fees required to be paid by proposers hereunder.
- I. Request revisions to conceptual or detailed proposals.

Under no circumstances shall the Commonwealth, the Commonwealth Transportation Commissioner or VDOT 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 VDOT makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these guidelines, the proposer must submit the question in writing to the Assistant Commissioner for Finance and VDOT will provide answers in writing.

Timeline

Public-Private Transportation Act of 1995

The following schedule is provided for illustrative purposes and depicts the time frames within which VDOT anticipates completion of each phase of the proposal selection process. Every attempt will be made to move through the process as expeditiously as possible; however, variations in the following schedule will be necessitated due to volume, complexity of proposals received, the need for further information, timely cooperation by proposer, or other unanticipated circumstances. Shorter times for smaller, less complex proposals are possible.

<u>Posting of Notice</u>	7 - 8 weeks after acceptance of conceptual proposal
Conceptual Proposals--Initial Review	4 - 6 weeks
Commonwealth Transportation Board Approval	3 - 8 weeks
Detailed Proposal Submission	8 - 12 weeks
Detailed Proposal—Review by Advisory Panel	8 - 16 weeks
Final Project Selection by Commissioner	2 - 4 weeks
Negotiation of Comprehensive Agreement	12 - 26 weeks

PROJECT PROPOSALS

Solicited Proposals

The Commissioner may solicit project proposals through issuance of a Request for Proposals (RFP). The RFP may invite private entities to propose to construct, acquire, improve, finance and/or operate either projects of their own choosing or Commissioner-specified transportation facilities in specific locations. Whether the RFP is for a general solicitation or project-specific, proposers will be encouraged to be as innovative as possible in their proposals.

The Request for Proposals will outline the minimum qualifications and project selection criteria including any unique capabilities or qualifications, which would be required of the proposer. Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the RFP. Proposers will be instructed as to the format in which to submit proposals and what minimum information, materials, and fees must be submitted in order for the proposal to be considered complete.

Public notice of the Request for Proposals will be posted at least 60 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of VDOT public notices and by publication in a newspaper or newspapers or other publications of general circulation within and/or outside the Commonwealth of Virginia and on the VDOT web page so as to 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.

Unsolicited Proposals

The Act permits responsible public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities. **VDOT will evaluate unsolicited proposals whenever received so long as the proposals meet the requirements of the Act and these guidelines.**

Upon receipt of any and all unsolicited proposals and acceptance by VDOT as meeting all legal and policy requirements, VDOT will post a notice for 45 days or such additional time as determined by 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 contractors who might be interested. The notice will state that VDOT has received and accepted an unsolicited proposal

Public-Private Transportation Act of 1995

under the Act, that it intends to evaluate the proposal, that it may negotiate a comprehensive agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing and compliant proposals VDOT receives in accordance with these guidelines within 45 days of the initial posting and publication of the notice. Copies of proposals are available upon request. The notice will summarize the proposed transportation facility or facilities, identify their proposed location and interconnections with other transportation facilities, and provide a conceptual design.

Failure by a prospective proposer to submit a competing proposal within such 45 day period shall preclude such proposal from VDOT consideration unless and until VDOT terminates consideration of, or negotiations on, the original proposal and any and all competing proposals received within such 45 day period. VDOT will not grant requests to extend the 45 day period; and 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 45 day period.

VDOT recognizes that it may receive proposals, which have certain characteristics in common yet differ in meaningful ways. In such cases, VDOT 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 noncompeting unsolicited proposal. Because of the consequences to a proposer for failing to submit within the 45 day period a proposal which VDOT could later deem a competing proposal, prospective proposers are strongly urged to monitor VDOT notices of proposals received, and to be prepared to submit within such 45 day 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 VDOT a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. VDOT will endeavor no later than seven days thereafter to respond to such request 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 VDOT elects to treat a proposal, or part of a proposal, received within the 45 day period as a noncompeting proposal, VDOT will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

Upon the expiration of such 45 day period, VDOT will subject the original proposal, together with any and all properly received competing proposals, to the evaluation and selection process set forth below.

Qualifying Transportation Facilities

To become subject to 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 acquire, construct, improve, maintain, finance 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. Third, the proposal must be submitted to the public entity which 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.

***PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTS
UNSOLICITED PROPOSALS***

Proposal Submission

Proposers submitting to either VDOT or DRPT are required to deliver 20 copies of their Conceptual Proposal and, if requested, Detailed Proposal to the following address:

**Deputy Secretary of Transportation
Office of the Secretary of Transportation
1401 East Broad Street
Richmond, Virginia 23219**

(804) 786-6675(Phone)

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 telephone and facsimile numbers.

Also pursuant to the Act, copies of proposals must be provided directly to the governing body of each local jurisdiction (city, county, town etc.) affected by the proposed project. A list of all local jurisdictions being provided a copy of the proposal must accompany the conceptual proposal with name and address of recipient and date delivered.

In the event a proposer is submitting a proposal under the Act to a responsible public entity not subject to the authority of the Commonwealth Transportation Commissioner, it should deliver a copy of its proposal to the Commissioner on the same day it delivers its proposal to the responsible public entity. The Commissioner will provide written comments to the responsible public entity within 60 days of receipt of such proposal.

Proposal Review Fee

A non-refundable, non-negotiable minimum Proposal Review Fee of \$50,000 will be required to offset the costs of processing and reviewing the proposals where construction cost is estimated to exceed \$50 million. In recognition of time and cost factors affecting proposers, a two phase process is permitted involving a conceptual project proposal for consideration by the Initial Review Committee and the Commonwealth Transportation Board and a detailed project proposal to be completed for review and consideration by the Advisory Panel and the Commonwealth Transportation Commissioner. The total fee of \$50,000 will be broken into two components based on progression of the project proposal through the four-phase evaluation and selection process. A fee of \$10,000 must accompany each conceptual proposal submitted for the first phase review. Prior to entering the third phase of the evaluation process, the remaining \$40,000 must be submitted for each proposal. If the cost of reviewing the detailed proposal exceeds the \$40,000 fee, the Secretary of Transportation may assess the proposer the additional state cost to evaluate the detailed proposal and negotiate a comprehensive agreement. For projects where construction 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. Failure to submit all fees shall suspend VDOT's 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 project proposals will be required to submit a Proposal Review Fee for each project.

Proposal Preparation

Proposals must be signed by an authorized representative of the firm or consortium making the proposal. All information requested under "***Proposal Requirements***" should be submitted. Proposers failing to submit all information requested for conceptual or detailed proposals may be given an opportunity promptly to submit missing information or may be given a lowered evaluation of the proposal. Conceptual proposals which lack key information required 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 meets criteria stated herein. In addition,

Public-Private Transportation Act of 1995

the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed project financing is feasible.

Proposals should be organized in the order requested herein. All pages of the proposal should be numbered. Evaluation of proposals will be better facilitated if proposers will 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 risk elimination from consideration.

Each copy of the proposal should be bound or otherwise 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 an oral presentation of their proposal to the Initial Review Committee, the Advisory Panel, the Commonwealth Transportation 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 proposed project.

Virginia Freedom of Information Act

All proposals submitted to VDOT become the property of VDOT and are subject to the Virginia Freedom of Information Act (§ 2.1-340 et seq.). Proposers are advised to familiarize themselves with the Act's provisions to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In no event shall the Commonwealth, the Commonwealth Transportation Commissioner or VDOT be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these guidelines.

In the event that VDOT receives a request for public disclosure of a portion of a proposal identified as confidential, VDOT will attempt to notify the proposer of the request, providing an opportunity for such proposer to assert, in writing, claimed exemptions under the Freedom of Information Act or other Commonwealth law. VDOT will come to its own judgement whether or not the requested materials are exempt from disclosure. In the event VDOT elects to disclose the requested materials, it will attempt to provide the proposer advance notice of its intent to disclose.

If a proposer has special concerns about proprietary information which it would desire to make available to VDOT, prior to submission of its proposal, such proposer may wish to: 1. make a written request to the IRC chairman for a face to face meeting to specify and justify proposed confidential documents; 2. make oral presentation to IRC staff and if desired, IRC legal counsel; 3. receive letter from IRC chairman accepting/rejecting confidentiality request; 4. conduct similar process with affected local jurisdictions. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the Va. FOIA.

Proposal Requirements

In order to facilitate evaluation by the respective panels of the proposer's capabilities and project feasibility, proposals should be as thorough and detailed as possible so that the respective panels may properly evaluate the proposer's capabilities to complete the proposed project. Proposals should include an executive summary and use cross-referencing rather than repetition in explaining the proposed project.

Phase One - Conceptual Proposal

Proposers are required to submit the following, separated by tabs within the conceptual proposal:

TAB 1: Qualifications and Experience

- a. Identify the legal structure of the firm, or consortium of firms making the proposal. 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.
- b. 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). The lead organization must be identified.
- c. Provide the names, addresses and phone numbers of persons within the firm or consortium who may be contacted for further information.

Public-Private Transportation Act of 1995

- d. 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.
- e. 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.
- f. Include any planned participation of small, women-, and minority-owned businesses during project development and implementation.

TAB 2: Project Characteristics:

- a. 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.
- b. Identify and fully describe any work to be performed by VDOT.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals. Identify which, if any, permits or approvals are to be obtained by VDOT.
- d. Without completing an Environmental Impact Statement, 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.
- e. List the critical factors for the project's success.
- f. Identify the proposed schedule for operator's work on the project, including the estimated time for completion.

Public-Private Transportation Act of 1995

- g. Propose allocation of risk and liability for past agreement work, and assurances for timely completion of the project.
- h. Clearly state the assumptions related to ownership, legal liability, law enforcement and operation of the facility.
- i. Provide information on any phased (partial) openings proposed prior to final completion of the work.

TAB 3: Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase and/or segment (e.g. planning, design, construction).
- b. 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.
- c. Include a list and discussion of assumptions (user fees or toll rates, and usage of the facility) underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources; and the timing of any anticipated commitment.

TAB 4: Public Support

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall transportation system.
- b. Identify any anticipated government support or opposition, or general public support or opposition for the project.
- c. 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.

TAB 5: Project Benefit/Compatibility

- a. Describe the 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.
- b. Describe significant benefits to the state's economic condition. Discuss whether this project is critical to attracting or maintaining competitive industries and businesses to the state or region.

Phase Two - Specific Deliverables

The following information may be requested in phase two of the evaluation and selection process. Specific requirements and delivery dates will be determined on a case-by-case basis according to the proposed transportation facility.

- a. Provide a topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed facility or facilities.
- b. Provide a list of public utility facilities that will be crossed or affected by the transportation facility and a statement of the private operator's plans to accommodate such utility facility.
- c. 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 Commissioner to condemn.
- d. 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.
- e. 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.

Public-Private Transportation Act of 1995

- f. Include a detailed discussion of assumptions about user fees or toll rates, and usage of the facility such as traffic forecasts and assumptions.
- g. 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.
- h. Demonstrate consistency with state and local transportation plans and local comprehensive plans or indicate the steps required for acceptance into such plans.
- i. Provide an explanation of how the proposed transportation facility would impact local transportation plans of each affected locality.
- j. Such additional material and information as the responsible public entity may reasonably request.

EVALUATION AND SELECTION PROCESS

Four Phase Process

Proposals will be evaluated according to a four phase process. Phase one will require a conceptual proposal to be submitted for a pre-qualification review conducted by the Initial Review Committee. Phase two will consist of review and approval/rejection of the conceptual proposal by the CTB. Phase three of the evaluation process will consist of scheduled submission of detailed proposal for evaluation and recommendation by the Public-Private Transportation Advisory Panel. Phase four is the final selection of the successful proposer by the Commonwealth Transportation Commissioner.

Phase One: Initial Review Committee

Composition

The IRC will be comprised of VDOT staff who will evaluate the proposer's qualifications as well as the technical and financial feasibility of each proposal.

The IRC will be chaired by the Department of Transportation Assistant Commissioner for Finance and include the Chief Engineer and the Assistant Commissioner for Operations. Where DRPT is the responsible public entity, the composition of the IRC will be modified accordingly.

Purpose

The IRC will perform the phase one preliminary qualification review of each conceptual proposal to determine whether the proposer has, in the sole opinion of the Committee, (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 capital to finance the facility. The Committee may consider the advice of the Commonwealth Transportation Board's Financial Advisor, Private Legal Counsel, other state agencies with appropriate technical expertise, and a representative from the Attorney General's Office, where appropriate, in reaching its decision. The IRC will file a written explanation of its decision with the Commissioner and, if federal funding is anticipated, with FHWA.

The IRC may request oral presentations and/or additional documentation in order to assess project feasibility and proposer's qualifications. If any proposer makes an oral presentation, each proposer must be given that opportunity. All conceptual proposals with potential to satisfy the PPTA when

Public-Private Transportation Act of 1995

expanded by detailed proposal and negotiation will be recommended to the Commonwealth Transportation Board for approval of the conceptual proposal. A conceptual proposal will be deemed to have the potential to satisfy the PPTA when if expanded by detailed proposal and negotiation, considering the proposer's qualification, technical merit and financial feasibility, the proposal forms a reasonable basis for further negotiation toward a successful project.

Phase Two: The Commonwealth Transportation Board Approval

At the first monthly meeting of the Commonwealth Transportation Board (the Board) following a determination by the Initial Review Committee that a conceptual proposal merits further review, the Board will review the conceptual proposal and approve or disapprove it for further evaluation and action by VDOT under the Public-Private Transportation Act.

Upon Board approval, those conceptual proposals will be forwarded to the Public-Private Transportation Advisory Panel along with the evaluations supporting the determination that based on the proposer's qualifications and technical and financial feasibility, the proposal(s) merit further review and final evaluation. Proposers whose proposals advance to phase three will be contacted by the Deputy Secretary of Transportation and advised of initial specific deliverables which will be required for the Public-Private Transportation Advisory Panel to make its evaluation of the project. Unsuccessful proposers will be so notified.

Phase Three: Public-Private Transportation Advisory Panel Recommendation

Composition

The Public-Private Transportation Advisory Panel (the Advisory Panel) will be comprised of individuals having appropriate expertise and knowledge to objectively evaluate and analyze which projects would promote the Commonwealth's transportation goals and advance the public interest.

The Deputy Secretary of Transportation will chair the Advisory Panel which will include a member of the Commonwealth Transportation Board appointed by the Chairman of the Board, the Assistant Commissioner for Finance, the Chief Engineer, the Assistant Commissioner for Operations, and an appropriate representative from the academic community. Where DRPT is the responsible public entity, the composition of the Advisory Panel will be modified accordingly.

Public-Private Transportation Act of 1995

Purpose

The primary focus of the Advisory Panel's review will be to consider the project proposals using the Evaluation and Selection Criteria to determine whether the project(s) promotes the Commonwealth's transportation goals and serves the public interest. The Panel may consider the advice of the Commonwealth Transportation Board's Financial Advisor, Private Legal Counsel, other state agencies with appropriate technical expertise, and a representative from the Office of the Attorney General, where appropriate, in making its written recommendations.

Public Comment

The Act requires that a copy of each proposal submitted be provided by the proposer to each affected local jurisdiction (as defined in the Act) that is not a responsible public entity. Proposers should provide a copy of the phase one conceptual proposal and the phase two detailed proposal to any and all affected local jurisdictions at such time as the proposal is submitted to VDOT. Those affected local jurisdictions have 60 days from receipt of the detailed proposal to submit written comments to the responsible public entity. Local comments are encouraged as early as possible in the process to maximize consideration. Where VDOT or DRPT is the responsible public entity, comments will be reviewed by the Advisory Panel. If comments have not been received within the 60 day time frame or such longer period as the chairman of the Advisory Panel may allow, VDOT will conclude that the affected local jurisdiction opposes the proposal.

Selection

After comment period for affected jurisdictions has expired, the Advisory Panel may request proposers to make presentations to the panel. The format of these presentations will include a formal presentation by the proposer, followed by any questions the Advisory Panel may have pertaining to the project proposal or the presentation. The Advisory Panel may also ask the proposer to address concerns expressed through the public comment process. These meetings will allow the Advisory Panel to seek clarification of project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the Advisory Panel may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

Following the formal presentations, the Advisory Panel will evaluate all proposals using the criteria listed under "Proposal Evaluation and Selection Criteria". The Initial Review Committee's Report, information gathered at the presentations to the Advisory Panel, local jurisdiction comments, and the Advisory Panel's evaluation results will be used to select proposals to recommend to the Commissioner. The Advisory Panel may elect to recommend any number of projects from proposals received.

Phase Four: The Commonwealth Transportation Commissioner's Selection

The Commissioner will review the recommendations of the Advisory Panel and select from those projects recommended, projects which (i) satisfy a public need; (ii) are compatible with the state transportation and local comprehensive plans; (iii) are reasonable in terms of cost based on independent VDOT estimate; and (iv) will result in the timely acquisition, construction of or improvements to the transportation facility, pursuant to § 56-560 C of the Act. On projects with estimated cost of \$1 Billion or more, which expect federal funding, an independent cost evaluation must be performed by FHWA.

Final authorization by the Commissioner to acquire, construct, improve, maintain or operate any transportation facility, will be contingent on successful negotiation and execution of a comprehensive agreement between the private operator and VDOT. 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 operator, determine liability, and establish dates for termination of the private operator's authority and dedication of the facility to the Commonwealth.

PROPOSAL EVALUATION AND SELECTION CRITERIA

The following items will be considered, but the weighting and final decision is subject to the sole discretion of the respective evaluating panel or official.

Qualifications and Experience Does the proposer propose a team which is qualified, led, and structured in a manner which will clearly enable the team to complete the proposed project?

1. Experience with Similar Infrastructure Projects

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?

2. 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 success and follow-through on this project?

3. Leadership Structure

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 an agreement/document in place between members?

4. 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?

5. 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?

6. Financial Condition

Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill its obligations described in the project proposal?

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 and Businesses Owned by Women and Minorities

What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the project?

9. Competitive Bidding

To what extent have adequate and transparent procurement policies been adopted by the proposer to maximize competitive bidding opportunities for potential subcontractors and suppliers?

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, 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?

4. Technology

Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation? Does the technology proposed maximize interoperability with

relevant local and statewide transportation technology? Can the proposed project upgrade relevant local 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

Is the project outside the purview of federal oversight, or will it require some level of federal involvement due to its location on the National Highway System or Federal Interstate System or because federal permits are required?

7. Meets/Exceeds Environmental Standards

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

8. State and Local Permits

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. Right of Way

Does the proposal set forth the method by which the private operator proposes to secure all property interests required for the transportation facility? Does the statement include: the names and addresses, if known, of the current owners of the property needed for the facility, the nature of the property to be acquired, and a listing of any property that the responsible public entity is expected to be requested to condemn?

10. Maintenance

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

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

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?

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 dealt with sufficiently? Are the planned sources of funding and financing realistic? Does the proposer make a financial contribution to 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. Business Objective

Does the proposer clearly outline his reason for pursuing this project? Do his assumptions appear reasonable?

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?

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? Have all affected local jurisdictions provided clear written statement of the extent of their support for the project?

3. Public Involvement Strategy

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?

Project Compatibility Is the proposed project compatible with state and local comprehensive 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?

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. Consistency with Local, Regional and State Transportation Plans

Is the project consistent with city and county comprehensive plans and regional transportation plans? Is this project consistent with plans and documents of the Virginia Multimodal Long Range Plan? If not, are steps proposed that will achieve consistency with such plans?

5. 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?

THE COMPREHENSIVE AGREEMENT

Prior to acquiring, constructing, improving, maintaining and/or operating a transportation facility, the proposer(s) selected must enter into a comprehensive agreement with VDOT. A working group chaired by the Commonwealth Transportation Commissioner and including the Deputy Secretary of Transportation, a representative of the Office of the Attorney General, the Financial Advisor and Private Legal Counsel for VDOT, and VDOT staff will be responsible for negotiating the comprehensive agreement. Each comprehensive agreement will define the rights and obligations of VDOT and the respective private operator with regard to the project.

The terms of the comprehensive agreement shall include but not be limited to:

1. The right of the operator to acquire, construct, improve and/or operate the Transportation Facility, the duration of the operator's 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. Any user fees shall be set at a level that, taking into account any service payments, allows the private operator the rate of return on investment specified in the comprehensive agreement;
 - a. A copy of any service contract shall be filed with VDOT.
 - b. A schedule of the current user fees shall be made available by the private operator to any member of the public on request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
3. The performance milestones that will be required of the operator;
4. The right of the operator 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 operator and VDOT 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 Commissioner will exercise his power of eminent domain to facilitate the Transportation Facility;
8. The design, construction, operation and maintenance standards with which the operator must comply;
9. The requirements of the operator to submit plans and specifications for the Transportation Facility to VDOT for approval;
10. The rights of VDOT to inspect construction of or improvements to the Transportation Facility;
11. The obligation of the operator to maintain the Transportation Facility and the rights of VDOT to monitor the operator's maintenance;
12. The right of the operator to make and enforce, with the consent of VDOT reasonable rules with respect to the Transportation Facility;
13. The terms under which the operator will reimburse the responsible public entity for services provided;
14. The reasonable maximum return or rate of return on investment authorized for the operator to earn, the formula by which such rate of return will be calculated and the distribution of project revenues;
15. The terms and conditions under which VDOT may contribute financial and/or in-kind resources, if any, for the Transportation Facility;
16. The events that will constitute operator defaults, operator's rights to notice and cure and the remedies available to VDOT;
17. The events that will constitute VDOT defaults, VDOT's rights to notice and cure and the remedies available to the operator;
18. Lender's rights and remedies with respect to operator defaults and VDOT remedies;

19. The events that will constitute force majeure and the remedies the parties will have in the event of occurrence;
20. The insurance and bonding requirements the operator will be required to meet at each stage;
21. The allocation between the operator and VDOT of liabilities for, among others, property damage, personal injury, Transportation Facility repair and hazardous waste remediation;
22. The obligations of the operator to maintain records, to allow inspection and audit and to provide regular reports to VDOT;
23. The conditions under which the operator may assign its rights under the comprehensive agreement and/or its rights to the Transportation Facility; and
24. Other requirements of the Public-Private Transportation Act of 1995.

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

Where DRPT is the responsible public entity, the composition of the working group negotiating the comprehensive agreement will be modified accordingly.

The Commonwealth of Virginia

Public-Private Transportation Act of 1995

Implementation Guidelines

Revised April 2001

TABLE OF CONTENTS

INTRODUCTION.....1

EXECUTIVE SUMMARY2

Solicited Proposals.....3

Unsolicited Proposals.....3

Proposal Submission and Review3

Project Selection and Comprehensive Agreement.....4

VDOT Rights Reserved.....5

Timeline.....6

PROJECT PROPOSALS.....7

Solicited Proposals.....7

Unsolicited Proposals.....7

Qualifying Transportation Facilities9

PROPOSAL PREPARATION AND SUBMISSION REQUIREMENTSUNSOLICITED

PROPOSALS.....10

Proposal Submission.....10

Proposal Review Fee.....11

Proposal Preparation.....11

Virginia Freedom of Information Act12

Proposal Requirements - Two Part Process.....13

Part One - Conceptual Proposal13

Part Two - Specific Deliverables.....16

EVALUATION AND SELECTION PROCESS18

Four Phase Process.....18

Phase One: Initial Review Committee.....18

Phase Two: Commonwealth Transportation Board Approval19

Phase Three: Public-Private Transportation Advisory Panel Recommendation.....19

Phase Four: Commonwealth Transportation Commissioner Approval21

PROPOSAL EVALUATION AND SELECTION CRITERIA22

Qualifications and Experience22

Project Characteristics.....23

Project Financing25

Public Support25

Project Compatibility.....26

THE COMPREHENSIVE AGREEMENT.....27

