

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

**Guidelines and Procedures**

**County of Chesterfield**



*Adopted by the Chesterfield County Board of Supervisors on January 23, 2019*

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## **I. Executive Summary**

The Public-Private Transportation Act of 1995, as Amended (Code of Virginia § § 33.2-1800 et seq.) (the “PPTA”) allows both solicited and unsolicited project proposals for qualifying transportation facilities, as defined in Part VI.C of this policy. The major steps involved in evaluating, selecting, and implementing the projects are similar for both solicited and unsolicited proposals. This policy anticipates that the private sector will identify prospective projects without County solicitation, although the County may solicit proposals generally or for specific projects.

The PPTA permits private entities to propose innovative financing methods, including the imposition of user fees or service payments. The financing arrangements may include the issuance of debt, equity or other securities or obligations. The proposer may enter into sale and lease back 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 Virginia Public Procurement Act (“VPPA”) Code of Virginia § 2.2-4300 et. seq., the selection process for solicited or unsolicited project proposals is not subject to the VPPA, except for Article 6 *Ethics in Public Contracting*, which is hereby incorporated by reference.

## **II. Proposals**

### **A. Solicited Proposals**

The County may issue solicitations inviting proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities as defined in the PPTA. The solicitation will specify information and documents which must accompany the proposals, the factors that 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. Such solicitations may invite private entities to identify projects or may solicit proposals on identified projects.

### **B. Unsolicited Proposals**

The County may receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, maintain and/or operate qualifying transportation facilities. The County may receive such unsolicited proposals at any time pursuant to these guidelines. Once a proposal is received and deemed to meet all legal and policy requirements for initial review, the County 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, the County will also notify FHWA. The deadline for County receipt of any such competing proposals will be as stated in the notice, but in any case, not less than forty-five (45) days from publication of the notice. All competing, compliant proposals

submitted by such deadline will be considered unless and until the County terminates consideration of, or negotiation on the proposals.

### **III. Proposal Submission and Review**

#### **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

1. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the Board of Supervisors will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the Board of Supervisors determines not to accept the proposal and not to proceed to publication and conceptual-phase consideration, staff will return the proposal, together with all fees and accompanying documentation, to the proposer.
2. If the Board chooses to accept an unsolicited proposal for conceptual-phase consideration, staff shall post a notice in a public area regularly used by the County for posting of public notices and on the County website for a period of not less than 45 days. The County shall also publish the same notice in a newspaper of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have adequate time as specified in the notice, but in no event less than 45 days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing unsolicited proposals that comply with the procedures of the County and the PPTA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

#### **B. Initial Review at the Conceptual Stage**

1. Only proposals complying with the requirements of the PPTA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed to evaluate the unsolicited proposals using either method a. or b. below:
  - a. Procedures normally used by the County for the evaluation of bids resulting from "competitive sealed bidding" with award to the lowest responsive and responsible private entity. Evaluation may include special qualifications of private entities, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability. Awards may be made to more than one private entity. The County may reject any or all proposals at any time and for any reason.

- b. Procedures normally used by the County for the evaluation of proposals resulting from the procurement of other than professional services through "competitive negotiation" as follows: Selection shall be typically made of two private entities deemed to be fully qualified and best suited among those submitting proposals. Negotiations shall then be conducted with each of the private entities so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each private entity so selected, the County shall select the private entity, which, in its opinion, has made the best proposal. Awards may be made to more than one private entity. Should the public body determine in writing and in its sole discretion that only one private entity is fully qualified, or that one private entity is clearly more highly qualified than the others under consideration, negotiations may be limited to that private entity. The County may reject any or all proposals at any time and for any reason.
        - c. The County may proceed using competitive negotiation procedures described in b. above only if the Procurement Director makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity or urgency of need, or (ii) the risk sharing, added value, increase in funding or economic benefit from the project would otherwise not be available.
3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the County may determine:
  - i. not to proceed further with any proposal,
  - ii. to proceed to the detailed phase of review with the original proposal,
  - iii. to proceed to the detailed phase with a competing proposal, or
  - iv. to proceed to the detailed phase with multiple proposals.

#### **IV. Project Selection and Comprehensive Agreement**

The Board of Supervisors will select those projects and proposals that 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 the County. 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 County.

## **V. County Rights Reserved**

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

1. Reject any and all proposals at any time.
2. Terminate evaluation of any and all proposals at any time.
3. 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.
4. Negotiate with a proposer without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposals.
6. Issue addenda to and/or cancel any solicitation.
7. Revise, supplement or withdraw all or any part of these guidelines.
8. Request revisions to conceptual or detailed proposals.

Under no circumstances shall the County 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 the County 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.

## **VI. Project Proposals**

### **A. Solicited Proposals**

The County may solicit project proposals. The solicitation may invite private entities to propose to construct, acquire, improve, finance and/or operate either projects of their own choosing or County-specified transportation facilities in specific locations.

The solicitation will outline the minimum qualifications and project selection criteria including any unique capabilities or qualifications, which will be required of the proposer. Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the solicitation. 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 the solicitation will be posted at least 45 days prior to the date set for receipt of proposals by posting in a public area normally used for posting of County public notices and by publication in a newspaper of general circulation within the County and on the County

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.

## **B. Unsolicited Proposals**

Upon receipt of any and all unsolicited proposals and acceptance by the County as meeting all legal and policy requirements, the County will post a notice for at least 45 days in a public area normally used for posting public notices and will publish the same notice in a newspaper of general circulation to notify private entities which might be interested. The notice will state that the County has received and accepted an unsolicited proposal under the PPTA, 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 the County receives in accordance with these guidelines within the specified time. Copies of proposals will be made available upon request. The notice will summarize the proposed transportation facility or facilities and identify their proposed location and interconnections with other transportation facilities.

Failure by a prospective proposer to submit a competing proposal within such specified period shall preclude such proposal from County consideration unless and until the County terminates consideration of, or negotiations on, the original proposal and any and all competing proposals received within such specified 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 period for accepting competing proposals.

The County recognizes that it may receive proposals that have certain characteristics in common yet differ in meaningful ways. In such cases, the County 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 specified period a proposal which the County could later deem a competing proposal, prospective proposers are strongly urged to monitor County notices of proposals received, and to be prepared to submit within such specified 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 County a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The County will endeavor no later than fourteen calendar days thereafter to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or request additional information if it has received insufficient information to make a determination.

In the event the County elects to treat a proposal, or part of a proposal, received within the specified period as a noncompeting proposal, the County 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 specified period, the County will subject the original proposal, together with any and all properly received competing proposals, to the evaluation and selection process set forth below.

### **C. Qualifying Transportation Facilities**

To become subject to the evaluation and selection process under the PPTA a proposal must meet the following criteria:

1. The proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance and/or operate specified transportation facilities.
2. 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 other property that is needed to operate the transportation facility.
3. 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.

### **D. Submission of Unsolicited Proposals**

#### **1. Proposal Submission**

Any unsolicited proposal shall be submitted to the County by delivering both paper submission (hard copies) and electronic submission (digital copies) as specified below, together with the required initial review fee as provided in section VI.D.2 “Proposal Review Fee” of these Guidelines to the following address:

**Procurement Director  
Chesterfield County Procurement Department  
9901 Lori Road  
Chesterfield, VA 23832**

- a. Paper submission (hard copies)
  - i. One (1) original signed proposal marked as “ORIGINAL”
  - ii. Nine (9) duplicate copies of above each marked as “COPY”



- iii. One (1) redacted copy marked as “REDACTED” only if the proposer has invoked protection from disclosure of certain proprietary and confidential information contained in their proposal in accordance with section VI.D.4 “Virginia Freedom of Information Act”. of these Guidelines. Proposer must also include a written request in accordance with section VI.D.4 of these Guidelines to invoke such protection from disclosure.
- b. Electronic Submission (provide on CD-R, DVD-R or USB Flash/Thumb drive)
    - i. One (1) electronic copy of proposal in a text searchable format (either MS Word, or text searchable PDF).
    - ii. One (1) redacted electronic copy of proposal in a text searchable format only if Private Entity has invoked protection from disclosure of certain proprietary and confidential information contained in their proposal in accordance with section VI.D.4 “Virginia Freedom of Information Act” of these Guidelines.

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.

Copies of proposals must be provided directly to the governing body of each local jurisdiction (city, county, town etc.) affected by the proposed project when submitted to the County. 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 to be delivered.

## 2. Proposal Review Fee

- a. No fee will be charged to process, review or evaluate any solicited proposal submitted under the PPTA.
- b. A review fee will be charged a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.

c. For unsolicited proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:

- 1) Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPTA, it shall not do so until the entire, non-refundable proposal fee has been paid in full.
- 2) Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.
- 3) Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded.

### 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 submit promptly missing information, in the County's sole discretion. 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 must include a comprehensive scope of work and provide enough information about the project to determine whether it meets the criteria stated herein. 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.

Proposals must include an Executive Summary and be organized in the order requested herein. All pages of the proposal must be numbered. Evaluation of proposals will be better facilitated if proposers will cross reference responses by citing the tab number, and sub-letter, and repeating the text of the requirement. 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 must 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 eliminated from consideration at the sole discretion of the County.

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 staff, one or more Board of Supervisors committees, the Board of Supervisors, 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.

#### 4. Virginia Freedom of Information Act; Disclosure of Records

- a. All proposals submitted to the County become the property of the County and are subject to the Virginia Freedom of Information Act (FOIA) (§ 2.2-3700 et seq.). Private entities are advised to familiarize themselves with the FOIA's provisions to ensure that documents identified as confidential will not be subject to disclosure under FOIA. In no event shall the County or any County official be liable to a private entity for the disclosure of all or a portion of a proposal submitted under these guidelines.
- b. If a private entity has special concerns about proprietary information which it desires to make available to the County, such private entity may, prior to submission of its proposal:
  - 1) Make a written request to the County for a face to face meeting to specify and justify proposed confidential documents;
  - 2) Make an oral presentation to County staff and if desired, legal counsel;

- 3) Receive a letter from the County accepting/rejecting confidentiality request;
- 4) Conduct a similar process with affected local jurisdictions or any other recipient of the proposal.

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

c. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to disclosure under the Virginia Freedom of Information Act (Code of Virginia § 2.2 – 3700 et seq. (“FOIA”)) except to the extent that they relate to:

- 1) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Code of Virginia §59.1-336 et seq.);
- 2) Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- 3) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the County must comply with the provisions of such order.

d. Protection from mandatory disclosure for certain documents submitted by a private entity

- 1) Any confidential and proprietary information provided to the County by a private entity pursuant to the PPTA shall be subject to disclosure under the Virginia Freedom of Information Act (“FOIA”) except as provided by § 33.2-1820 of the PPTA.
- 2) Documents of a private entity may be withheld from disclosure, only if the private entity makes a written request to the County at the time the documents are submitted designating with specificity the sections of the document, data, or other materials for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Section VI.D.4.c of these Guidelines. A private entity may request and receive a determination from the County as to the

anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

e. Protection from mandatory disclosure for certain documents produced by the County

- 1) Memoranda, staff evaluations, or other records prepared by or for the County, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPTA would adversely affect the financial interest or bargaining position of the County or private entity, and the basis for the determination of adverse affect is documented in writing by the responsible public entity.
- 2) Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.

f. Records that may not be withheld from disclosure

The County may not withhold from public access:

- 1) Procurement records other than those subject to the written determination of the public entity;
- 2) Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the County and the private entity;
- 3) Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- 4) Information concerning the performance of any private entity developing or operating a qualifying project.

5. 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.
- 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.

## 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 the County or any other public entity or agency.
- 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 the County or any other public entity or agency.
- d. 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. It is

not necessary to include an Environmental Impact Statement to comply with this requirement.

- 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.
- g. Propose allocation of risk and liability for post-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 County benefits resulting from the project including the achievement of County transportation policies or other County goals.
- b. Describe significant benefits to the County's economic condition. Discuss whether this project is critical to attracting or maintaining competitive industries and businesses to the County.

6. Phase Two - Detailed Proposal - Specific Deliverables

The following information shall be provided in the detailed proposal and submitted within the time specified by the County.

- 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 County 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, including operations 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.
- 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.

### **E. 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.

1. 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?

- a. 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?

- b. 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?

- c. 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?

- d. 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?

e. 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 County?

f. 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?

g. 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?

h. 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?

2. Project Characteristics Is the proposed transportation facility technically feasible?

a. 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?

b. 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?

c. Operation

Does the proposer present a reasonable statement setting forth plans for operation of the facility?

d. 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 use relevant local technology?

e. Conformity with 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?

f. 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?

g. 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?

h. 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?

i. 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?

j. Maintenance

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

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?

a. 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?

b. 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?

c. 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.

d. 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?

e. Business Objective

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

4. Public Support Has the proposer garnered sufficient public support for the proposed project?

a. 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?

b. 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 statements of the extent of their support for the project?

c. 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?

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

a. 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?

b. 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?

c. Enhance Community-Wide Transportation System

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

d. Consistency with Local, Regional and State Transportation Plans

Is the project consistent with town 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?

e. Economic Development

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

## **VII. 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 the County. A working group appropriate to the project will be responsible for negotiating the comprehensive agreement. Each comprehensive agreement will define the rights and obligations of the County 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 the County.
  - 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 the County 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 County will exercise the 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 the County for approval;
10. The rights of the County 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 the County to monitor the operator's maintenance;
12. The right of the operator to make and enforce, with the consent of the County 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 the County 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 the County;
17. The events that will constitute County defaults, the County'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 County remedies;
19. The events that will constitute force majeure and the remedies the parties will have in the event of a force majeure occurrence;
20. The insurance and bonding requirements the operator will be required to meet at each stage;

21. The allocation between the operator and the County 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 the County;
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 PPTA.

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.