



**Virginia Department of
Transportation**

**SOLICITATION FOR CONCEPTUAL
PROPOSALS**

U.S. Route 460 Corridor Improvements Project

through the

Public-Private Transportation Act

May 5, 2010

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1 EXECUTIVE SUMMARY

1.1 Introduction

The U.S. Route 460 Corridor Improvements Project (Project) is located from the existing U.S. Route 460 near its Interstate-295 interchange in Prince George County to a new interchange with the U.S. Route 58 bypass in the City of Suffolk. The Project is comprised of approximately 55 miles of limited access, four-lane, divided highway along a new alignment.

In accordance with the Public-Private Transportation Act of 1995 (the “PPTA”), as amended, the Virginia Department of Transportation (VDOT) is hereby requesting the submittal of Conceptual Proposals for the finance, design, construction, operation, and maintenance of the Project.

Capitalized terms used in this Solicitation for Conceptual Proposals (SFP) are defined in Appendix A. If a term is not specifically defined in Appendix A, then such term shall have the definition ascribed to it in this SFP or the SFP Documents.

1.2 Purpose

The purpose of this SFP is to:

- inform the industry of the Project;
- identify VDOT’s objectives and priorities for the Project’s delivery;
- set out the evaluation criteria and selection process to select the short listed Offerors; and
- request submittal of Statements of Qualifications including a Conceptual Financial Plan to enable VDOT to identify Offerors qualified to submit Detailed Proposals to finance, design, construct, operate and maintain the Project.

Offerors must demonstrate their ability to undertake the development and operations of the Project within a legislative, contractual and regulatory environment that will necessitate working effectively with VDOT, other Responsible Public Entities, the community and other stakeholders.

1.3 Project Objectives

VDOT is procuring this Project under the provisions of the PPTA to secure private sector funds and offset the need for public allocations to fund the Work. A successful project shall satisfy the following transportation objectives:

- Improve travel safety along the corridor;
- Create a new westbound emergency evacuation route for Hampton Roads;
- Accommodate increases in freight movements along the corridor; and
- Improve military strategic connectivity.

1.4 Document Disclosure

VDOT shall disclose to the public, in accordance with the Virginia Freedom of Information Act, all information received in response to this SFP including any proposed product, service, or idea for the Project that enhances or augments VDOT's minimum requirements and/or project objectives, unless determined by VDOT to be exempt in accordance with Section 8.1 of this SFP. Noting VDOT's intent to disclose, Offerors are expected to submit Conceptual Proposals with no requests or very limited requests for exceptions to disclosure.

1.5 Legislative Authority for the Project

The PPTA is the legislative framework enabling the Commonwealth of Virginia (the "Commonwealth") to enter into agreements authorizing private entities to develop and/or operate qualifying transportation facilities. The Commonwealth of Virginia adopted Implementation Guidelines (Guidelines) in accordance with the PPTA. The current Guidelines were revised as of December 2008 and are available at <http://www.virginiadot.org/business/ppta-Guidelines.asp>. In accordance with § 56-556 *et seq.* of the Code of Virginia, VDOT shall be the coordinating Responsible Public Entity for the Project.

VDOT previously solicited conceptual proposals for this Project on February 15, 2006. VDOT received three responses to that earlier solicitation. VDOT terminated that solicitation process on May 3, 2010.

1.6 Procurement Process

This SFP commences the first-phase of a procurement process. The following is a summary of VDOT's standard six-phase PPTA procurement process, which is defined in detail in the Guidelines:

1. Phase One – Quality Control: a VDOT level review to determine whether Conceptual Proposals meet the requirements of the Law and the Guidelines. Please refer to VDOT’s IPD Memorandum IPD 05-02 available at http://www.virginiadot.org/business/resources/IPD_Memorandum_05_02_0_dlh_051206.pdf.
2. Phase Two - Independent Review Panel (IRP): The IRP, which is appointed by the Secretary of Transportation, will review and evaluate the Conceptual Proposal(s) and provide a recommendation as to whether to advance one or more of the Conceptual Proposal(s).
3. Phase Three – Commonwealth Transportation Board (CTB) Approval: The CTB will review the Conceptual Proposal(s), along with the IRP’s recommendation and recommend that VDOT either reject the Conceptual Proposal(s) or seek a Detailed Proposal from one or more of the Offerors.
4. Phase Four – Submission and Selection of Detailed Proposals: Offerors advancing to Phase Four will be requested to submit Detailed Proposals. VDOT shall evaluate the Detailed Proposals and select none, one or more proposals by the Commonwealth Transportation Commissioner for negotiation of an interim and/or a comprehensive agreement.
5. Phase Five – Negotiation of interim and/or comprehensive agreement: The process of completing negotiations of an interim and/or comprehensive agreement.
6. Phase Six – Execution of interim and/or comprehensive agreement: The final stage of review and includes the execution of an interim and/or comprehensive agreement by the Commonwealth Transportation Commissioner and the selected Offeror.

VDOT will issue a draft Request for Detailed Proposals (RFDP) to the short listed Offerors. Prior to issuing a final RFDP, VDOT will host meetings with the short listed Offerors with the intent of allowing further development of concepts and issues raised during the preceding phases of the PPTA procurement process.

The Commonwealth Transportation Commissioner may decide to streamline this process because earlier activities have included substantial public information and public involvement, including an Independent Review Panel.

While the RFDP will contain specific requirements for Detailed Proposals, as well as a specific selection criteria process, VDOT anticipates that Detailed Proposals will include, among other things, requirements for conceptual design plans, a financial plan, a tolling schedule, and a schedule for development, construction, and implementation of operations and maintenance for the duration of the concession period. Based on the responses to the RFDP, the Commonwealth Transportation Commissioner will make a selection of a successful Offeror(s), if any, to initiate negotiations for an interim and/or comprehensive agreement to finance, design, construct, operate and maintain the Project.

2 BACKGROUND

2.1 Introduction

The Project contemplated in this SFP includes the construction of a new west-east transportation link between the existing U.S. Route 460 near its interchange with I-295 in Prince George County to a new interchange with U.S. Route 58 along the Suffolk Bypass. The Project includes only minor adjustments to the existing I-295 interchange. The adjustments to this interchange are minor realignments of two existing ramps, the westbound U.S. Route 460 to I-295 northbound ramp and the northbound I-295 ramp to eastbound U.S. Route 460. The Project area extends approximately 55 miles and includes a four-lane divided, limited access highway along a new location.

The proposed improvements will include, among other things, new roadway, drainage, communications/intelligent transportation systems, lighting, flood protection, and toll collection facilities.

2.2 Project Information

VDOT has developed information that may assist Offerors as they develop Conceptual Proposals. Information is available on VDOT's external project website at <http://route460ppta.org/>. Additional information is available through the purchase of CD. Instructions for purchase of the information package are included in Section 4.5.

2.3 Map of Project

Several illustrations of the Project are included on the external project website at <http://route460ppta.org/>.

2.4 Progress to Date

An overview of the work undertaken by VDOT on the Project to date is briefly described below. Note that all completed studies, reports, and documents referenced below are provided on VDOT's external project website at <http://route460ppta.org/> or included in the Information Package.

Environmental Studies	
2005	VDOT completed its Draft Environmental Impact Statement (DEIS) and associated technical reports.
2008	VDOT completed additional hazardous materials investigations (Phase I and Phase II Environmental Site Assessments) (Information Package)
2008	VDOT completed additional cultural resource investigations (Information Package)
2008	Final Environmental Impact Statement (FEIS) approved by FHWA
2008	FHWA Issued the Record of Decision.
Geotechnical Studies	
2008	<p>VDOT completed additional geotechnical borings along the corridor and at locations anticipated for major structures. This information is included in the Geotechnical Engineering Data Report. (Information Package)</p> <p>Data from other projects in the vicinity of the Project has been identified and is included on the Project website at http://www.virginiadot.org/ppta_projects/route_460/geotechnical_documents.asp</p>
Preliminary Engineering	
2008	VDOT has developed a Preliminary Reference Design for the corridor. (Information Package)
Procurement	
2006	In compliance with the legislative requirement identified in Section 1.5, VDOT initiated a PPTA procurement of the Project. VDOT cancelled the procurement on May 3, 2010. Additional Project information related to the prior procurement is available on the Project website at http://route460ppta.org/ .

3 PROJECT SCOPE

The scope includes the development and operation of the proposed Project. The Offeror's Conceptual Proposal shall take into consideration the Project objectives and requirements listed herein. Short listed Offerors that are advanced to Phase Four may undertake further investigations and develop Detailed Proposals in accordance with the environmental, technical, and functional requirements that will be issued at the RFDP stage.

3.1 Project Requirements

The Project shall be developed and operated in accordance with applicable Regulatory Approvals and Laws, AASHTO standards and industry best practices.

3.1.1 Key Assumptions

Offerors shall use the following key assumptions in developing their approaches to financing, designing, constructing, operating, and maintaining the Project:

- Hurricane evacuation capabilities and improving military strategic connectivity are priorities of the project and the public. The Governor will consider waiving certain statutory mandates and regulations in order to facilitate the development of the Project, if a part of his emergency preparedness plan, in accordance with the Code of Virginia §33.1-223.2:5.
- The Commonwealth will support the Concessionaire's innovative ideas to increase truck traffic in the corridor, including truck traffic to and from the Port of Virginia.
- VDOT will accept a phased approach to develop the Project and a minimum scope of work for the first phase (e.g., the first phase may include only one interchange at each terminus, with future interchanges or phases constructed as funding becomes available).
- The Concessionaire shall complete right of way (ROW) acquisition at its sole cost and expense in accordance with all applicable Regulatory Approvals and Laws. VDOT will handle condemnation proceedings, should the need arise.
- There is no state or federal funding planned or programmed for this Project.
- VDOT welcomes proposals for innovative financing alternatives.
- VDOT will perform only minimal construction oversight and will rely primarily on the Concessionaire's quality assurance/quality control work and on the Concessionaire's certifications that the work complies with contract requirements. The Concessionaire will be responsible for VDOT's construction oversight costs, estimated at two (2) percent of the design and construction costs.
- Offerors may propose more efficient operating conditions than currently provided by state Law, subject to compliance with all applicable design standards and safety factors.

- The Comprehensive Agreement will include provisions to address a number of commercial issues, including but not limited to the following:
 1. a concession term of up to 75 years, with the potential to extend the term up to a maximum of 99 years;
 2. support for the development of commercial facilities determined to be essential for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility in accordance with the Code of Virginia Section 56-557 and applicable Law; and
 3. funding for compensation events shall be limited as set forth in the term sheet.
- The Comprehensive Agreement will include an enforceable goal for Disadvantaged Business Enterprise (DBE) and the Commonwealth's Small, Women, and Minorities (SWAM) participation in the Project.

3.1.2 Route 460

The following requirements shall be implemented on the proposed Project:

- Provide for 4-lane divided roadway built to AASHTO interstate standards and designed with sufficient vertical elevation and clearance to enable safe operation during a 100-year flood event;
- Provide a system for reversing eastbound traffic flow to accommodate westbound travel on all lanes for hurricane and emergency evacuation; and
- Acquire sufficient ROW to enable future expansion of phased interchanges and widening from a 4-lane to 6-lane roadway, subject to availability of funding.

3.1.3 Tolling

Any new roadway on which a toll would be implemented must be capable of fully electronic toll collection techniques and technologies and employ Open Road Tolling for the Project's main lines. Traditional toll collection systems may be an option for initial operations, in conjunction with open-road tolling. Electronic toll equipment shall be compatible with E-Z Pass or any successor network and VDOT's existing electronic toll collection system. Offerors may have the option of contracting with VDOT's Violation Enforcement and Electronic Toll Collection services.

3.2 Regulatory Approvals

Offerors shall be responsible for the implementation of all National Environmental Policy Act of 1969 (NEPA) commitments and restrictions. The Project is subject to all applicable Regulatory Approval and Laws, to include but not limited to the requirements of the NEPA.

Offerors shall be required to obtain all necessary remaining regulatory clearances required to accomplish the Project. The Offeror shall be responsible for obtaining and

coordinating any necessary water quality permits and any modifications of water quality permits.

If VDOT approves any deviations or change in scope or design proposed by the Offeror, Offeror shall be responsible for providing VDOT with environmental data in support of any re-evaluation of the NEPA document that is necessary due to such proposed deviation or change in scope or design. The Offeror shall reimburse VDOT for its costs in the preparation of any additionally required environmental documents.

Conceptual Proposals shall be consistent with the environmental documents.

4 GENERAL PROCEDURES AND REQUIREMENTS

4.1 Short Listing

The Conceptual Proposals received in response to this SFP will be used to short list the most qualified Offerors who will be invited to submit Detailed Proposals. It is anticipated that no more than three (3) Offerors will be short-listed. Evaluation of Detailed Proposals may lead to final selection of one or more Offerors with whom VDOT may enter into an interim and/or comprehensive agreement to obtain the right and obligation to finance, design, construct, operate, and maintain the Project.

4.2 Schedule

VDOT currently anticipates conducting the procurement of the Project in accordance with the following list of milestones leading to an interim and/or comprehensive agreement. This schedule is subject to revision and VDOT reserves the right to modify this schedule as it finds necessary, in its sole discretion.

<u>Procurement Phase</u>	<u>Date</u>
1. SFP Document Available to Offerors	05/05/10
2. Deadline for Questions or Clarifications	06/21/10
3. Conceptual Proposal Submission Deadline	08/05/10 (4:00 PM prevailing local time)
4. Quality Control Report Submitted to Secretary	08/20/10
5. Secretary Appoints Independent Review Panel	09/15/10
6. Local Comments Due	10/20/10
7. Independent Review Panel Recommendation	11/03/10
8. CTB Resolution	11/17/10
9. Request for Detailed Proposals (if applicable)	12/20/10
10. Detailed Proposal Submission Deadline (if applicable)	05/15/11 (4:00 PM prevailing local time)
11. Interim and/or Comprehensive Agreement (if applicable)	09/15/11

4.3 VDOT's Point of Contact and Project Reference

VDOT's sole Point of Contact (POC) for the Project shall be the person designated below. VDOT's POC is the only individual authorized to discuss this SFP with any interested parties, including Offerors. All communications with VDOT's POC shall be in writing, as required by the applicable provisions of this SFP. Offerors may not rely on oral responses to any inquiries.

VDOT's POC is:

Name: Margie Ray
 Title: Program Manager
 Address: Innovative Project Delivery Division
 Virginia Department of Transportation
 1401 East Broad Street
 Richmond, VA 23219
 Phone: (804) 786-9537
 Fax: (804) 786-7221
 E-Mail: margit.ray@VDOT.Virginia.gov

- 4.3.1** VDOT disclaims the accuracy of information derived from any source other than VDOT's POC and the use of any such information is at the sole risk of the Offerors.
- 4.3.2** All written communications to VDOT from the Offerors shall specifically reference the correspondence as being associated with the "Route 460 Corridor Improvements Project".

4.4 Advertising the SFP

The SFP shall be advertised on VDOT's website at <http://route460ppta.org/>, and on eVA, Virginia's electronic procurement website (www.eva.state.va.us). The SFP shall also be advertised in major regional newspapers in accordance with Innovative Project Delivery (IPD) Division Memorandum IPD 05-01.0, available for review at http://www.virginiadot.org/business/resources/IPD_Memorandum_05_01_0_dlh_050930.pdf.

Addenda to the SFP will only be posted on the VDOT website above. Offerors should monitor the VDOT website for the posting of any addenda to this SFP.

4.5 SFP Information

Additional information regarding the Project may be downloaded from VDOT's website at <http://route460ppta.org/>. An information package which includes: preliminary reference design, typical sections, environmental studies, geotechnical investigation reports, and other project information, is available to interested Offerors on CD for \$50.00. Interested Offerors should completed the Information Package Order Form included as Appendix B. The instructions for submittal and payment are included on the form.

4.6 Pre-Submittal Responsibilities

Each Offeror shall be solely responsible for examining the SFP, including any addenda, and any and all conditions which may in any way affect their proposal or the performance of the Work on the Project, including but not limited, to the following responsibilities:

- 4.6.1** Examining and carefully studying the SFP, including any addenda and other information or data identified in the SFP.
- 4.6.2** Visiting the Project area and becoming familiar with and satisfying itself as to the general, local, and site conditions that may affect the cost, progress, or performance of its Work on the Project.
- 4.6.3** Becoming familiar with and satisfying itself as to Regulatory Approvals and Laws that may affect the cost, progress, or performance of its Work on the Project.
- 4.6.4** Determining that the SFP and any addenda thereto are sufficient to indicate and convey understanding of all terms and conditions for the performance of Offeror's Work on the Project.
- 4.6.5** Providing prompt written notice of all conflicts, errors, ambiguities, or discrepancies that the Offeror discovers in the SFP and addenda, and any aspects of the SFP and addenda that the Offerors do not understand. Any failure to do so shall be at Offeror's sole risk, and no relief for error or omission will be provided by VDOT.

4.7 Delivery of Proposal

Conceptual Proposals are to be sealed in mailing envelopes or packages bearing the Offeror's name, address and the words "Route 460 Corridor Improvements Project PPTA" clearly written on the outside. All Conceptual Proposals must be received by the date and time as designated in Section 4.2. Conceptual Proposals must be delivered to the VDOT POC as designated below. Neither fax nor email submissions will be accepted. Hand delivered responses to the SFP must be received by the date and time as designated in Section 4.2, and must be delivered to:

Mrs. Brenda Williams
 Administrative Services Division
 Virginia Department of Transportation
 1st Floor Reception Desk
 1201 E. Broad Street
 Richmond, VA 23219

Offerors are responsible for effecting delivery by the deadline above and late submissions will be rejected without consideration or evaluation, and will be returned unopened to the sender. VDOT accepts no responsibility for misdirected or lost Conceptual Proposals.

- 4.7.1** The Conceptual Proposals should be as clear and concise as possible in accordance with the requirements of this SFP, so that a proper evaluation can be made of the Offeror's capabilities and intent to complete the proposed Project.
- 4.7.2** Offerors submitting Conceptual Proposals to VDOT are required to deliver ten (10) identical hard copies, one (1) of which must bear original signatures and one (1) electronic copy (a ".pdf" file in the most current version of Adobe Acrobat), of their Conceptual Proposal for all Volumes on CD-ROM. Offerors passing VDOT's Quality Control review will be required to submit additional hard copies at VDOT's request.

4.8 Format of Proposal

Conceptual Proposals shall follow the format prescribed in this section and the current version of the Guidelines as referenced herein. Submittals that do not follow the format prescribed below may be considered non-responsive and may be eliminated from further consideration.

- 4.8.1** Conceptual Proposals should be prepared simply and economically, providing a straightforward, concise description of the Offeror's capabilities to complete the Project. Emphasis should be on completeness and clarity.
- 4.8.2** All pages of the Conceptual Proposal shall be numbered in the lower right hand corner. Offerors shall use cross referencing rather than repetition throughout the Conceptual Proposal. The Conceptual Proposal shall contain a table of contents which shall follow the format described herein.
- 4.8.3** Conceptual Proposals shall be placed in a three-ring binder. All documentation submitted with the Conceptual Proposal shall be contained in two volumes: Volume I shall contain all of the material requested in Section 4.8.4, with the exception of the financial commitments and reports, and Volume II shall contain financial statements and reports. Conceptual Proposals shall also meet the following requirements:
- Consist of no more than 50 pages (VDOT will remove and discard all pages in excess of the stipulated page limit). The following items shall not be counted against the page limit: Letter of Submittal; Executive Summary; tabs; Certification Regarding Debarment Forms, Appendix C; financial statements and reports requested in Section 10.4.1.1 and contained in Volume II; Work History Forms, Appendix D; Resume Forms, Appendix E; and Conceptual Financial Plan Pro Forma, Appendix G;
 - Except for charts, exhibits, and other illustrative and graphical information, all information shall be prepared on 8.5"X 11" white paper. Charts, schedules, exhibits and other illustrative and graphical information may be on 11" x 17" paper, but must be folded to 8.5" X 11";
 - Typed on one (1) side only; and
 - Separated by numbered tabs with sections corresponding to the order set forth in Section 4.8.4. Tabs should not contain Project-specific information, or they will count against the page limit.

- All printing, except for the front cover of the Conceptual Proposal and any appendices, must be:
 - Times New Roman, with a font of 12-point; and
 - Offeror may use Times New Roman 10 point font for filling out information on the Work History Forms, Appendix D and the Resume Forms, Appendix E.

4.8.4 Each Conceptual Proposal shall be organized as follows:

1. Letter of Submittal (maximum Four Pages)
2. Executive Summary (maximum Five Pages)
3. Table of Contents
4. Responses to Conceptual Proposal Evaluation Criteria:
 - Section 10.4.1: Qualifications Criteria
 - .1 Financial Capacity
 - .2 Project Finance Experience
 - .3 Design, Construction, Maintenance and Operations
 - .4 Toll Facility Operations
 - .5 Conceptual Financial Plan

4.9 Formal Presentation and Interviews

Offerors may be required to give oral presentations of their Conceptual Proposal to an IRP and/or the public. The format of these presentations may include a formal presentation by Offerors, followed by questions from the IRP pertaining to the Conceptual Proposals or the presentations. The IRP may also ask Offerors to address concerns expressed through the public comment process. Such presentations will provide opportunities to inform VDOT and the public and/or clarify aspects of the Project. The presentations will also allow the IRP to seek clarification of Project elements, the Conceptual Proposal's response to the Project objectives and needs, complete deliverable requirements and provide Offerors with the opportunity to further explain their Conceptual Proposal. If there is an issue to which the Offerors are unable to respond during the formal presentation, the IRP may, at their discretion, grant the Offerors a reasonable period of time in which to submit a written response.

5 QUESTIONS AND CLARIFICATIONS

All questions and requests for clarification regarding this SFP shall be submitted in writing to VDOT's POC designated in Section 4.3. No requests for additional information, clarification or any other communication should be directed to any other individual. VDOT's responses to questions or requests for clarification shall be in writing and may be accomplished by an addendum to this SFP. VDOT will not be bound by any oral communications, or written interpretations or clarifications that are not set forth in an addendum. VDOT, at its sole discretion, shall have the right to seek clarifications from any Offeror to fully understand information contained in the Conceptual Proposal. All questions submitted by the Offerors shall be published on the VDOT website, in the form in which they were received.

6 RIGHTS AND OBLIGATIONS OF VDOT

In connection with this procurement, VDOT reserves to itself all rights (which rights shall be exercisable by VDOT in its sole discretion) available to it under applicable Law.

6.1 Specific Rights and Obligations of VDOT

In addition to all rights reserved as specified by Law, VDOT further reserves to itself, without limitation or with or without cause and with or without notice, the following:

- 6.1.1** The right to cancel, withdraw, postpone or extend this SFP in whole or in part at any time prior to the execution by VDOT of an interim and/or comprehensive agreement, without incurring any obligations or liabilities.
- 6.1.2** The right to issue a new SFP.
- 6.1.3** The right to reject any and all submittals, responses and proposals received at any time.
- 6.1.4** The right to modify all dates set or projected in this SFP.
- 6.1.5** The right to terminate evaluations of responses received at any time.
- 6.1.6** The right to suspend and terminate the procurement process for the Project at any time.
- 6.1.7** The right to revise and modify, at any time prior to the proposal submittal date, factors it will consider in evaluating responses to this SFP and to otherwise revise its evaluation methodology.
- 6.1.8** The right to waive or permit corrections to data submitted with any response to this SFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this SFP has been completed and closed.
- 6.1.9** The right to issue addenda, supplements, and modifications to this SFP.
- 6.1.10** The right to permit submittal of addenda and supplements to data previously provided with any response to this SFP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this SFP has been completed and closed.
- 6.1.11** The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this SFP to seek an improved understanding and evaluation of the responses to this SFP.
- 6.1.12** The right to seek or obtain data from any source that has the potential to improve the understanding and evaluation of the responses to the SFP, including the right to seek clarifications from Offerors.

- 6.1.13** The right to permit Offerors to add or delete firms and/or key personnel.
- 6.1.14** The right to add or delete the Offeror's responsibilities from the information contained in this SFP.
- 6.1.15** The right to appoint and change appointees of the Independent Review Panel.
- 6.1.16** The right to use assistance of outside technical, financial, and legal experts and Consultants in the evaluation process.
- 6.1.17** The right to waive deficiencies, informalities and irregularities in a proposal, accept and review a non-conforming proposal or seek clarifications or supplements to a proposal.
- 6.1.18** The right to disqualify any Offeror that changes its submittal without VDOT approval.
- 6.1.19** The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the SFP.
- 6.1.20** The right to use all or part of an unsuccessful Conceptual Proposal if the Offeror of said proposal accepts a payment, if applicable.
- 6.1.21** The right to suspend, discontinue and/or terminate interim and/or comprehensive agreement negotiations with any Offeror at any time prior to the actual authorized execution of such agreement by all parties, subject to appropriate documentation.
- 6.1.22** The right to negotiate with an Offeror without being bound by any provision in the proposal.
- 6.1.23** The right to enter into one or more interim and/or comprehensive agreements with one or more Offerors, as permitted by the PPTA, in furtherance of the development and operation of the Project or any of its components, or to modify or abandon procurement of the Project.
- 6.1.24** The right to request revisions to the Conceptual Proposal.
- 6.1.25** The right to short list from among the highest rated Offerors, and to provide an RFDP only to those short listed Offerors. VDOT anticipates short listing no more than three (3) highest rated Offerors. VDOT may increase or decrease the number of short listed Offerors, if it is in the best interest of VDOT to do so.

6.2 Assumption of Liability

VDOT assumes no obligations, responsibilities, and liabilities, fiscal or otherwise, to reimburse all or part of the costs incurred or alleged to have been incurred by parties considering a response to and/or responding to this SFP. All such costs shall be borne solely by each Offeror and its team members.

- 6.2.1** In no event shall VDOT be bound by, or be liable for, any obligations with respect to the Project until such time (if at all) an interim and/or comprehensive agreement, in form and substance satisfactory to VDOT, has been executed and authorized by VDOT and, then, only to the extent set forth therein.
- 6.2.2** Any and all information made available to the Offerors is made for convenience purposes only and is without representation or warranty of any kind.

7 COMPREHENSIVE AGREEMENT – MATERIAL TERMS

VDOT issues this SFP, inclusive of all appendices and addenda (collectively the “SFP Documents”) as a preliminary step in the PPTA procurement process, which, if carried through to the conclusion, will result in VDOT entering into an interim and/or comprehensive agreement with the successful Offeror, who will obtain the right and obligation to finance, design, construct, operate and maintain the Project. Several terms of the interim and/or comprehensive agreement, which VDOT proposes to execute for the Project are included as Appendix F. Additionally, a draft comprehensive agreement, will be included with the RFDP. The RFDP will, among other things, detail the technical requirements for the design, construction, maintenance and operations components of the Project; the scope of the services to be provided by the successful Offeror; and commercial terms.

8 MISCELLANEOUS

8.1 Virginia Freedom of Information Act

- 8.1.1** All proposals submitted to VDOT are subject to the disclosure requirements of the PPTA, Section 2.2-4342 of the Virginia Public Procurement Act, and the Virginia Freedom of Information Act (VFOIA) (Section 2.2--3700 et seq.). Offerors are advised to familiarize themselves with the provisions of each Act referenced herein to ensure that documents identified as confidential will not be subject to disclosure under VFOIA. In no event shall the Commonwealth, the Commonwealth Transportation Commissioner, or VDOT be liable to an Offeror for the disclosure of all or a portion of a Conceptual Proposal submitted pursuant to this request.
- 8.1.2** If a responding Offeror has special concerns about information which it desires to make available to VDOT but which it believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, such responding Offeror should specifically and conspicuously designate that information as such in its proposal and state in writing why protection of that information is needed. The Offeror should make a written request to VDOT's POC. The written request shall:
1. Invoke such exemption upon the submission of the materials for which protection is sought;
 2. Identify specifically and conspicuously the data or other materials for which the protection is sought;
 3. State the reasons why protection is necessary; and
 4. Indicate that a similar process with the appropriate officials of the affected local jurisdictions has or will be conducted. Failure to take such precautions prior to submission of a proposal may subject confidential information to disclosure under the VFOIA.
- 8.1.3** Blanket designations that do not identify the specific information shall not be acceptable and may be cause for VDOT to treat the entire proposal as public information. Nothing contained in this provision shall modify or amend requirements and obligations imposed on VDOT by applicable Law, and the applicable Law(s) shall control in the event of a conflict between the procedures described above and any applicable Law(s).
- 8.1.4** In the event that VDOT receives a request for public disclosure of a portion of a proposal, VDOT will determine whether or not the requested materials are exempt from disclosure. In the event that VDOT elects to disclose the requested materials, it will endeavor to provide notice to the Offeror of its intent to disclose.
- 8.1.5** Offerors are on notice that VDOT will post on its webpage all responsive Conceptual Proposals and other relevant information and agreements, in accordance with applicable Regulatory Approvals and Laws.

- 8.1.6** Offerors are advised that portions of the Project documents may be considered Critical Infrastructure Information/Sensitive Security Information (CII/SSI) and any VFOIA requests for such documents will be processed in accordance with the Code of Virginia Section 2.2-3705.2.

8.2 Requirement to Keep Team Intact

The Key Personnel proposed by the Offeror shall remain on Offeror's team for the duration of the procurement process and, if the Offeror is selected and enters into an interim and/or a comprehensive agreement, the requirement will be as more specifically defined in the comprehensive agreement. If circumstances require a proposed change, it must be submitted in writing to VDOT's POC. VDOT will determine whether to authorize a change, which authorization will not be unreasonably withheld. Unauthorized changes to the Offeror's Key Personnel at any time during the procurement process may result in the elimination of the Offeror from further consideration.

8.3 Disadvantaged Business Enterprises/Small, Women and Minority Owned Businesses

The participation goals for this Project will be set forth in the RFDP, wherein a commitment will be required from Offerors to achieve the goals. Offerors shall anticipate compliance with relevant Federal and State DBE/SWAM policies and regulations.

8.4 Administrative Requirements

In addition to the specific submittal requirements set forth elsewhere in this SFP, all Offerors shall comply with the following:

- 8.4.1** Prior to the execution of an interim and/or comprehensive agreement, all business entities, except for sole proprietorships, are required to be registered with the Virginia State Corporation Commission (a Business Registration Guide is available on the Internet at <http://www.state.va.us/scc/division/clk/brg.htm>). Foreign Professional Corporations and Foreign Professional Limited Liability Companies must possess a Commonwealth of Virginia Certificate of Authority from the State Corporation Commission to render professional services.

All Offerors and Submittals must at the time of their Conceptual Proposal submittal comply with the law and nothing herein is intended to contradict, nor supersede, any applicable Regulatory Approvals and Laws. All Offerors shall be eligible at the time of their Conceptual Proposal submittal, under the law and relevant regulations, to offer and to provide all services proposed and related to the Project. Unless exempted by §§ 54.1-401, 54.1-402, or 54.1-402.1 of the *Code of Virginia*, any person, partnership, corporation, or other entity offering or practicing architecture, engineering, or land surveying shall be registered or licensed in accordance with the provision of *Chapter 4, Title 54.1 of the Code of Virginia*. Offerors shall satisfy, at the time of their Conceptual Proposal submittal, all commercial and professional registration requirements, including,

but not limited to the requirements of the State Corporation Commission and the Department of Professional and Occupational Regulations.

- 8.4.2** VDOT will not consider for award any proposals submitted by any Offerors and will not consent to subcontracting any portions of the proposed contract to any subconsultants in violation of the provisions of the Federal Immigration Reform and Control Act of 1986, which prohibits employment of illegal aliens.
- 8.4.3** Prior to the execution of an interim and/or comprehensive agreement all Offerors must have internal control systems in place that meet federal requirements for accounting. These systems must comply with requirements of 48CFR31, "Federal Acquisition Regulations, Contract Cost Principals and Procedures," and 23CFR172, "Administration of Negotiated Contracts."
- 8.4.4** VDOT assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The Consultant and all subconsultants selected for this Project shall be required to submit a Title VI Evaluation Report (EEO-D2) when requested by VDOT to respond to the SFP. This requirement applies to all consulting firms with fifteen (15) or more employees.
- 8.4.5** VDOT does not discriminate against an Offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state Law relating to discrimination in employment.
- 8.4.6** Please indicate in the Letter of Submittal, Section 10.2, and by executing and returning the attached Certification Regarding Debarment Forms, provided in Appendix C, if your firm, subconsultant, subcontractor, or any person associated therewith in the capacity of owner, partner, director, officer or any position involving the administration of federal or state funds:
 - 1. Is currently under suspension, debarment, voluntary exclusion or determination of ineligibility by any State or federal agency;
 - 2. Has been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;
 - 3. Has a proposed debarment or suspension pending; or
 - 4. Has been indicted, convicted, or had a civil judgment rendered against it or them by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

Any of the above conditions will not necessarily result in denial of award, but will be considered in determining Offeror responsibility. For any condition noted, indicate to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administrative sanctions. Certifications should be submitted directly behind the Letter of Submittal.

- 8.4.7** Offerors shall note and comply with the requirements relative to the eVA Business-to-Government Vendor system. The eVA Internet electronic procurement solution, web site portal (<http://www.eva.state.va.us>), streamlines and automates government purchasing activities in the Commonwealth. The portal is the gateway for vendors to conduct business with state agencies and public bodies. All vendors desiring to provide goods and/or services to the Commonwealth shall participate in the eVA Internet e-procurement solution through either eVA Basic Vendor Registration Service or eVA Premium Vendor Registration Service. For more detail information regarding eVA, registrations, fee schedule, and transaction fee, use the website link: <http://www.eva.state.va.us>. All Offerors must register in eVA; failure to register will result in a Conceptual Proposal being rejected.

9 CONFLICT OF INTEREST

9.1 Conflict of Interest Determination

9.1.1 VDOT will apply the procedures set forth in the Innovative Project Delivery Division Memorandum 07-2.0, dated August 1, 2007, for identification and review of potential organizational conflicts of interest related to VDOT procurement of contracts under the PPTA or design-build legislation. This memorandum is available at VDOT's website at <http://www.virginiadot.org/business/bu-ipd-memo.asp>.

9.1.2 Offerors shall note that portions of the SFP Documents will include work product developed by the others.

1. The firms listed below will not be allowed to participate as a team member with an Offeror for this Project due to their participation in assisting VDOT with: procurement documents; negotiations strategies and negotiations; business and policy decisions; contract management and administration; development, negotiation, and execution of interim and/or comprehensive Agreement; and reports and contact language. Any proposal received in violation of this requirement may be rejected.

Halcrow Inc.; Public Resources Advisory Group (PRAG); C&M; Jeffrey A. Parker and Associates, KPMG Corporate Finance LLC; Warner Construction Consultants, Inc.; Capital Project Strategies, LLC, and Nossaman LLP / Nossaman, O'Conner & Hannan LLP

2. The firms listed below have completed work that is available to prospective Offerors and VDOT has determined that, at this time, they would not have a conflict of interest if they chose to pursue the Project with a private developer.

Parsons Brinkerhoff, Michael Baker and Rummel, Klepper, and Kahl LLP

9.2 Ethics in Public Contracting Act

VDOT may, in its sole discretion, disqualify the Offeror from further consideration for the award of the contract if it is found by VDOT that there is a violation of the Ethics in Public Contracting Act, Section 2.2-4367 of the Virginia Code, or any similar statute involving the Offeror in the procurement of the contract.

10 CONTENTS OF CONCEPTUAL PROPOSAL

The Conceptual Proposals should provide sufficient information to facilitate evaluation of the Offeror's qualifications and Conceptual Financial Plan. Section 10 describes the type of information that must be included in the Conceptual Proposals. The format for the presentation of such information within the Conceptual Proposal is described in Section 4.8.

Offerors shall be aware that VDOT reserves the right to conduct an independent investigation of any information, including prior experience, identified in a proposal by contacting project references, accessing public information, contacting independent parties, or any other means. VDOT also reserves the right to request additional information from an Offeror during the evaluation of its Conceptual Proposal.

10.1 Confidentiality

Confidentiality requests should be consistent with Section 8.1 of this SFP. It is VDOT's policy to be transparent throughout the entire procurement process. The classification of the entire Conceptual Proposal as confidential is not acceptable. Offerors shall clearly disclose any anticipated source and amount of public funds, programs or services in the Executive Summary and in the Conceptual Financial Plan and such information shall not be exempt from disclosure.

10.2 Letter of Submittal

Each Offeror shall provide a Letter of Submittal on the Offeror's letterhead signed by an authorized Representative of the Offeror's organization, which individual shall be the contact point for all communications from VDOT related to the SFP or the Project. The letter shall not exceed four (4) pages in length and shall meet the following requirements:

- Include the authorized Representative's title, address, phone and fax numbers, and e-mail addresses;
- Provide name and address of lead firm and consortium firms who are to be part of the Offeror's team;
- Certification Regarding Debarment forms as provided in Appendix C;
- If the Offeror is not yet a legal entity or is a joint venture or other enterprise which consists of parties who will be jointly and severally liable for all the private entity's obligations under the interim and/or comprehensive agreement, then all such parties (including but not limited to the lead contractor and lead designer), or, if applicable, all joint venture partners/members shall sign the letter;
- All signatures shall be original and signed in ink;
- Include the written commitment of all signators to be jointly and severally liable for all obligations of the private entity under the interim and/or comprehensive agreement; and

- Describe any parent guarantees that the Offeror will provide to secure its performance of its obligations under the interim and/or comprehensive agreement, and any proposed limits on the liability of the private entity or its guarantors.

10.3 Executive Summary

Each Offeror shall provide an Executive Summary. The Executive Summary shall not exceed five (5) pages and should include the following items:

- 10.3.1** Brief description of all significant aspects of the Conceptual Proposal and the implementation team, to include the Offeror's objectives in the development and operation of the Project.
- 10.3.2** Declaration as to whether public financial support is not necessary in the Offeror's approach for implementation of the Conceptual Financial Plan.
- 10.3.3** Declaration of Offeror's intent, if selected, to enter into an interim and/or comprehensive agreement with VDOT for the Project in accordance with the terms of this procurement.
- 10.3.4** Declaration that the offer presented in the Conceptual Proposal shall remain in full force and effect until such time as submission of the Detailed Proposals.
- 10.3.5** Declaration that information provided in the Conceptual Proposal meets appropriate state and federal, standards, statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards.

10.4 Conceptual Proposal Submittal Criteria

Offerors are advised that the Conceptual Proposal submittal and evaluation criteria contained herein has been modified from the Guidelines. These modifications were made in order to meet the specific needs of the Project and VDOT. Further, the submittal and evaluation criteria listed herein supersede the criteria listed in the Guidelines.

Offerors should limit their Conceptual Proposal responses to the request for qualifications and information identified below. Responses should focus on critical issues for the Project, the objectives of the Conceptual Proposals and on the stated evaluation criteria listed herein.

Section 10.4.1 Qualifications Criteria		
.1	Financial Capacity	<p>For all team members who will be providing equity and/or providing the performance security for the initial construction of the Project, (to include any parent or related companies from whom financial guarantees will be provided) the following documentation must be provided:</p> <ol style="list-style-type: none"> 1. Audited financial statements for each of the last five (5) years prepared: <ol style="list-style-type: none"> a. in accordance with U.S. Generally Accepted Accounting Principles (GAAP) or International Financial Reporting Standards (IFRS); b. in English; c. in US dollars*; and d. including balance sheet, profit and loss statements, and statement of changes in financial position and accompanying notes to financial statements. <p>If the audited financial statements are prepared in accordance with an accounting standard other than U.S. GAAP or IFRS, a letter must be provided by a Certified Public Accountant (or equivalent professional accountant) discussing the major differences between the standards upon which these financial statements are prepared and U.S. GAAP or IFRS.</p> <p>*If audited financial statements are not available in U. S. dollars, items required in 10.4.1.1.1 (d) converted into U.S. dollars will suffice. However, a CPA or other accountant professional equivalent letter describing assumptions and confirming accuracy of calculations and fair representation results shall be provided.</p> 2. Interim financial statements for the most recent period since the last fiscal period. 3. Most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed. 4. Current and planned financial commitments to other projects, any off-balance sheet liabilities and an assessment of the extent to which these commitments may affect the Offeror's ability to raise the necessary finance for the Project. 5. Commitment letters from parent company or related parties who are proposed to provide financial guarantees to the Project.

.2	Project Finance Experience	<p>a. On an aggregate basis, identify members of the team that have been involved in successfully financing long-term Public Private Partnership (P3) transportation projects valued in excess of \$500 million total (US\$) initial capital costs including a role as an equity investor within the last ten (10) years.</p> <p>With respect to the Offeror's financing experience, the following documentation for up to three of the most recent projects must be provided (in US\$):</p> <ol style="list-style-type: none"> 1. Name of individual team member involved 2. Name of project 3. Description of project 4. Location of project 5. Total project costs 6. Year of financial close 7. Value of financing 8. Description of financing 9. Value of equity invested 10. Third party reference (Name, organization, phone number, email) <p>This information should be provided on the Work History Form 1, Appendix D.</p> <p>b. Provide a narrative describing the extent and depth of the Offeror's experience in financing projects similar to the Project.</p> <p>With respect to the Offeror's financing experience, the following additional information must be submitted for each representative project (maximum five projects):</p> <ol style="list-style-type: none"> 1. Team member (firm) name 2. Name of project 3. Description of project 4. Location of project 5. Year of financial close 6. Value of financing 7. Description of financing 8. Role in financing 9. Third party reference (Name, organization, phone number, email) <p>This information should be provided on the Work History Form 1, Appendix D.</p>
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		Note: If Offeror chooses to list individual team member experience gained from another firm as relevant to the Offeror's qualifications, then the Offeror shall also identify these specific team members as Key Personnel. The information regarding Key Personnel should be provided on the Resume Form, Appendix E.
.3	Project Design, Construction, Maintenance and Operations	<p>What is the direct and relevant experience of the Offeror's team in the design, construction, operations and maintenance of infrastructure projects of similar scope and magnitude as this Project?</p> <p>List and describe a maximum of ten (10) projects that the Offeror's proposed team, to include, the Offeror, and lead team members for design and construction and operations and maintenance has been involved in, which best illustrates current qualifications relevant to the unique components of this Project.</p> <p>Provide the overall history of performance, including schedule completion, cost and budget control, and assessment of liquidated damages, on all ten (10) projects as indicated above and undertaken by the Offeror, the design-build Contractor and the operator.</p> <p>a. Provide specific relevant experience of the Offeror and its team members who will be responsible for the operations and maintenance of the roadway. Identify direct and relevant experience related to operation of a reversible roadway during an emergency or evacuation event.</p> <p>This information should be provided on the Work History Form 3, Appendix D.</p> <p>b. Provide specific relevant experience of the Offeror and its lead team members which will be responsible for the design and construction of the roadway, including its record of success in the development of comparable projects and responsibilities. Identify the design and construction teams' prior working relationships, if any.</p> <p>Provide at least three examples of projects that included the Offeror's design team in a leading role. Include a minimum of one of the three projects that involved a greenfield project.</p> <p>Provide at least three examples of projects that included the Offeror's construction team in a leading role. Include a minimum of one of the three projects that involved a greenfield project.</p> <p>In addition, provide information as to whether the Offeror, design-build Contractor have defaulted on any contracts in the last seven (7) years. Provide details if any.</p> <p>This information should be provided on the Work History Form 2,</p>

		<p>Appendix D.</p> <p>Lead team members identified in response to these criteria will be deemed “Key Personnel”. The information regarding Key Personnel should be provided on the Resume Form, Appendix E.</p>
.4	Toll Facility Operations	<p>What is the extent and depth of the Offeror’s direct and relevant experience in undertaking toll operations for a project or projects of similar scope and magnitude as this Project in the last ten (10) years?</p> <p>With respect to the Offeror’s tolling experience the following information should be submitted for each project (for a maximum of three projects):</p> <ol style="list-style-type: none"> 1. Name of team member involved 2. Name of project 3. Location of project 4. Description of project 5. Description of tolling (manual toll booths, electronic tolling, video tolling, variable tolling, etc.) 6. Description of tolling responsibilities 7. Third party reference (Name, organization, phone number, email) <p>This information should be provided on the Work History Form 1, Appendix D.</p>
.5	Conceptual Financial Plan	<p>Provide an approach to developing a reasonable and viable financial plan that fully funds total project cost.</p> <p>With a focus on achieving the Project objectives, the extent to which the Conceptual Financial Plan submitted demonstrates the following:</p> <ol style="list-style-type: none"> 1. An understanding of long-term P3 financing of major infrastructure projects; 2. An understanding of viable financing options available in the U.S. markets; 3. An understanding of the unique financing characteristics of the Project; and 4. The plan is achievable in the current U.S. financial markets. <p>a. The Offeror must provide a qualitative description (maximum three (3) pages) of the Offeror’s approach to financing the development, maintenance and operations of the Project. At a minimum, this discussion should address:</p> <ol style="list-style-type: none"> 1. Potential sources and uses of funds and a brief description of the listed funding sources;

		<ol style="list-style-type: none"> 2. Potential payment mechanisms for the Project; 3. Financial support that may be available from team members; 4. No Federal funding or Federal Programs should be assumed; 5. Approaches to user fee and toll regulation including a projected range of initial toll rates; and 6. Roles and responsibilities for the public and private sector parties as it relates to financing. <p>b. The Offeror must provide its estimated sources and uses of funds as well as providing the information as described in the Conceptual Finance Plan Pro Forma, Appendix G. Traffic numbers distinguishing between cars and trucks (% and AADT), revenue numbers and cash flow data shall be provided separately in ten (10) year increments to the end of the term. All information in section 10.4.1.6b shall be provided in a Microsoft Excel spreadsheet electronically.</p>
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11 EVALUATION PROCESS

VDOT will review and evaluate each Conceptual Proposal based on the Offerors' qualifications to finance, design, construct, maintain and operate the Project over the long term through the demonstration of significant and relevant experience and capabilities meeting the Project objectives.

The criteria will consider, among other things, the Offerors' relevant experience with the development and financing of transportation infrastructure projects of similar complexity and scope; the operations and maintenance of toll highways; and the operations, maintenance and management of highway corridors and integrated networks.

The Conceptual Proposal evaluation criteria reflect VDOT's main objectives and priorities during project development and its evaluation of the Proposals in response to the SFP.

11.1 Evaluation Rating System

Conceptual Proposals will be evaluated by applying the rating system as set forth below.

The rating system that will be used for the assessment of the Conceptual Proposals is detailed in Table 11.1. The rating system will have four rating levels for the evaluator. Within each of the rating levels, an evaluator may provide specific information differentiating the basis of their evaluation and whether one Offeror is more qualified, but is rated within the same rating level. For example, if four Offerors each are rated a Green proposal response, this would not necessarily signify that all four Offerors are equally ranked. Based on the information provided in the Conceptual Proposal, an evaluator has the discretion to rank each Offeror, notwithstanding the fact that he/she may have rated all Offerors as a Green for a particular category.

Based on its evaluation, VDOT will then provide recommendations to the Commonwealth Transportation Commissioner, the IRP and the CTB, as to whether none, one, or more Conceptual Proposals should be advanced to Phase Four.

Evaluation Criteria and a rating system have not yet been determined for the RFDP. If an Offeror is selected to advance to Phase Four the evaluation and selection criteria will be provided in the RFDP.

TABLE 11.1 – VDOT EVALUATION RATING SYSTEM	
Adjectival Rating	Adjectival Rating Description
Blue	Conceptual Proposal indicates significant strengths and/or a number of minor strengths and no weaknesses. Submitter provides a consistently outstanding level of quality, qualifications, performance or capability requirements in a way beneficial to the Commonwealth.

Green	Conceptual Proposal meets relevant qualifications, performance or capability requirements necessary for acceptable contract performance.
Yellow	Conceptual Proposal does not clearly meet some relevant qualifications, performance or capability requirements necessary for acceptable contract performance, but proposal inadequacies may be correctable.
Red	Conceptual Proposal fails to express relevant qualifications, performance or capability requirements.

APPENDIX A

DEFINITIONS

Concessionaire means the individual, company, firm, partnership, corporation, association or joint venture contemplated to contract with VDOT in conjunction with this SFP and pursuant to the execution of an Interim and/or Comprehensive Agreement.

Conceptual Proposals means Offeror's submission of Statement of Qualifications and Conceptual Financial Plan in response to VDOT's request for such proposals.

Consultant means any Person at the time retained by or on behalf of VDOT or the Concessionaire, which Person is experienced and has a national and favorable reputation in the matters for which such Person is so employed.

Contractor means any Person with whom the Concessionaire has entered into any contract to perform any part of the Work or provide any materials, equipment or supplies for the Project and/or the Utility Relocations included in the Work, on behalf of the Concessionaire, and any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

CTB means the Commonwealth Transportation Board, a board of the State affiliated with VDOT.

Detailed Proposals means short listed Offerors' submission of proposals in response to VDOT's request for such proposals under Phase Four of the evaluation and procurement process.

Electronic Toll Collection means the collection of tolls based on the automatic identification and classification of vehicles using electronic systems.

Experience Modification Rating (EMR) means a mandatory process that modifies the published rates for rating classifications by taking into account the actual reported losses and payrolls of an individual business. It is a financial incentive to employers to minimize the financial cost of workplace injuries. The rate is based on two major issues: the number of claims and the cost of each claim reported over an experience period. The experience period is usually three full policy years, ending one year prior to the effective date of the modification. To illustrate, a modification effective January 1, 2008 uses payrolls and losses for the policies effective January 1, 2004; January 1, 2005; and January 1, 2006.

Federal Highway Administration (FHWA) means the branch of the United States Department of Transportation which funds and oversees new highways and highway improvement projects.

Financial Closing Date (Financial Close) means the closing date of the issuance of tax-exempt bonds or the issuance of taxable debt and/or equity, the proceeds of which, in either case, are sufficient together with other available funds to finance the completion of the design and construction of the Project or the related Phase, as applicable

Financial Plan (Conceptual Financial Plan) means Offeror's conceptual plan which describe planned use and source of funds to cover anticipated Project costs and expenditures related to the finance, design, construction, operation, maintenance and handback phases of work, including annual updates for which such plan and annual updates meet the requirements of Section 1904(a) of SAFETEA-LU and FHWA Major Projects Guidance, March 2007.

Generally Accepted Accounting Principles (GAAP) means a collection of methods used to process, prepare, and present public accounting information representing such accepted accounting practice as, in the opinion of the Accountant, conforms at the time to generally accepted accounting principles in the United States of America

Governmental Authority means any court, federal, state, department, commission, board, bureau, agency or other regulatory, administrative, or governmental entity or authority having jurisdictional authority in accordance with State or Federal Laws.

Implementation Guidelines (Guidelines) means such guidelines presenting the goals and objectives as governed by the Public Private Transportation Act (PPTA) of 1995 (§ 56-556 et seq. of the Code), as amended.

International Financial Reporting Standards (IFRS) means standards and interpretations adopted by the International Accounting Standards Board (IASB) which state how particular types of transactions and other events should be reported in financial statements. Major financial centers in various countries of each continent apply these standards to promote uniformity in financial reporting and practices and to generate financial statements that are understandable in all of the countries they operate.

Key Personnel is defined in **Section 10.4.1.5** of the SFP.

Law(s) mean any current or future order, writ, injunction, decree, judgment, law, ordinance, decision, opinion, ruling, statute, code, rule or regulation of any Governmental Authority.

Letter of Submittal is defined in **Section 10.2** of the SFP.

NEPA means the National Environmental Policy Act, 42 U.S.C. § 4321 et seq., as amended and as it may be amended from time to time.

Open Road Tolling (ORT) means an electronic toll collection system without toll plazas, where drivers will be charged the toll without having to stop, slow down, or stay in a given lane.

Project means collectively, the provision for a new four-lane divided highway between Interstate-295 in Prince George County and U.S. Route 58 Bypass in the City of Suffolk, Virginia and as further defined in Article 3 of the SFP.

Regulatory Approvals means all local, regional, state and federal agreements, studies, findings, permits, approvals, authorizations, certifications, consents, decisions, exemptions, filings, leases, licenses, registrations, rulings and other governmental authorizations required to be obtained or completed under applicable Laws prior to undertaking any particular activity contemplated by this Agreement. The term “Regulatory Approvals” includes any supplements to the EIS.

Representative means, with respect to any Person, any director, officer, employee, official, lender (or any agent or trustee acting on its behalf), partner, member, owner, agent, lawyer, accountant, auditor, professional advisor, Consultant, engineer, contractor, other Person for whom such Person is at law responsible or other representative of such Person and any professional advisor, Consultant or engineer designated by such Person as its “Representative.”

Responsible Public Entity has the meaning assigned to such term in Section 56-557 of the PPTA and, for purposes hereof, means the Virginia Department of Transportation.

SFP Documents mean the documents, whether attached or incorporated by reference, furnished by VDOT as part of the Solicitation for Proposals for the Project.

Solicitation for Proposals (SFP) means VDOT’s request for such proposals under Phase One of the procurement process for the Project.

State means the Commonwealth of Virginia.

Statement of Qualifications means a statement of the Offeror’s experience, financial capacity, Key Personnel, a current profile of the Offeror teams’ activities, and other pertinent information relevant to the Project.

Toll Agreement means the agreement signed between the FHWA and a State or local government or other entity to grant the authority to collect tolls.

VDOT means Virginia Department of Transportation.

Violation Enforcement System means the collective equipment and procedures that capture a violation transaction, image and the citation process.

Virginia Code means the Code of Virginia of 1950, as amended.

Work means all development and operation [as defined in the PPTA] required to be furnished and provided by or on behalf of the Concessionaire as contemplated under an executed comprehensive agreement, including all labor, materials, equipment, services

and documentation required to develop and operate the Project, except for those efforts which the comprehensive agreement expressly specifies will be performed by VDOT.

APPENDIX B

PPTA ORDER FORM ROUTE 460 CORRIDOR IMPROVEMENT PROJECT SOLICITATION FOR PROPOSALS (SFP) INFORMATION PACKAGE

FIRM NAME _____

COMPLETE MAILING
ADDRESS _____

(PLEASE GIVE BOTH STREET ADDRESS AND POSTAL DELIVERY ADDRESS)

FIRM TELEPHONE NUMBER _____ FIRM FAX NUMBER _____

E-MAIL ADDRESS _____

SIGNED: _____

FOR QUESTIONS REGARDING THE SFP INFORMATION PACKAGE CONTACT:

MARGIE RAY
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 786-9537

TO ORDER THE SFP INFORMATION PACKAGE BY TELEPHONE/MAIL/FAX CONTACT:

THE SCHEDULING AND CONTRACT DIVISION PLAN ROOM
VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VIRGINIA 23219
(804) 786-1898, 786-5161 OR 371-9868
FAX TELEPHONE NO. (804) 786-2788 (Ordering by fax using a Master or Visa credit card is the preferred method)

MASTERCARD/VISA NO. _____

EXPIRATION DATE: _____

THE SFP INFORMATION PACKAGE WILL NOT BE ISSUED PRIOR TO RECEIPT OF PAYMENT

Dear Sir/Madam:

Please send the SFP Information Package designated below. Enclosed is check No. _____ in the amount of \$ _____ made payable to the Treasurer of Virginia.

TO VIEW THE SFP GO TO THE WEBSITE ADDRESS LISTED BELOW

<http://route460ppta.org/>

SFP NO.	PROJECT	PACKAGES REQUESTED	TOTAL (\$50.00 per package, price includes 5% Virginia Sales Tax)
		#	\$
	Route 460 Corridor Improvement Project		

FOR DEPARTMENTAL USE ONLY

SFP PACKAGE MAILED _____
TO BE MAILED _____

MAILED BY _____
CHECKED BY _____

APPENDIX C

Certification Regarding Debarment Primary Covered Transactions

Project: Route 460 Corridor Improvements Project

1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency.

b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; and have not been convicted of any violations of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification, or destruction of records, making false statements, or receiving stolen property;

c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1) b) of this certification; and

d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date

Title

Name of Firm

APPENDIX C

Certification Regarding Debarment Lower Tier Covered Transactions

Project: Route 460 Corridor Improvements Project

- 1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- 2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

The undersigned makes the foregoing statements to be filed with the proposal submitted on behalf of the Offeror for contracts to be let by the Commonwealth Transportation Board.

Signature

Date

Title

Name of Firm

APPENDIX D

Work History Form 1 (Financial)

List experience with projects similar to the proposed Project, which best illustrates current qualifications relevant to this Project.								
a. Team Member or Firm's Name	b. Name of the Project, Location, Description and Tolling Description (if applicable)	c. Project Owner's Name & Address, Project Manager's Name, Phone Number	d. Project Cost	e. Third Party Reference Name, Organization, Phone Number	f. Year of Financial Close or Year Posted (pertaining to Securities)	g. Financing/Security/Insurance		
						Description/Type	Role/Tolling Responsibility	Value/Amount/Equity Invested
(1)								
(2)								
(3)								
(4)								
(5)								
(6)								
(7)								
(8)								
(9)								
(10)								

APPENDIX D

Work History Form 2

List experience with projects similar to the proposed Project, which best illustrates current qualifications relevant to this Project.								
a. Project Name & Location	b. Project Owner's Name & Address, Project Manager's Name, Phone & Fax Number	c. Nature of Firm's Responsibilities	d. Contract Completion Date (Original)	e. Contract Completion Date (Actual or Estimated)	f. Estimated Value (in Thousands)			
					Original Contract Value	Final or Estimated Contract Value	Dollar Value of Work for Which Firm Was/Is Responsible	Liquidated Damages/Defaults
(1)								
(2)								
(3)								
(4)								
(5)								
(6)								
(7)								
(8)								
(9)								
(10)								

APPENDIX D

Work History Form 3 – Experience of the Lead Operations and Maintenance Firm* in the Operation and Maintenance of Roadway Facilities

a. Project Name & Location	b. Project Owner’s Name & Address, Project Manager’s Name, Phone & Fax Number	c. Nature of Firm’s Responsibilities	d. Lane Miles Maintained per project	e. Duration of Maintenance Period (state if ongoing)	f. Estimated Value in Thousands		g. Firm’s Number of Employees per project
					Original Contract Value	Dollar Value of Work for Which Firm Was/Is Responsible	
(1)							
(2)							
(3)							
(4)							
(5)							
(6)							
(7)							
(8)							
(9)							
(10)							

*List the experience of Lead Operations and Maintenance Firm only, whether or not future shareholders of the concessionaire.

APPENDIX E

RESUME FORM

Brief Resume of Key Personnel/Offendor's team members anticipated for this project.	
a. NAME & TITLE:	
b. PROJECT ROLE:	
c. NAME OF FIRM WITH WHICH ASSOCIATED:	
d. YEARS EXPERIENCE: With this firm: With other firms: In role as stated in letter "b":	
e. EDUCATION: Educational Institution: Degree(s): Year: Specialization:	
f. ACTIVE REGISTRATION: Year First Registered: Discipline: Location of Registration:	
g. CERTIFICATIONS:	
h. EXPERIENCE AND QUALIFICATIONS RELEVANT TO THE PROPOSED PROJECT:	

APPENDIX F

Term Sheet for the Development of a Comprehensive Agreement

1 Introduction

This term sheet identifies and summarizes several key terms and conditions which will form the basis of, and shall be incorporated into, the Comprehensive Agreement negotiated by the Department and the Concessionaire. The terms are based on the premise that the Project will be financed solely with private funds. The terms would be different for a project relying in whole or in part on public funds.

2 Definitions

[Reserved]

3 Basic Roles and Responsibilities

3.01 Basic Agreement

(a) Concessionaire shall provide appropriate oversight, management, and reporting of all phases of the Project and its subcontractors such that the Project is delivered, operated, and maintained in accordance with, and fit for the purpose intended by, the Comprehensive Agreement.

(b) Concessionaire shall perform, or cause to be performed, the work required by the Comprehensive Agreement in accordance the Standard of Care (as defined in Section 3.02 below).

(c) Concessionaire may retain subcontractors to perform certain of Concessionaire's responsibilities under the Comprehensive Agreement, subject to Section 24.02.

(d) VDOT will perform only minimal construction oversight and will rely on the Concessionaire to directly manage, oversee, and resolve disputes involving its subcontractors without the involvement of the Department. VDOT will rely on the Concessionaire's quality assurance/quality control work and on the Concessionaire's certifications that the work complies with contract requirements. The Concessionaire will be responsible for VDOT's construction oversight costs, estimated at two (2) percent of the design and construction costs.

3.02 Standard of Care

(a) As used herein, "Standard of Care" means performance of the work in compliance with all of the following standards:

(i) specific standards, methods, and requirements set forth in the Comprehensive Agreement, including the Technical Requirements;

- (ii) all applicable laws, including laws applicable to a transportation project that has received or receives federal-aid funds;
- (iii) all regulatory approvals;
- (iv) the application of professional engineering judgment taking into consideration safety, operational requirements, level of service, and life cycle costs;
- (v) prudent industry practices, methods, techniques, and standards and using the degree of care that would be expected to be exercised by a prudent, skilled, and experienced contractor engaged in the same kinds of undertakings as the Project under the same or similar circumstances or conditions as those applying to the design, development, construction, and operation of the Project; and
- (vi) the requirements of insurance policies required to be maintained pursuant to the Comprehensive Agreement.

Neither compliance with a minimum requirement set forth in any specific standard set forth above, nor achievement of a lowest cost solution, shall be deemed to either excuse compliance with any more stringent standard set forth above or comply with the general standards set forth in clauses (iv) and (v).

(b) Architectural, engineering, and design services shall be procured from licensed, independent professionals retained directly or indirectly by Concessionaire or furnished by licensed employees of Concessionaire to the extent required by applicable law.

3.03 Nature of Parties' Interests under the Comprehensive Agreement

The Comprehensive Agreement shall not grant to Concessionaire any fee title, leasehold estate, easement, or other real property interest of any kind in or to the Project or the Project right of way. Concessionaire's interests under the Comprehensive Agreement shall be limited to the Permit described in Section 4.01.

4 Grant of Permit and Term

4.01 Grant of Permit

Subject to the terms and conditions of the Comprehensive Agreement, Concessionaire shall have the exclusive right, and the Concessionaire accepts the obligation: (i) to finance, develop, design, and construct the Project and (ii) from and after the commencement of public operations of the Project ("Service Commencement") and until the end of the Term (as defined below), to manage,

operate, maintain, and improve the Project and to establish, impose, charge, collect, use, and enforce payment of tolls and related charges (the “Permit”).

4.02 Term of the Comprehensive Agreement

(a) The Comprehensive Agreement shall take effect on the Agreement Date and shall remain in effect until the date that is [__ years] from the Agreement Date, unless earlier terminated in accordance with the terms of the Comprehensive Agreement. The “Agreement Date” shall mean the date upon which the Comprehensive Agreement is executed by the Department and the Concessionaire.

(b) The Term may be extended from time to time in accordance with Section 13.01.

5 Tolling Per the terms of the Comprehensive Agreement

5.01 General Requirements

5.02 Toll Rates

5.03 User Confidentiality

Concessionaire shall comply with all applicable law related to confidentiality and privacy of users of the Project.

5.04 Emergency Suspension of Tolls

6 Payments to the Department Per the terms of the Comprehensive Agreement

7 Project Finance

7.01 Concessionaire Financing

(a) Concessionaire shall be solely responsible for developing a financial plan and seeking approval from the Department for all aspects of the financial plan prior to the Agreement Date.

(b) Concessionaire shall be solely responsible for obtaining any financing for the development, design, construction, operation, and maintenance of the Project and the Department shall have no responsibility to meet Concessionaire’s debt service or payment obligations on any financing obtained by Concessionaire.

7.02 Financing Assignments

(a) Per the terms of the Comprehensive Agreement.

7.03 Lender's Rights and Obligations Relating to Concessionaire Default

- (a) Per the terms of the Comprehensive Agreement.

7.04 Restrictions on Assignment and Transfers

- (a) Per the terms of the Comprehensive Agreement.

8 Design and Construction

8.01 General Obligations of Concessionaire

(a) Concessionaire shall perform, or cause to be performed, all design and construction services and provide all materials, equipment, tools, and labor necessary to complete the construction of the Project as specified in the scope of work, together with any Project Enhancements directed or approved by the Department (the "Design-Build Services"). Design-Build Services shall be provided at Concessionaire's sole cost and expense, except as otherwise specified by the Comprehensive Agreement.

- (b) All development services shall comply with the Standard of Care;

(c) Concessionaire shall achieve substantial completion not later than per the terms of the Comprehensive Agreement.

(d) If the Concessionaire has not achieved Substantial Completion by the Guaranteed Substantial Completion Date, the Concessionaire shall continue to perform the Design-Build Services so as to achieve substantial completion within [24 months] of the Guaranteed Substantial Completion Date ("Outside Substantial Completion Date").

8.02 Conditions Precedent to Work

Per the terms of the Comprehensive Agreement

8.03 Quality Management

(a) Concessionaire shall perform all quality assurance and quality control activities necessary for the work in accordance with the Technical Requirements (and specifically the Department's guidance document entitled, Minimum Quality Control & Quality Assurance Requirements for Design-Build & Public-Private Transportation Act Projects).

(b) Concessionaire shall require that all of its subcontractors comply with this Section 8.03.

(c) Concessionaire shall certify that all submittals have been completed in compliance with the requirements of the Comprehensive Agreement.

8.04 Design-Build Contract and Amendments

(a) Per the terms of the Comprehensive Agreement.

8.05 Project Design and Construction Documentation

(a) Per the terms of the Comprehensive Agreement.

8.06 Project Schedule

An initial baseline schedule shall be attached to the Comprehensive Agreement and serve as the basis for monitoring Concessionaire's performance of the work until such time as a baseline schedule has been submitted to and approved by the Department in accordance with the Technical Requirements.

8.07 Regulatory Approval

(a) Except as provided in Section 8.07(b) below, Concessionaire, at its sole cost and expense, shall obtain and maintain in full force and effect and comply with all regulatory approvals necessary for the work. Responsibility for obtaining regulatory approvals necessitated by a Department Change or a Project Enhancement shall be as specified in the accompanying change order.

(b) The Department has completed an environmental review in accordance with the NEPA, on behalf of the FHWA. The FHWA has issued a Record of Decision. Concessionaire shall comply with the requirements of the NEPA documents.

8.08 Acquisition of Right of Way and Utility Relocations

(a) Concessionaire, at its sole cost and expense, shall acquire all Project right of way and shall perform or cause to be performed all activities and services necessary for the acquisition of all Project right of way and utility relocations necessary for construction of the Project.

(b) All right of way shall be acquired in the name of the state.

(c) Concessionaire shall use its best efforts to settle claims with landowners amicably. If, despite Concessionaire's best efforts, it is unable to reach agreement with landowners within 90 days, the Department will undertake any necessary condemnation proceedings. Concessionaire shall reimburse the Department for all costs incurred by the Department in pursuing condemnation.

(d) The Department will reasonably assist Concessionaire in obtaining the benefit of all rights the Department has under any current utility easement, permit, or other right in real property relating to utility relocations.

8.09 Latent Defects in Existing Assets

[Not applicable]

8.10 Transportation Management Plan

(a) Per the terms of the Comprehensive Agreement.

8.11 Revisions to the Technical Requirements

Prior to Substantial Completion, the Department may revise the Technical Requirements pursuant to a Department Change. Following Substantial Completion, the Department may, with 30 days' prior notice to Concessionaire, revise the Technical Requirements to be consistent with the evolution of regulations, materials, and best practices on similar limited access facilities. Any such revision will not be a Compensation Event.

8.12 Deviations from Technical Requirements

(a) Per the terms of the Comprehensive Agreement.

8.13 Substantial Completion, Final Acceptance, and Damages for Late Completion

(a) Per the terms of the Comprehensive Agreement.

8.14 Warranties; Defective Design and Construction

(a) Concessionaire warrants to the Department that:

(i) all construction work, including all materials and equipment furnished as part of the construction work, is new, of good quality, free of defects, and will be fit for its intended purpose; and

(ii) the Design-Build Services conform to the Standard of Care.

(b) In the event of the occurrence of a defect or deficiency in the work, the Concessionaire shall promptly rectify such defect or deficiency in the work at Concessionaire's sole cost and expense throughout the course of the operating period of the Comprehensive Agreement.

8.15 Performance Security Per the terms of the Comprehensive Agreement

8.16 Project Recovery Schedule

(a) Per the terms of the Comprehensive Agreement

9 Operations and Maintenance

9.01 General Responsibilities

(a) Concessionaire shall perform, or cause to be performed, all operation and maintenance [O&M] services for the Project at Concessionaire's sole cost and expense.

(b) O&M Services shall comply with the Standard of Care.

9.02 Service Commencement

Concessionaire shall not commence the O&M Services unless and until all conditions precedent to service commencement as defined in the Comprehensive Agreement have been satisfied or waived by the Department. Such conditions precedent shall include the following:

(a) substantial completion of the construction work;

(b) issuance of all regulatory approvals necessary to commence operations; and

(c) procurement of all required insurance per the terms of the Comprehensive Agreement.

9.03 O&M Contractor

(a) Per the terms of the Comprehensive Agreement.

9.04 Annual Budget

(a) Per the terms of the Comprehensive Agreement

9.05 Maintenance

(a) Concessionaire shall perform all routine maintenance and the repair, renewal, reconstruction, and replacement of any portion or component of the Project (“Major Maintenance”) in accordance with the Technical Requirements.

(b) Per the terms of the Comprehensive Agreement.

9.06 Traffic Patrol and Law Enforcement

(a) The Department shall cause the Virginia State Police to provide police services, including traffic patrol and law enforcement services, and emergency services to the Project at a level of service equivalent to that provided on comparable state highways from time to time.

(b) Concessionaire shall not engage or permit the engagement of private security services to provide traffic patrol or traffic law enforcement services on the Project.

9.07 Handback

Per the terms of the Comprehensive Agreement

10 Project Oversight

10.01 Department Oversight

Refer to Section 3.01

11 Performance Point System

11.01 Description of the Performance Point System

(a) The Department shall use a performance point system to monitor Concessionaire’s performance levels following service commencement. The Comprehensive Agreement shall identify certain Concessionaire acts, omissions, breaches, or failures to perform its obligations that may result in the assessment by the Department of performance points (“Performance Shortfalls”). The accumulation of performance points by Concessionaire may trigger the remedies set forth or referenced per the terms of the Comprehensive Agreement.

(b) The specific process by which performance points may be assessed, as well as other general terms and conditions applicable to the performance point system, will be set forth in the Comprehensive Agreement.

11.02 Assessment of Performance Points

- (a) Per the terms of the Comprehensive Agreement.

12 Change Orders, Safety Compliance Orders, and Project Enhancements

12.01 Change Orders

(a) The Department may require a change to Concessionaire's scope of work ("Department Change") pursuant to a change order executed by both parties or a directive letter executed by the Department. The costs of implementing a Department Change shall be borne by the Department unless otherwise agreed by the parties.

(b) If the Department desires to initiate a Department Change, the Department shall deliver to Concessionaire a request for change proposal. The request for change proposal will set forth the details of the proposed Department Change. Within 21 days following Concessionaire's receipt of the request for change proposal, Concessionaire shall provide the Department with a preliminary written response, which includes an estimate of the cost of implementing the proposed Department Change. Within 60 days after its receipt of the preliminary written response, the Department may request Concessionaire to prepare and submit a definitive proposal ("Change Proposal"), which Concessionaire shall submit within 60 days of such request. The Change Proposal shall include, among other things: a detailed estimate of the cost of implementing the proposed Department Change; the anticipated effect that such proposed Department Change would have on the baseline schedule, operating revenues, and traffic volumes and traffic flow; and the estimated damages to Concessionaire (if any). Within 21 days following its receipt of the Change Proposal, the Department shall provide a preliminary written response as to whether it intends to proceed with the proposed Department Change. Within 60 days thereafter, the Department and Concessionaire shall negotiate a mutually-acceptable change order.

(c) The Department may deliver to Concessionaire a directive letter directing Concessionaire to proceed to implement a Department Change at the Department's cost on a force account basis as provided in the Technical Requirements.

12.02 Safety Compliance Orders

- (a) Per the terms of the Comprehensive Agreement.

12.03 Project Enhancements

(a) Either the Department or Concessionaire may propose to undertake any additions to, or major modifications of, the Project following service

commencement (“Project Enhancements), subject to the terms or conditions set forth in the Comprehensive Agreement.

13 Delay Events, Compensation Events, and Force Majeure

13.01 Delay Events

(a) If a Delay Event (as in Section 13.01(b)) occurs during the Term, the Concessionaire may be entitled to an adjustment to the Term, including an extension of the period required for completion of the Design-Build Services or an extension of the period for completion of the O&M Services, as applicable.

(b) Delay Events prior to service commencement that may extend the period required for completion of the Design-Build Services include the following:

- (i) the implementation of a change order;
- (ii) a Force Majeure Event (as defined in Section 13.03);
- (iii) discovery of any of the following conditions on the Project right of way during the Development Period:
 - (A) differing subsurface conditions;
 - (B) unforeseen threatened or endangered species;
 - (C) unforeseen archaeological, paleontological, or cultural resources; or
 - (D) unforeseen hazardous substances; and
 - (E) unknown utilities.
- (iv) a failure to obtain, or a delay in obtaining, any regulatory approval (provided that such failure or delay could not have been reasonably avoided or prevented by Concessionaire or its subcontractors);
- (v) a change in federal or state law occurring after the Agreement Date that imposes additional requirements that directly materially adversely impact performance of the Design-Build Services and that could not have been reasonably anticipated by a reasonable contractor; or

(vi) an injunction or other legal proceeding enjoining or estopping either the Department or Concessionaire from the performance of its obligations under the Comprehensive Agreement.

(c) Delay Events following service commencement that may extend the period for completion of the O&M Services include the following:

(i) a Force Majeure Event (as defined in Section 13.03);

(ii) a change in federal or state law occurring after the Agreement Date that imposes additional requirements that directly materially adversely impact performance of the Design and Construction Services and that could not have been reasonably anticipated by a reasonable contractor;

(iii) a change in state law that has the effect of discriminating against Concessionaire or the Project, except where such change in state law is in response to any act or omission on the part of Concessionaire that is illegal (“Discriminatory Change in State Law”);

(iv) the implementation of any change order or Project Enhancement;

(v) the implementation of a Safety Compliance Order;

(vi) an injunction or other legal proceeding enjoining or estopping either the Department or Concessionaire from the performance of its obligations under the Comprehensive Agreement:

(vii) Department Caused Delays

(d) If Concessionaire experiences a Delay Event, it must submit written notice to the Department within 30 days following the date on which Concessionaire first became aware that a Delay Event occurred. If Concessionaire fails to submit the notice within that 30 day period, it shall waive its right to an extension of time. The notice shall include the information specified by the Comprehensive Agreement, which shall include a time impact analysis demonstrating the impact of the Delay Event to the Project schedule.

13.02 Compensation Events

(a) If a Compensation Event (as defined below) occurs during the Term, the Concessionaire may be entitled to damages or the Department may be entitled to positive net cash flows created by such an event.

(b) Compensation Events include:

- (i) the implementation of a change order or Project Enhancement;
- (ii) Discriminatory Change in State Law;
- (iii) [intentionally deleted]; or
- (iv) Department Caused Delay, as set forth in more detail below;
- (v) discovery of any of the following conditions on the Project right of way during the development period;
 - (A) differing subsurface conditions;
 - (B) unforeseen threatened or endangered species;
 - (C) unforeseen archaeological, paleontological, or cultural resources; or
 - (D) unforeseen hazardous substances.
- (vi) Department Changes.

(c) If the Concessionaire is affected by a Compensation Event, it shall give written notice to the Department within 30 days following the date on which the Concessionaire first became aware (or should have been aware, using all reasonable due diligence) that an event has occurred and that it is or will become a Compensation Event (a “Compensation Event Notice”). The Compensation Event Notice shall set forth (i) the Compensation Event and its date of occurrence in reasonable detail, (ii) the amount claimed as the Concessionaire Damages, and (iii) details of the calculation thereof including a written analysis and calculation of the estimated net cost impact, if any, and estimated net revenue impact, if any.

(d) If, for any reason, the Concessionaire fails to deliver such written Compensation Event Notice within the foregoing time period, the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to Concessionaire damages or other adverse effects on gross revenues or on costs, expenses and liabilities attributable to such Compensation Event.

(e) If the Department determines the Concessionaire is entitled to cost relief for Department Caused Delay or Department Changes the Concessionaire shall be entitled to recover from the Department only the direct costs reasonably and necessarily incurred by the Design Build Contractor as a direct result of the

Department Caused Delay or Department Changes. However, under no circumstances will such recoverable costs include home office overhead incurred by the Design Build Contractor's member companies, nor net revenue impacts nor financing costs.

(f) If the Department determines the Concessionaire is entitled to cost relief for the implementation of a change order or Project Enhancement, Discriminatory Change in State Law, differing subsurface conditions, unforeseen threatened or endangered species, unforeseen archaeological, paleontological, or cultural resources, or unforeseen hazardous substances the Concessionaire may request an extension of the Term as necessary to recoup its net cost impacts and/or net revenue impacts. The Department has no liability for compensation due to the Compensation Events noted above.

13.03 Force Majeure Events

(a) Force Majeure Event means any of the following acts of nature or people that can neither be anticipated nor controlled: earthquakes that cause ground accelerations in excess of the AASHTO bridge design standards for the site of the Project, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds, tornados, epidemic disease declared by US federal government, quarantine restriction of critical personnel or materials, adverse conflict by or among armed forces, acts of terror, maritime blockade, nuclear or other explosion, radioactive or chemical contamination or ionizing radiation, riot or other public disorder, industry-wide or regional strikes or labor disputes, and governmental embargo. An event is not a Force Majeure Event if such event is otherwise specifically dealt with in the Comprehensive Agreement or arises by reason of:

- (i) the negligence or misconduct of Concessionaire or its subcontractors;
- (ii) any act or omission by Concessionaire or its subcontractors in breach of the provisions of the Comprehensive Agreement;
- (iii) any defect or deficiency in the design or construction of the Project;
- (iv) lack or insufficiency of funds or failure to make payment of monies or provide required security on the part of Concessionaire or its subcontractors;
- (v) any strike, labor dispute or labor protest directed solely at Concessionaire or its subcontractors or caused by or attributable to any act (including any pricing or other practice or method of operation) or omission of Concessionaire or its subcontractors;

(vi) damage to the Project caused by an earthquake that causes ground accelerations in excess of the AASHTO bridge design standards for the site of the Project, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds, or tornados if such damage would not have occurred but for the Project's failure to have been designed or constructed in accordance with the Technical Requirements.

(b) It is specifically understood that other than earthquakes causing ground acceleration in excess of the AASHTO bridge design standards for the site of the Project, floods in excess of the base flood (as defined in the Department's Division I Amendment), hurricane force winds or tornadoes, the Concessionaire shall assume the risk and other weather or conditions resulting from weather shall not constitute a Force Majeure Event.

(c) If a Force Majeure Event occurs after service commencement which has the effect of causing physical damage or destruction to the Project or a portion thereof and results in a substantial reduction in Concessionaire's toll revenues for a period in excess of 180 consecutive days (a "Significant Force Majeure Event"), Concessionaire shall provide the Department with a plan for restoring the Project before the end of the Term. If the Department determines in its sole discretion that the Project cannot be restored, the Department may terminate the Comprehensive Agreement pursuant to Section 20.05. If Concessionaire restores the Project, the Department and Concessionaire shall negotiate an appropriate extension of the Term.

13.04 Department Caused Delay

(a) Department Caused Delay means a material breach or an inexcusable delay by the Department in performing any of its obligations during the design-build period of the development of the Project, and which material breach or an inexcusable delay by the Department causes the Design Build Contractor a material increase of its construction costs or a material impact to the critical path which delays the Guaranteed Substantial Completion Date described in the Comprehensive Agreement.

For the purposes of this Section, an "inexcusable delay" shall mean a delay that is attributable solely to error or omission of the Department, and an inexcusable delay or a material breach specifically excludes delay or breach attributable to: (a) the submission of incomplete documentation for the Department's review, (b) required review or approvals from other Governmental Authorities necessary or appropriate to the Department's review, (c) failure to obtain appropriation and allocation of public funds, (d) consumption of available float, (e) submittals or requests that are "deemed approved" if no response is provided within the minimum required response period [typically 21 days], or (f) Force Majeure Events.

(b) The Concessionaire shall submit its request for Change Order within 30 days after the occurrence of any Department Caused Delay giving rise to the request for adjustment or relief. The request for Change Order shall include sufficient information to advise Department of the circumstances giving rise to the request for adjustment, the amount of adjustment requested and the basis of such request.

(c) not used

(d) The Concessionaire's request for Change Order due to Department Caused Delay may include the price escalation for materials only if the event causes the Guaranteed Substantial Completion Date to be delayed by at least one year and such delay is not attributable to the actions or negligence of the Concessionaire, a Concessionaire Party, or the Design-Build Contractor.

(e) The Department may extend the Guaranteed Substantial Completion Date only if its delay results in a material impact to the critical path set forth in the Baseline Schedule.

(f) If for any reason the Concessionaire fails to deliver the request for Change Order within the time period specified above, the Concessionaire shall be deemed to have irrevocably and forever waived and released any Claim or right to cost or schedule relief attributable to any such alleged Department Caused Delay.

(g) If the Department grants to the Concessionaire cost relief, schedule relief, or both, the Concessionaire shall pass such relief to the Design Build Contractor pursuant to the terms of the Design-Build Contract.

14 Hazardous Substances

14.01 Concessionaire's Responsibility

Concessionaire shall be fully responsible for the the management, handling, treatment, remediation, removal, transport (where applicable), and disposal of all hazardous substances, including but not limited to, hazardous substances that were introduced to the Project or caused by Concessionaire or those whose acts for which Concessionaire is responsible, or that are discovered on the Project right of way, in accordance with applicable law and regulatory approvals. The Concessionaire shall be fully responsible for the costs of the work contemplated in this Section, except to the extent such work qualifies as a Compensation Event pursuant to Section 13.02. Hazardous substances that were introduced to the Project or caused by Concessionaire or those whose acts for which Concessionaire is responsible shall not be a basis for Delay Events or Compensation Events.

14.02 Reserved

14.03 Concessionaire's Indemnity for Hazardous Substances

(a) Concessionaire shall indemnify, defend, and hold harmless each State Indemnitee (as defined in Section 15(a) below) from and against all claims, losses, damages, liabilities, and expenses, including attorneys' fees and expenses, arising out of or resulting from:

(i) those hazardous substances introduced to the Project right of way by Concessionaire, its contractors, its subcontractors, or anyone for whose acts they may be liable;

(ii) the spreading, migration, release, remediation, storing, transportation, or disposal of Pre-Existing Hazardous Substances by Concessionaire, its contractors, its subcontractors, or anyone for whose acts they may be liable; and

(iii) exacerbation, due to negligence, recklessness, or willful misconduct of Concessionaire, its contractors, its subcontractors, or anyone for whose acts they may be liable, of the release, spreading, migration, or toxicity of hazardous substances on or within the Project right of way.

15 Indemnification

(a) Concessionaire shall indemnify, defend, and hold harmless the Department, the Commonwealth Transportation Commissioner, the Commonwealth Transportation Board, the state, and their respective representatives ("State Indemnitee") from and against any losses actually suffered or incurred by such State Indemnitee (except to the extent such Losses are caused by the negligence or willful misconduct of such State Indemnitee), due to third party claims that are based upon, arise out of, relate to, are occasioned by or are attributable to:

(i) any failure by the Concessionaire to comply with, observe or perform any of the covenants, obligations, agreements, terms or conditions in the Comprehensive Agreement or, any breach by the Concessionaire of its representations or warranties set forth herein;

(ii) any actual or alleged misconduct, negligence or other culpable act, error or omission of a Concessionaire Party in connection with the Project;

(iii) any actual or alleged patent or copyright infringement or other actual or alleged improper appropriation or use of trade secrets, patents, proprietary information, know-how, trade marked or service marked materials, equipment, devices or processes, copyright rights or inventions by a

Concessionaire or any of its contractors or suppliers in connection with the Project;

(iv) inverse condemnation, trespass, nuisance or similar taking of or harm to real property committed or caused by a Concessionaire or any of its contractors or suppliers in connection with the Project;

(v) any tax attributable to any transfer of the Concessionaire's interest or any part thereof; or

(vi) any claim for brokerage commissions, fees or other-compensation by any person who acted on behalf of the Concessionaire, its affiliates, or their respective representatives in connection with the Comprehensive Agreement, any transfer of the Concessionaire's interest, or any part thereof.

(b) The indemnities of the Concessionaire shall survive the expiration or termination of the Comprehensive Agreement and any other Project agreements to which the Concessionaire is a party and shall continue for six years following the expiration or termination of the Comprehensive Agreement; provided, that such six-year limitation on survival shall not apply in the event of fraud or a material misrepresentation with respect to a particular covenant, agreement, representation or warranty, and, provided further, that additional indemnification agreements shall be as provided in any Contract and any other Project agreement to which the Concessionaire becomes a party. Notwithstanding the foregoing, the Concessionaire's indemnification of any State Indemnitee shall be limited solely to its obligations under the Comprehensive Agreement and any other Project agreements to which the Concessionaire becomes a party.

(c) If a State Indemnitee is enjoined from the operation or use of the Project as a result of any patent or copyright suit, claim or proceeding, Concessionaire at its sole cost and expense shall take reasonable steps to procure the right to operate or use the Project.

16 Insurance Per the terms of the Comprehensive Agreement

17 Ownership and Access to Records

17.01 Ownership of Work Product

Per the terms of the Comprehensive Agreement

17.02 Access to Records

(a) Without limiting any statutory or legal rights, the Department, its representatives, and any governmental entity allowed access under law, at all reasonable times and upon advance notice, shall have the right to audit, inspect

and copy all records and documents produced or maintained by Concessionaire related to the Project. Any records and documents furnished to the Department shall be subject to the Virginia Freedom of Information Act.

(b) All records and documents shall be maintained in an organized fashion, use accounting and control systems in accordance with Generally Accepted Accounting Principles (“GAAP”), and comply with applicable law, including federal funding requirements.

(c) The Department and the state shall have the right to carry out an audit of information relating to (i) the design, construction, operation, maintenance, and repair of the Project or (ii) other information required to be maintained or delivered by Concessionaire pursuant to the Comprehensive Agreement. Such audit may extend, without limitation, to calculations undertaken and financial or business reports provided by or on behalf of Concessionaire.

(d) Concessionaire shall maintain all financial and cost accounts, pay administration, and acquisition and supply records in accordance with records retention requirements defined the Federal Acquisition Regulation (“FAR”). At the Department’s request, Concessionaire shall furnish or cause to be furnished to the Department such information relating to the operation, maintenance, and repair of the Project as the Department may reasonably request for any purpose related to the Project and as shall be in the possession and control of Concessionaire or its subcontractors or consultants.

(e) If a federal action is required by a federal agency, Concessionaire shall make all its Project records available to the agency for inspection and audit at the agency’s request.

(f) In addition, Concessionaire, at its sole cost and expense, shall cause a reputable independent auditor to annually audit Concessionaire’s books and records relating to the Project according to GAAP. Concessionaire shall cause the independent auditor to deliver the audit report to the Department promptly after it is completed, but in any event within 120 days of the end of each of Concessionaire’s fiscal years.

18 Escrowed Documents Per the terms of the Comprehensive Agreement

19 Default and Remedies Per the terms of the Comprehensive Agreement

20 Termination and Project Value Per the terms of the Comprehensive Agreement

21 Dispute Resolution

21.01 Procedure

(a) The parties shall attempt to resolve any disputes arising out of the Comprehensive Agreement at the Project level, through good-faith negotiations between designated representatives. If the dispute cannot be resolved at the Project level, the parties' senior management representatives shall meet at the request of either party within a time as set forth in the Comprehensive Agreement in an attempt to resolve the dispute.

(b) If the parties' senior management cannot resolve the dispute, then either party may request non-binding mediation. Mediation generally shall be a condition precedent to instituting a legal action in court. However, if the Department determines, in its sole discretion, that a dispute involves an issue that poses an immediate or serious threat to the public health, safety, or welfare, the Department shall be entitled to take whatever steps it deems appropriate and to initiate litigation of the matter in court without first submitting the dispute to the dispute resolution procedure.

(d) All litigation between the parties arising out of or pertaining to the Comprehensive Agreement shall be filed, heard, and decided in the Circuit Court for the City of Richmond, Virginia, Division 1, which shall have exclusive jurisdiction and venue.

(e) Each party shall bear its own attorneys' fees and costs in any dispute or litigation and no party shall seek or accept an award of attorneys' fees or costs.

21.02 Duty to Proceed and Continue with Performance

Notwithstanding the existence of any dispute (except a dispute regarding the cause for terminating the Comprehensive Agreement), Concessionaire shall continue performance in accordance with the Comprehensive Agreement, or otherwise as approved or directed by the Department, and the Department shall perform its obligations under the Comprehensive Agreement.

22 Reserved Rights Per the terms of the Comprehensive Agreement

23 Representations and Warranties

The Comprehensive Agreement shall set forth representations and warranties from both Concessionaire and the Department.

24 **Contracting Practices**

24.01 Obligation to Refrain from Discrimination

Concessionaire covenants and agrees that it shall not discriminate and shall require all contractors not to discriminate against any person, or group of persons, on account of age, sex, marital status, race, creed, color, national origin, religion, or sensory, mental, or physical handicap in the performing the work described in the Comprehensive Agreement; *provided that* the prohibition against discrimination on the basis of sensory, mental, or physical handicap shall not apply if the particular disability prevents the proper performance of the particular person involved.

24.02 Subcontracting

(a) Concessionaire may perform its work under the Comprehensive Agreement by subcontracting to persons with expertise, qualifications, and experience to perform the subcontracted work. All subcontracts shall comply with the terms and conditions of the Comprehensive Agreement. Concessionaire shall remain fully responsible to the Department for performance of the work and the acts and omissions of its subcontractors.

(b) Concessionaire shall not subcontract any part of its work to:

(i) any person then debarred or prohibited from participating in state or federally-funded projects, or indicted, convicted, pled guilty or *nolo contendere* to a violation of law involving fraud, conspiracy, collusion, bribery, perjury, material misrepresentation, or any other violation that shows similar lack of moral or ethical integrity;

(ii) a subcontractor (with the exception of contract specialty items, consultants, manufacturers, suppliers, or haulers) that is not pre-qualified with the Department; or

(iii) an affiliate, except as provided in Section 24.03.

24.03 Affiliate Contracts

Concessionaire shall not enter into or materially amend a subcontract with an affiliate without prior notice to and consent of the Department, which consent shall not be unreasonably withheld or delayed if the subcontract is entered into in the ordinary course of business and Concessionaire demonstrates to the Department that the contract or subcontract is on overall terms no less favorable to Concessionaire than terms the Concessionaire could obtain in an arm's length transaction.

24.04 Small, Women-Owned and Minority Business and Disadvantaged Business Enterprise Reporting

(a) Concessionaire shall use good faith efforts to achieve the following goals in performing the Design-Build Services: [__% DBE participation and __% SWaM participation, such percentages relating to the value of the design-build contract totaling an aggregate goal of 40% of the value of the design-build contract].

(b) Concessionaire shall use good faith efforts to achieve the following goals in performing the O&M Services: [__% DBE participation and __% SWaM participation totaling an aggregate goal of 40% of the value of the O&M Services].

(c) If the Department determines Concessionaire or its affiliates (including the design-build contractor and O&M contractor), neither achieves the goals described in Sections 24.04(a) and (b) above nor demonstrates good faith efforts, Concessionaire and/or its affiliates may be enjoined or disqualified from additional work or new contracts with the state, in accordance with current policies and procedures.

25 Miscellaneous

25.01 Consequential Damages Waiver

(a) Except for damages expressly allowed under the Comprehensive Agreement, neither party shall be liable, whether as a result of breach of contract, breach of warranty, tort liability (including negligence or strict liability), or otherwise, for special, indirect, or consequential damages of any nature whatsoever.

(b) The consequential damages waiver described in Section 24.01(a) shall not apply to the following:

- (i) indemnification obligations relating to third-party claims;
- (ii) recovery of any liquidated damages expressly provided for in the Comprehensive Agreement;
- (iii) recovery of concessionaire damages expressly provided for in the Comprehensive Agreement;
- (iv) recovery of termination damages expressly provided for in the Comprehensive Agreement;

(v) damages arising out of fraud or intentional misrepresentation;

(vi) damages covered by insurance required under the Comprehensive Agreement.

25.02 State Allocation of Funds

The Department's payment of any amounts due and owing by the Department to Concessionaire under the Comprehensive Agreement shall be subject to appropriations by the General Assembly and allocation by the CTB.

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APPENDIX G

CONCEPTUAL FINANCIAL PLAN PRO FORMA

All values in millions of USD

NPV figures discounted to January 1, 2010

Income Statement - NPV @ 5%

Revenue

O&M costs

EBITDA

Depreciation

Financing costs

Profit before interest and tax

Net interest

State Tax (paid) / refunded

Federal Tax (paid) / refunded

Profit after tax

Dividends

Retained earnings

Cash Flow Summary - NPV @ 5%

Revenues

Construction

O&M

Lifecycle

Debt costs

Equity costs

Taxes

(Required Public Funds) / Concession Payment

Percentage of Truck Revenue

Percentage of Truck Traffic

Average Initial Truck Toll Rate

Average Initial Car Toll Rate

Maximum Annual Toll Escalation Rate

Cost of debt

Equity IRR (post tax)

Project IRR (post tax, proxy for WACC)

APPENDIX G

CONCEPTUAL FINANCIAL PLAN PRO FORMA

All values in millions of USD

NPV figures discounted to January 1, 2010

Income Statement - Nominal

Revenue

O&M costs

EBITDA

Depreciation

Financing costs

Profit before interest and tax

Net interest

State Tax (paid) / refunded

Federal Tax (paid) / refunded

Profit after tax

Dividends

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Cash Flow Summary - Nominal

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(Required Public Funds) / Concession Payment

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Average Initial Truck Toll Rate

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Maximum Annual Toll Escalation Rate

Cost of debt

Equity IRR (post tax)

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