
Draft HRTAC PPTA Guidelines

The Draft HRTAC PPTA Guidelines have been developed in accordance with the PPTA, and include details on the process for acceptance, review, negotiation, acceptance or rejection of any proposal. These Guidelines are not intended to modify or override the requirements of the PPTA, and the PPTA shall govern in the event of any conflicts between the PPTA and these Guidelines. The HRTAC PPTA Guidelines will add to the HRTAC project development and delivery tool kit by providing the conduit for the Commission to engage in a PPTA. As provided in the Draft HRTAC PPTA Guidelines, the conduit may only be accessed by Commission Action to entertain an unsolicited or solicited proposal. The Finance Committee was provided a full briefing at its December 5, 2017 meeting, and the Commission was provided a full briefing at its December 14, 2017 Regular Meeting.

During its April 19, 2018 Regular Meeting, the Hampton Roads Transportation Accountability Commission (HRTAC) endorsed the Draft HRTAC PPTA Guidelines and authorized the Finance Committee Chair to conduct a public hearing to solicit public comments to inform the Commission at its next meeting.

A public hearing for the Draft HRTAC PPTA Guidelines has been scheduled to be held at 9:00 a.m. on Monday, June 11, 2018, in the HRTAC Conference Room, 723 Woodlake Drive, Chesapeake, VA 23320.

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**Hampton Roads Transportation
Accountability Commission**

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**PPTA Implementation
Guidelines**

**For the
Public-Private Transportation Act of 1995,
as Amended**

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I. INTRODUCTION

A. Overview of the PPTA

The Public-Private Transportation Act of 1995, Section 33.2-1800, *et seq.* (the “PPTA”), of the Code of Virginia of 1950, as amended (the “Virginia Code”), grants responsible public entities the authority to create public-private partnerships for the development of transportation facilities for public use (“qualifying transportation facilities” or “P3 project”) if the public entity determines that they serve the public purposes of the PPTA. The PPTA provides a structure for considering both solicited and unsolicited proposals from private entities to develop and/or operate qualifying transportation facilities.

The PPTA defines “responsible public entity” to include the Commonwealth of Virginia and any political subdivision thereof that has the power to develop a qualifying transportation facility. The Hampton Roads Transportation Accountability Commission (“HRTAC”) is a political subdivision of the Commonwealth of Virginia with the authority to develop and/or operate qualifying transportation facilities within its authorized jurisdiction, and therefore is a “responsible public entity” as that term is used in the PPTA.

Under the PPTA, a private entity seeking authorization to develop or operate a transportation facility must obtain approval from the responsible public entity to do. The private responsible public entity may initiate the approval process by submitting an unsolicited proposal or the responsible public entity may request proposals.

Before a responsible public entity can approve a transportation facility under the PPTA, it must determine that the facility is in the best interest of the public. Once such a determination is made, the responsible public entity must engage in a competitive sealed bidding or competitive negotiation process consistent with the processes set out in the Virginia Public Procurement Act (“VPPA”).

B. Purpose of HRTAC’s PPTA Implementation Guidelines

The PPTA requires that, as a condition to approving any public-private partnership, a responsible public entity must first develop and adopt guidelines establishing the process for the acceptance and review of both solicited and unsolicited proposals from private entities. These Guidelines are established by HRTAC in accordance with the PPTA, and include details on the process for review, negotiation, acceptance or rejection of any proposal. In the event of any conflicts between the PPTA and these Guidelines, the PPTA shall govern.

Each P3 project is unique and certain sections or element of these Guidelines may not apply in all circumstances or may be subject to change in certain circumstances. HRTAC may modify the procurement and implementation processes set forth herein to address the specific needs of a particular P3 project. Any deviation from the processes set forth in these Guidelines by HRTAC shall not give recourse to any individual or entity for such deviation. The public, private entities submitting proposals, and other stakeholders will be

notified of modifications to procurement and implementation processes by means of a statement outlining and explaining the modifications issued with any solicitation.

C. Coordination with VDOT

Any proposals submitted to both HRTAC and the Virginia Department of Transportation (“VDOT”) will also be subject to VDOT’s comprehensive 2017 PPTA Implementation Manual and Guidelines. For any joint P3 project between HRTAC and VDOT, VDOT’s Manual and Guidelines will govern.

D. HRTAC Objectives

HRTAC was created to approve and fund new construction projects on new or existing highways, bridges, and tunnels in the localities comprising Planning District 23 (currently the Counties of Isle of Wight, James City, Southampton, and York, and the Cities of Chesapeake, Franklin, Hampton, Newport News, Norfolk, Poquoson, Portsmouth, Suffolk, Virginia Beach, and Williamsburg) (generally described herein as the “Hampton Roads” area or region). HRTAC is required to give priority to those projects that are expected to provide the greatest impact on reducing congestion for the greatest number of citizens residing within Planning District 23.

E. Overview of Process

The first step in the process for developing transportation facilities under the PPTA is to identify and screen potential P3 projects. Projects are identified in two ways: either HRTAC develops a project concept or a private entity develops a project concept on its own and submits a proposal to HRTAC for consideration.

Once a project is identified, HRTAC must make a determination that developing a facility as a P3 project is in the public interest. If it is in the public interest to procure a project under the PPTA, HRTAC will proceed to the procurement phase.

If HRTAC develops a project concept for a transportation facility that it determines should be developed as a P3 project, it will invite private entities to compete for the right to develop and/or operate the project through response to a solicitation (“Solicited Proposal”). The solicitation may proceed through either an invitation to bid (“ITB”) or request for proposal (“RFP”). During the course of developing a project concept, HRTAC may issue a request for information (“RFI”) or request for qualifications (“RFQ”) prior to the solicitation.

If a private entity develops a project concept and submits a proposal for it (“Unsolicited Proposal”), HRTAC is required to provide notice of the Unsolicited Proposal to the public. HRTAC may discontinue its evaluation of any Unsolicited Proposal at any time prior to the procurement stage. If HRTAC finds a proposed transportation facility in an Unsolicited Proposal is in the public interest and HRTAC approves it as a P3 project, HRTAC will solicit the submission of proposals from other private entities (“Competing Proposals”). If HRTAC determines that a transportation facility submitted for approval

through an Unsolicited Proposal should not be approved, or if the project is one for which HRTAC intends to issue a request for qualifications (“RFQ”), HRTAC will return the Unsolicited Proposal to the private entity submitting it.

HRTAC will follow the competitive procurement requirements of the PPTA and VPPA for all P3 projects. HRTAC may utilize a two-step process for procurement utilizing a conceptual proposals followed by an invitation for bid or a request for detailed proposals. The term “Proposer” used in these Guidelines refers to a private entity or team of private entities, whether a joint venture, partnership, or any other type of association or legal entity, submitting a Solicited Proposal or an Unsolicited Proposal.

HRTAC may, at its discretion, enter into an Interim Agreement with one or more private entities for the purpose of project planning, design, engineering, environmental analysis and other similar activities. Prior to the development of a transportation facility under the PPTA, HRTAC will enter into a Comprehensive Agreement with the private entity pursuant to the requirements of the PPTA.

II. SOLICITED PROPOSALS

A. Identification of Projects and Solicitation of Proposals

HRTAC may identify and screen projects to determine whether a project is a potential candidate for P3 project delivery.

At its discretion, HRTAC may issue a RFI inviting private entities to express an interest in developing one or more qualifying transportation facilities or seeking additional information and comment from interested stakeholders. RFIs may also include public briefings to further discuss elements of the project under consideration, including seeking input which improve or refine the scope, risk allocation and technical requirements of the project being developed.

Once a project is identified as a potential P3 project, HRTAC must determine if it is in the public’s interest to use the PPTA rather than other procurement methods to develop and/or operate it. Upon a finding in the public’s interest (See Section ___ of these Guidelines), HRTAC may issue an ITB or RFP for the qualifying transportation facility (a bid or proposal submitted in response to an ITB or RFP shall be considered a “Solicited Proposal”).

HRTAC shall use competitive sealed bidding procedures consistent with VPPA Section 2.2-4302.1 unless it determines that proceeding through competitive negotiation consistent with VPPA Section 2.2-4302.2 is likely to be advantageous to both HRTAC and the public based upon:

1. the scope, complexity, and urgency of the project,
2. risk sharing including guaranteed cost or completion guarantees, added value, or proposed debt or equity investments; or
3. an increase in funding, dedicated revenue source, or other economic benefit that would not be available if competition negotiation is not used.

If HRTAC proceeds through competitive negotiation, it shall state in writing the reasons for its determination to do so.

B. Procedures for Solicited Proposals

The procedures, format, and information required to be submitted for any particular Solicited Proposal shall be specified in the ITB or RFP and shall be consistent with the requirements of the VPPA and the PPTA.

The ITB or RFP shall specify any information and documents required by HRTAC and the factors that will be used in evaluating the bids or proposals. At the discretion of HRTAC, the solicitation may be composed of two stages, a conceptual stage and a detailed stage. The requirements of proposals at the conceptual and detailed stage as set forth in the Unsolicited Proposals Section of these Guidelines are a guide for Solicited Proposals but

an ITB or RFP need not include all such requirements (except those required by law) and may include additional or other requirements. Thus, it is important that any private entity submitting a Solicited Proposal carefully review the ITB or RFP. Pre-submission conferences may be held as deemed appropriate by HRTAC.

Prior to soliciting Solicited Proposals, HRTAC may issue a separate RFQ to determine a shortlist of private entities that are qualified to submit a Solicited Proposal. Shortlisted entities will then have an opportunity to submit a Solicited Proposal for that particular P3 Project.

Any proposal submitted for a P3 project that is not received in response to an ITB or RFP shall be an Unsolicited Proposal under these Guidelines, even if HRTAC has encouraged the submission of proposals pursuant to the PPTA that address those needs.

The issuance of a RFI or RFQ does not require HRTAC to issue an ITB or RFP for the project(s).

C. No Fees for RFIs or Solicited Proposals

No fees shall be charged for processing, reviewing, or evaluating a response to an RFI.

No fee will be charged to process, review or evaluate any Solicited Proposal.

III. UNSOLICITED PROPOSALS

A. Overview

Private entities seeking authorization to develop and/or operate a transportation facility for which HRTAC has not either issued a RFI or initiated the Solicited Proposal process may submit an Unsolicited Proposal to HRTAC. Unsolicited Proposals must adhere to the requirements set forth in this Section and Sections V, VI, and VII, as applicable. HRTAC may publicize its needs and encourage interested parties to submit Unsolicited Proposals.

HRTAC will not accept Unsolicited Proposals for a project that is the subject of some, or all, of an RFI until such time as HRTAC publishes a notice that it will accept Unsolicited Proposals (a notice to accept Unsolicited Proposals may be published solely on HRTAC’s website).

The submission of Unsolicited Proposals shall proceed in two stages: the conceptual stage (Unsolicited Conceptual Proposal) and the detailed stage (Unsolicited Detailed Proposal). See Section VI for special requirements for Unsolicited Proposals at the conceptual stage and Section VII for requirements at the detailed stage. Private entities seeking authorization for a transportation facility under this Section should submit an Unsolicited Conceptual Proposal in accordance with Sections V and VI. Should HRTAC decide to proceed beyond the conceptual stage, it shall request submission of the Unsolicited Detailed Proposal in accordance with Section VII. Unless otherwise expressly requested by HRTAC, a Proposer should not submit an Unsolicited Detailed Proposal.

If HRTAC receives an Unsolicited Conceptual Proposal that HRTAC determines, in its sole discretion, to be similar to another Unsolicited Conceptual Proposal it will treat the later received proposal as a Competing Proposal. If the later Unsolicited Conceptual Proposal is similar to an Unsolicited Conceptual Proposal for which Competing Proposals are requested as set forth in Section VI below, HRTAC will treat that Unsolicited Conceptual Proposal as a Competing Proposal only if it is submitted within the time designated for Competing Proposals. If it is not submitted within the time period for submission of Competing Proposals, it will be considered untimely and returned to the Proposer.

Because of the consequences to a Proposer for untimely submissions, prospective Proposers are strongly urged to monitor HRTAC’s website for Notice of Unsolicited Conceptual Proposals (as described in Section III(C)(1) below), RFIs, and notices to accept Unsolicited Proposals.

HRTAC may charge reasonable amounts to cover the costs of processing, review, and evaluation of the Unsolicited Proposal. The fees are set forth in Section III(D), below.

B. Consideration of Unsolicited Proposals

1. Initial Evaluation

Within 90 calendar days of receiving an Unsolicited Conceptual Proposal and the Initial Evaluation Fee from a Proposer, HRTAC will initiate an initial evaluation of the Unsolicited Conceptual Proposal and its concept and benefits to determine that it is in accordance with the PPTA and these Guidelines, and is consistent with HRTAC’s transportation policy goals (“Initial Evaluation”).

As part of the Initial Evaluation, HRTAC will review any Unsolicited Conceptual Proposal that includes the imposition of user fees to ensure it demonstrates, in accordance with Virginia Code Section 33.2-2607, that the revenues received will be used solely for programs and projects that are reasonably related to, or benefit the users of, the new or improved highway, bridge or tunnel project that is being proposed.

Based upon the Initial Evaluation, HRTAC may reject an Unsolicited Conceptual Proposal and return it to the private entity submitting it, or HRTAC may decide to continue with consideration of it. HRTAC may require additional fees as set forth in Section III(D) below to continue consideration of the Unsolicited Conceptual Proposal.

2. Evaluation of Public Interest and Other Considerations

If HRTAC decides to continue consideration of the Unsolicited Conceptual Proposal after Initial Evaluation, it shall consider the advantages, disadvantages, and long- and short-term costs of the proposed P3 Project and whether:

- a. it is in the public interest in accordance with the PPTA and as set forth in Section IV of these Guidelines.
- b. it is technically and financially feasible;
- c. it will address the needs of HRTAC’s transportation plan by improving safety, reducing congestion, increasing capacity, or enhancing economic efficiency;
- d. the estimated cost and environmental impact of the proposed P3 Project are reasonable in relation to alternative facilities;
- e. the Proposer’s plans will result in the timely development and more efficient operation; and
- f. it is consistent with federal requirements and potential agreements for federal funding and approval for P3 projects, if federal funding is anticipated.

Only Unsolicited Conceptual Proposals complying with the requirements of these Guidelines, including the submission of required fees, will be considered by HRTAC for further review at the conceptual stage.

3. Third Party Analysis

During the Initial Evaluation or anytime thereafter, HRTAC may engage the services of qualified consultants, which may include attorneys, architects, engineers, certified public accountants, financial advisors or other consultants not otherwise employed by HRTAC, to provide independent analyses of Unsolicited Conceptual Proposals.

C. Procurement Stage

1. Types of Procurement

If HRTAC finds a proposed P3 project is in the public interest and HRTAC has received the full proposal fee set forth in Section III(D) from the Proposer, it may determine to proceed with procurement of the P3 project. It shall proceed with such procurement through either:

- a. competitive sealed bidding, as defined in Virginia Code Section 2.2-4302.1, or
- b. competitive negotiation, if it has determined in writing that proceeding through competitive negotiation consistent with VPPA Section 2.2-4302.2 is likely to be advantageous to both HRTAC and the public based upon the factors listed in Section III(B)(2) above.

Prior to the procurement stage, HRTAC may reject any and all Unsolicited Conceptual Proposals at any time by returning the Unsolicited Conceptual Proposal to the private entity submitting it.

2. Public Notice and Receipt of Competing Proposals

Within ten (10) working days of acceptance of an Unsolicited Conceptual Proposal for procurement pursuant to Section III(C), above, HRTAC shall post on its website the Unsolicited Conceptual Proposal and a notice (“Notice”) stating that HRTAC:

- a. has received an unsolicited proposal under the PPTA;
- b. intends to evaluate the proposal;
- c. will issue an ITB or RFP seeking Competing Proposals specifying a period of time not less than ninety (90) days during which it will receive Competing Proposals (HRTAC may provide for more than ninety (90) days for submission of Competing Proposals in situations where HRTAC deems, in its sole discretion, that scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals);
- d. will make available for public inspection a copy of the Unsolicited Conceptual Proposal at the HRTAC office during normal business hours; and

- e. will receive public comments for a specified period of time not less than 30 days from date of Notice, explain how comments may be submitted, and may, at HRTAC’s sole discretion, provide for a public hearing on the proposed P3 project.

Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of Section 2.2-3705.6(11) shall not be required to be posted or provided for public inspection, except as otherwise agreed to by HRTAC and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

A summary of the Unsolicited Conceptual Proposal and the location where a copy of it is available for public inspection may be published in the newspapers of general circulation in the Hampton Roads area.

If the use of state or federal funds is anticipated in any proposal, HRTAC may require that the Proposer provide additional copies of the proposal to be given to appropriate state or federal agencies.

During the period for receiving Competing Proposals or bids in response to an ITB, HRTAC may continue to evaluate the original Unsolicited Conceptual Proposal.

3. Procedure for Submission and Consideration of Competing Proposals

The Competing Proposals must follow the requirements for Unsolicited Conceptual Proposals set forth in Section VI of these Guidelines. An Initial Evaluation Fee in the amount set forth in Section III(D) below must be submitted along with the Competing Proposals.

Competing Proposals will be subject to an Initial Evaluation as described in Section III(B) for Unsolicited Conceptual Evaluations. Only those Competing Proposals meeting the requirements of the Initial Evaluation will be accepted.

During the Initial Evaluation or anytime thereafter, HRTAC may engage the services of qualified consultants, which may include attorneys, architects, engineers, certified public accountants, financial advisors or other consultants not otherwise employed by HRTAC, to provide independent analyses of Unsolicited Conceptual Proposals.

4. Substantially Different Competing Proposals

If HRTAC receives a Competing Proposal which differs in meaningful ways from the Unsolicited Conceptual Proposal, HRTAC may, in its sole discretion, consider that Competing Proposal or any portion of it, as a separate Unsolicited Conceptual Proposal.

In the event HRTAC elects to treat a proposal, or part of a proposal, as a separate Unsolicited Conceptual Proposal, HRTAC will notify the Proposer. The Proposer may elect to have its proposal treated as an Unsolicited Conceptual Proposal under these

Guidelines, and HRTAC will follow the procedures outlined in Sections III(B) and III(C)(1) and (2). If the Proposer does not elect to treat the proposal as an Unsolicited Conceptual Proposal, HRTAC will return the proposal.

D. Proposal Review Fees

A review fee will be charged to a private entity submitting an Unsolicited Conceptual Proposal or a Competing Proposal to cover HRTAC’s costs of processing, reviewing, and evaluating any proposal or competing unsolicited proposal. Such costs include but are not limited to HRTAC staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by HRTAC to assist in processing, reviewing, or evaluating the proposal.

1. Schedule of Fees

Review fees shall be imposed based on the reasonably anticipated costs to HRTAC in accordance with the following schedule:

- a. Initial Evaluation Fee. Payment of an Initial Evaluation Fee must accompany the submission of an Unsolicited Conceptual Proposal or Competing Proposal to HRTAC. No Unsolicited Conceptual Proposal or Competing Proposal will be evaluated by HRTAC prior to submission of the requisite fee. The Initial Evaluation Fee shall be \$10,000.
- b. Conceptual Phase Review Fees. After the Initial Evaluation of an Unsolicited Conceptual Proposal or Competing Proposal, if HRTAC decides to continue with consideration of the proposal, the Proposer shall pay to HRTAC a Conceptual Phase Review Fee of two and one-half percent (2.5%) of the reasonably anticipated total cost of the implementing the proposal, but no more than \$50,000, regardless of the anticipated total cost. HRTAC shall not proceed with consideration of either an Unsolicited Conceptual Proposal or Competing until the entire Conceptual Phase Review Fee has been paid in full.
- c. Additional fees. Additional fees beyond the Initial Evaluation Fee and Conceptual Phase Review Fee may be imposed by HRTAC during any phase of evaluation or consideration of any proposal (other than Solicited Proposals), if HRTAC reasonably anticipates it will incur costs in excess of the Fees paid by the Proposer. HRTAC will notify the Proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before HRTAC will continue to process, review, and evaluate the proposal.

2. Reimbursement of Excess Fees Paid

In the event the total fees paid by the Proposer exceed HRTAC’s total costs incurred in processing, reviewing, and evaluating the proposal, HRTAC shall reimburse the difference. Otherwise, any fees paid to HRTAC are non-refundable.

IV. FINDING OF PUBLIC INTEREST

Prior to the initiation of the procurement of a qualifying transportation facility, HRTAC is required by Section 33.2-1803.1 of the PPTA to make a finding of public interest. At a minimum, such finding shall contain the following information:

1. A description of the benefits expected to be realized by the responsible public entity through the development and/or operation of the transportation facility, including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use.
2. A description of the benefits expected to be realized by the responsible public entity through the use of this chapter compared with the development and/or operation of the transportation facility through other options available to the responsible public entity.
3. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity, which shall include the following:
 - a. A discussion of whether revenue risk will be transferred to the private entity and the degree to which any such transfer may be mitigated through other provisions in the interim or comprehensive agreements;
 - b. A description of the risks, liabilities, and responsibilities to be retained by the responsible public entity; and
 - c. Other items determined appropriate by the responsible public entity in the guidelines for this chapter.
4. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how such determination was made. If the qualifying transportation facility is determined to contain high risk, a description of how the public's interest will be protected through the transfer, assignment, or assumption of risks or responsibilities by the private entity in the event that issues arise with the development and/or operation of the qualifying transportation facility.
5. If the responsible public entity proposes to enter into an interim or comprehensive agreement through competitive negotiation, information and the rationale demonstrating that proceeding in this manner is more beneficial than proceeding pursuant by competitive sealed bidding.

V. PROPOSAL SUBMISSION PROVISIONS APPLICABLE TO ALL PROPOSALS

A. Generally

Proposers are encouraged to propose innovative financing methods. Unless stated otherwise in a request for proposal, these financing methods may include the imposition of user fees or service payments as permitted under the provisions of the PPTA and the issuance of debt, equity, or other securities or obligations.

If the Instructions in an ITB or RFP differ from any of the provisions set forth in this Section V, the Instructions govern the submission of the bids or proposals submitted in response to that ITB or RFP.

HRTAC may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.

Proposals should be prepared as simply as possible, with straightforward, concise descriptions responsive to each of the requirements below or in the ITB or RFP. Proposers must submit their proposals with the required information in the order listed below.

Proposals must meet standards of professional writing established for the type of report or written material provided, must be thoroughly researched for accuracy of content, must be grammatically correct and not contain spelling errors, and must be submitted in the format outlined herein or in the ITB or RFP.

B. Submission of Proposals

One (1) original (marked “ORIGINAL”) and ten (10) copies, together with one (1) electronic copy, of the proposal must be submitted to:

Executive Director
Hampton Roads Transportation Accountability Commission
723 Woodlake Drive
Chesapeake, VA 23320

Each copy shall be bound in a single volume where practical, except that information for which a claim of confidential or proprietary information is made should be submitted in a separately bound document or volume for convenience of review by HRTAC. Any such volume containing confidential or proprietary information shall be clearly marked on its cover.

C. Format and Structure of the Proposal

- The proposal shall be limited to a page size of 8 ½” x 11”, single space and type size shall not be less than 10 point font for each response item;
- All copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of pages (proposals with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided;
- The proposal must contain a table of contents;
- Each proposal shall be structured so that it contains the following individual sections in the following order:
 - INTRODUCTION OF PROPOSER
 - PROJECT CHARACTERISTICS
 - PROJECT BENEFIT AND COMPATIBILITY
 - QUALIFICATIONS AND EXPERIENCE
 - PROJECT FINANCING
 - REFERENCES
 - CONFLICT OF INTEREST STATEMENT

Any proposal submitted for a qualifying transportation facility shall be clearly identified as a “PPTA Proposal.”

D. Affected Jurisdictions

Any Proposer submitting a Conceptual Proposal or Detailed Proposal to HRTAC must provide all other affected jurisdictions with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to HRTAC. The Proposer is responsible for documenting delivery of the request or proposal. The term “affected jurisdiction” includes any county, city or town in which

all or a portion of a qualifying transportation facility is located, and any responsible public entity directly affected by the qualifying transportation facility. If an affected jurisdiction is locality comprising Planning District 23, the Proposer is not required to provide the jurisdiction a copy separate and apart from the copies provided directly to HRTAC.

HRTAC may request comments from the affected jurisdictions, and the affected jurisdictions shall have sixty (60) days from the date of the request to submit written comments to HRTAC and to indicate whether the proposed qualifying transportation facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof as set forth in PPTA Section 33.2-1805. HRTAC will consider comments received within the 60-day period in evaluating proposals. HRTAC is not obligated to suspend or delay its evaluation of any proposal during the 60-day period for the receipt of comments from affected jurisdictions.

VI. SPECIAL PROVISIONS FOR UNSOLICITED CONCEPTUAL PROPOSALS AND COMPETING PROPOSALS

Unsolicited Conceptual Proposals and Competing Proposals at the conceptual stage must comply with Section V and must contain the following information:

A. Introduction of Proposer

- Legal Name of Proposer
- Address
- Tax ID Number (EIN)
- Type of Business Entity (i.e. Corporation, General Partnership, Limited Partnership, Unincorporated Association, Limited Liability Company, Sole Proprietorship).
- Identification number issued to the entity by the Virginia State Corporation Commission.
- Indicate whether or not the Proposer or any of its principals are currently debarred from submitting bids to HRTAC, any state or political subdivision or any Federal Department or Agency.
- Minority/DBE Status.
- Contact Person, and contact information (i.e., telephone number, e-mail address, etc.)
- Major subcontractors (over \$5 million) known to the Proposer.

B. Project Characteristics

- A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities and the communities that may be affected;
- A description of the project, including the conceptual design and all proposed interconnections with other transportation facilities, including a description of any components, planned initially or for the future, that are expected to generate revenue for the project or the Proposer;
- The proposed schedule for the work on the project, including the estimated time for completion of the construction of the transportation facility and the dates for operation of the facility;
- An estimate of the life-cycle cost of the transportation facility as proposed;
- A statement setting forth the method by which the Proposer proposes to secure any property interests required for the transportation facility or facilities, including whether the Proposer intends for HRTAC to acquire any such property interests;
- Information relating to the current transportation plans, if any, of each affected locality or public entity;
- A list of all permits and approvals required for developing and/or operating improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
- A list of public utility's, locality's, or political subdivision's facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the private entity to accommodate such crossings;
- A statement setting forth the private entity's general plans for developing and/or operating the transportation facility or facilities, including identification of any revenue, public or private, or proposed debt or equity investment or concession proposed by the private entity;
- Information on how the private entity's proposal will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, enhancing economic efficiency, or any combination thereof;
- A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility, including revenue risk and operations and maintenance;

- Identification and description of any work to be performed by HRTAC or any other public entity;
- Any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental assessments have been completed;
- The projected positive social, economic and environmental impacts of the project;
- Assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on HRTAC’s use of the project;
- Any other assumptions relied on for the project to be successful; and
- Any contingencies that must occur for the project to be successful.

C. Project Benefit and Compatibility

- The anticipated impact of the project on reducing congestion for the greatest number of citizens residing within the Hampton Roads region;
- The compatibility with HRTAC’s existing funding plan and with the long-range transportation plan adopted by the Hampton Roads Transportation Planning Organization (“HRTPO”);
- Description of how the project will enhance the Hampton Roads regional transportation system.
- Description of how the project will achieve performance, safety, mobility, or transportation demand management.
- Description of any known or anticipated public support or opposition, as well as any known or anticipated government support or opposition, for the project. Support should be demonstrated through resolution of official bodies, minutes or meetings, letters, or other official communications.

D. Qualification and Experience

- For the purpose of this Subsection, “major contractor or subcontractor” means any entity with whom the Proposer will contract any part of the development, construction, or operation of the proposed P3 Project with a value equal to or greater than 10% of the contract value, or, for P3 Projects over \$50 million, with a value equal to or greater than \$5 million.
- Identity of the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management

approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the Proposer's team, including major subcontractors known to the Proposer must be identified at the time a proposal is submitted for the Conceptual stage. Identified team members and major contractors or subcontractors may not be substituted or replaced once a project is approved and a Comprehensive Agreement is executed without HRTAC's written approval.

- Description of the experience the Proposer and its key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims by or against the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- For each major contractor or subcontractor that will be utilized in the project, statement listing all of the firm's prior projects and clients for the past three (3) years with contact information for such clients (names/addresses/ telephone numbers/e-mail). If a firm has worked on more than ten (10) projects during this period, it may limit prior project list to 10, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three (3) years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.
- The names, addresses, e-mail, and telephone numbers of the Proposer's employee or agent who will be directly involved in the project and who may be contacted for further information.
- A current or most recently audited financial statement of the Proposer and all entities with an equity interest of twenty percent (20%) or greater in the Proposer. For each, submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
- Identity of any persons known to the Proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Title 2.2, Chapter 31 of the Virginia Code (Section 2.2-3100 *et seq.*).

- Acknowledgement of conformance with the Ethics in Public Contracting Act (Sections 2.2-4367 through 2.2-4377 of the Virginia Code).
- Provide a completed qualification statement in a form acceptable to HRTAC that reviews all relevant information regarding technical qualifications and capabilities, firm resources and financial integrity of the Proposer and all major contractors or subcontractors, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three (3) years, except as indicated, any of the following conduct:
 1. bankruptcy filings
 2. unpaid claims for money damages
 3. fines, assessments, or penalties
 4. judgments or awards for money damages
 5. contract defaults, contract terminations
 6. license revocations, suspensions, other disciplinary actions
 7. prior debarments or suspensions by a governmental entity
 8. denials of prequalification, findings of non-responsibility
 9. maximum five years safety performance data, including fatality incidents
 10. “Experience Modification Rating” and issuing insurance company
 11. “Recordable Incidence Rates” “Lost Time Incidence Rates”
 12. OSHA 200 Summary and OSHA 300A Forms
 13. OSHA violations, dates, and disposition
 14. violations of any federal, state or local criminal or civil law by the firm or its principals
 15. criminal indictments or investigations of the firm or its principals
 16. legal claims filed by or against firm

E. Project Financing

- A preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both. If costs span a period greater than twelve (12) months, they shall be reported in “year of expenditure” dollars.
- A plan for the development, proposed financing and construction of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. Include any supporting due diligence studies, analyses, or reports.
- A list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all terms, conditions and fees associated with financing given the recommended financing approach. In addition, the complete disclosure of interest rate assumptions should be included and what impact, if any, a change in interest rates would have on the ultimate annual project cost.
- Any proposed user fees and demonstrate that the revenues therefrom will be used solely for programs and projects that are reasonably related to, or benefit the users of, the proposed project.
- Financial information which demonstrates the private entity’s financial stability and ability to finance the project.
- A description and analysis (cost/benefit, tax, etc.) to demonstrate the project’s financial feasibility.
- The amounts and the terms and conditions for any revenue sources.
- Any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

F. References

For all projects referenced in your Qualifications and Experience, the address, telephone number, and the name of a specific contact person who have knowledge of the work performed on those projects. These references should include:

- Name and address of project owner/sponsor
- Name, telephone number, fax number, and e-mail address of the owner’s project manager
- A summary of the project including budget and final cost
- Project schedule (proposed and actual)

G. Conflict Of Interest Statement

Firms must submit an executed copy of the Conflict of Interest Statement. See Exhibit A to these Guidelines.

VII. FORMAT FOR SUBMISSIONS OF UNSOLICITED PROPOSALS AND COMPETING PROPOSALS AT THE DETAILED STAGE

After review and evaluation of proposals submitted at the conceptual stage, HRTAC shall determine if it will continue with the procurement of the qualifying transportation facility and will select two or more Proposers (“short-list”) to submit a detailed proposal. HRTAC may select only one Proposer if only one Proposer is qualified to develop or operate the qualifying transportation facility.

HRTAC will issue a request for detailed proposals to the short-listed Proposers. The request for detailed proposals will set forth the requirements for the detailed proposal, which may include:

- Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
- A detailed description of the proposed participation, use and financial involvement of HRTAC in the project. Include the proposed terms and conditions for the project.
- A list of public utility’s, locality’s or political subdivision’s facilities, if any, that will be impacted by the qualifying transportation facility and a statement of the plans of the proposed entity to accommodate such impacts (facilities owned or operated by the local government or political subdivision may include pipes, mains, storm sewers, water lines, sanitary sewers, natural gas facilities, or other structures, equipment, and appliances owned or operated by a locality or political subdivision for the purpose of transmitting or distributing communications, power, electricity, light, heat, gas, oil, crude products, water, steam, sewage or waste, storm water not connected with highway drainage, or any other similar commodity or substance, which facilities directly or indirectly serve the public).
- The names and addresses, if known, of the current owners of the property interests required to be secured and property the private entity intends to request that HRTAC acquire.
- A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, a brief description of such guarantees and warranties and a record of any prior defaults in performance.

- An updated, total life-cycle cost including maintenance in “year of expenditure” dollars, specifying methodology and assumptions of the project or projects and its major building systems (e.g. electrical, mechanical, etc.) and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
- A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes and usage of the project over the useful life of the project.
- Update the identification of any known or anticipated public or government support or opposition for the project, including supporting documentation. Discuss the impact of the support or opposition on the project.
- Demonstration of consistency with appropriate HRTAC and/or affected jurisdiction comprehensive development plans (including related land use, environmental and facility standards ordinances, where applicable), transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
- Explanation of how the proposed project would impact the development plans of HRTAC or any affected jurisdiction.
- Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.
- Identification of the executive management and the officers and directors of the firm or consortium of firms making the proposal. In addition, identify any known conflicts of interest or other limitations that may impact HRTAC’s consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act, Title 2.2, Chapter 31 (Section 2.2-3100 et seq.) of the Virginia Code.
- Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to HRTAC, and all underlying data supporting any conclusions reached in

the analysis or the selection by the private entity of the financing plan proposed for the project.

- Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- Information on the level of commitment by the firm to using small, women-owned, or minority businesses in developing and implementing the project.
- For each firm or major subcontractor that will perform construction and/or design activities, a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
- Description of worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- All anticipated risk factors and methods for dealing with these factors. Describe the methods and remedies associated with any financial default.
- Any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from HRTAC or other governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of HRTAC's credit or revenue.
- Any other information HRTAC deems necessary or desirable for evaluation of the detailed proposals.

VIII. PROPOSAL EVALUATION AND SELECTION CRITERIA

Some or all of the following matters may be considered in the evaluation and selection of PPTA proposals. The specific evaluation criteria to be used for any particular procurement will be provided in the ITB or RFP. HRTAC retains the right at all times to reject any proposal at any time for any reason whatsoever.

A. Project Characteristics

Factors considered in evaluating the project characteristics may include, but are not limited to:

1. Project description, location, and design;
2. Proposed project schedule;
3. Operation of the project and interconnections with the transportation facilities;
4. Technical feasibility and state of the art offerings;
5. Conformity to federal, state and local laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Property impacts;
8. Utility, railroad, cable television provider, locality or political subdivision infrastructure facility impacts;
9. Federal, state and local permits;
10. Maintenance of the project; and
11. Ongoing operations.

B. Project Benefit and Compatibility

Factors to be considered in evaluating the proposed project’s benefit to and compatibility with the appropriate local or regional comprehensive or development plans may include, but are not limited to:

1. Anticipated reduction in congestion;
2. Compatibility with HRTAC’s existing funding plan, and with HRTPO’s long-range transportation plan;
3. Enhancements to the Hampton Roads regional transportation system;
4. Achievement of performance, safety, mobility, or transportation demand management;
5. Community support or opposition, or both;

6. Public involvement strategy;
7. Compatibility with existing and planned facilities;
8. Compatibility with local, regional, and state economic development efforts; and
9. Compatibility with the land use plans, transportation plans, and capital improvement plans of affected jurisdictions.

C. Qualifications and Experience

Factors considered in evaluating the qualifications and experience may include, but are not limited to:

1. Experience with similar projects of the Proposer, Proposer members, and major subcontractors;
2. Reputation, industry experience;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Organizational chart, including project staffing plans, the skill levels of the proposed task leaders, workforce, apprenticeship and other training programs offered for the project for the project;
9. Proposed safety plans;
10. Financial soundness, capability, including the ability to obtain required sureties and insurance coverages;
11. Project ownership; and
12. Ethics and integrity.

D. Project Financing

Factors considered in evaluating whether the proposed project financing allows adequate access to the necessary capital to finance the project may include, but are not limited to:

1. Estimated cost of the project, including debt source, operating costs, etc.;
2. Cost and cost benefit to HRTAC;
3. The impact of any proposed financing on HRTAC’s debt burden or credit ratings;
4. Ability to obtain tax-exempt financing;
5. Financial plan, including overall feasibility and reliability of the plan; default implications; degree to which private entity has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;
6. Private entity’s past performance with similar plans and similar projects;
7. Life-cycle cost analysis;
8. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment; and
9. User fees and use of revenue that benefits users. Reasonableness of assumptions underlying financing.

HRTAC may elect to accept the private entity’s financing proposal or may select its own finance team, source, and financing vehicles.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPTA proposals may include, but are not limited to:

1. The eligibility of the facility for accelerated selection, review, and documentation;
2. Local citizen and government comments;
3. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in HRTAC’s processes or delivery of services to the public;

4. The private entity’s compliance with HRTAC’s PPTA Guidelines and other applicable procurement policies, and the good faith effort to comply with the goals of such Guidelines and policies;
5. The private entity’s plan to employ local contractors and residents;
6. Proposer’s plan for utilizing SWAM or DBE business;
7. The safety record of the private entity; and
8. The risks, liabilities, and responsibilities transferred, assigned, or assumed by the private entity provide sufficient benefits to the public to not proceed with the development and/or operation of the transportation facility through other means of procurement available to HRTAC.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For unsolicited proposals, an estimated timeline will be developed and distributed within sixty (60) days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that HRTAC deems a priority, such as qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility.

IX. INTERIM AND COMPREHENSIVE AGREEMENTS

The purpose of an Interim Agreement for P3 projects is to all Proposers to engage and be compensated for certain project planning, design, engineering, environmental analysis or similar activities. HRTAC may, at its discretion, enter into an Interim Agreement with one or more Proposers for activities specified in the Agreement.

A Comprehensive Agreement is required to be entered into between HRTAC and a selected Proposer before the development of a P3 project.

HRTAC does not accept liability for any part or phase of a project prior to entering into a properly executed Interim or Comprehensive Agreement. Any Interim or Comprehensive Agreement executed pursuant to the PPTA and any annulment thereto, requires prior approval by HRTAC’s members in accordance with Section 33.2-2604 of the Virginia Code. Any changes in the terms of an executed Interim or Comprehensive Agreement shall be in the form of a written amendment.

A. Interim Agreement

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a Comprehensive Agreement. An Interim Agreement may not be used to have HRTAC assume risks that should be assumed by the Proposer or to pay costs attributable to the Proposer’s efforts in making the proposal. Interim Agreements require the same level of approval as Comprehensive Agreements.

Development of an Interim Agreement is in HRTAC’s sole discretion and in no way limits the rights reserved by HRTAC to terminate the evaluation of any or all proposals at any time.

1. Interim Agreement Provisions

Such Interim Agreement may:

- a. Permit a private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;
- b. Establish the process and timing of the negotiation of the Comprehensive Agreement; and
- c. Contain any other provisions related to any aspect of the development or operation of a qualifying transportation facility that the parties may deem appropriate.

2. Public Comment Prior to Interim Agreement

At least thirty (30) days prior to entering into an Interim Agreement, HRTAC shall provide an opportunity for public comment on proposals. HRTAC shall post the major business points of the agreement, including projected use of public funds, and explain how the public can submit comments. HRTAC shall also present the major points to its Board at a regular scheduled open meeting.

A draft of any Interim Agreement shall be posted and the public shall have an opportunity to comment on it at least thirty (30) days prior to the issuance of a final request for proposals.

B. Comprehensive Agreement

Prior to developing or operating any qualifying transportation facility, a selected Proposer must enter into a Comprehensive Agreement with HRTAC as provided by the PPTA. HRTAC may enter into a Comprehensive Agreement with multiple private entities if it determines, in writing, that it is in the public interest.

1. Public Comment Prior to Comprehensive Agreement

At least thirty (30) days prior to entering into a Comprehensive Agreement, HRTAC shall provide an opportunity for public comment on proposals. HRTAC shall post the major business points of the agreement, including projected use of public funds, and explain how the public can submit comments. HRTAC shall also present the major points to its Board at a regular scheduled open meeting.

2. Certification Prior to Comprehensive Agreement

HRTAC shall not enter into a Comprehensive Agreement unless HRTAC’s Executive Director certifies in writing to the Governor and the General Assembly that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the finding of public interest issued pursuant to Section 33.2-1803.1 of the PPTA have not materially changed since the finding was issued and the finding of public interest is still valid. Any change to the project scope that does not materially impact the assignment of risks or liabilities or mitigation of revenue risk shall be presented in a public meeting before the appropriate governing board.

3. Terms of Comprehensive Agreement

As provided by the PPTA, the terms of the Comprehensive Agreement must include, but not be limited to:

- a. Delivery of maintenance, performance and payment bonds or letters of credit in connection with the design, construction, expenses, equipping, maintenance or operation of the qualifying transportation project, in the forms and amounts satisfactory to HRTAC and in compliance with Virginia Code Section 2.2-4337 for those components of the qualifying transportation project that involves construction;
- b. Review and approval of plans and specifications for the qualifying transportation project by HRTAC;
- c. HRTAC’s right to inspect the construction of or improvement to qualifying transportation project to ensure compliance with the Comprehensive Agreement, and standards required by HRTAC;
- d. Maintenance of a policy or policies of public liability insurance or an acceptable program of self-insurance, each in form and amount satisfactory

to HRTAC and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;

- e. Monitoring of the maintenance practices of the private entity by HRTAC and actions that may be taken by HRTAC to ensure the proper maintenance of the qualifying transportation project;
- f. The terms under which the private entity will reimburse HRTAC for services provided by HRTAC;
- g. The terms under which the private entity will file appropriate financial statements in a form acceptable to HRTAC on a periodic basis;
- h. The terms governing the rights and responsibilities of HRTAC and the private entity in the event that the Comprehensive Agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by HRTAC and the transfer or purchase of property or other interests of the private entity by HRTAC and, in the case of a termination for convenience, compensation or reimbursement for development expenses and fees;
- i. Provisions for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, subject in each case to such limitations as may be required to comply with Federal and state laws, regulations and policies;
- j. Requiring a copy of any service contract to be filed with HRTAC and providing that a schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request;
- k. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee;
- l. The date of termination of the private entity's authority, duties and responsibilities to HRTAC;
- m. The terms and conditions under which HRTAC may contribute financial resources, if any, for the qualifying transportation facility;
- n. The terms and conditions under which HRTAC will be required to pay money to the private entity and the dates and amounts of such payments for the project;

- o. The terms and conditions under which existing site conditions will be assessed and addressed, including the identification of the responsible party for conducting the assessment and taking necessary remedial action;
- p. A provision for the distribution of any earnings in excess of the maximum rate of return negotiating in the Comprehensive Agreement;
- q. Incorporation of the duties of a private entity in the PPTA, the parties, and all terms and conditions required by law;
- r. A provision that all change to the Comprehensive Agreement must be by written amendment; and
- s. A provision requiring funding for adequate staffing by the Virginia State Police for law enforcement services during development and operation of the qualify transportation facility, as determined in consult with the Virginia State Police.

The representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by HRTAC. Accordingly, as part of the Comprehensive Agreement, the Proposer shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the Proposer shall immediately notify HRTAC of such changes in reasonable detail. Any violation of this section of the Comprehensive Agreement shall give HRTAC the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Additional Notice and Posting Requirements After Execution of Agreement

Once an Interim Agreement or a Comprehensive Agreement has been executed, HRTAC shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (Section 2.2-3700 *et seq.* of the Virginia Code). Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect HRTAC’s financial interest or bargaining position. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

D. Reservation of Rights

In connection with any proposal, HRTAC shall have all rights available to it by law in administering these procedures, including, without limitation, the right in its sole discretion to:

1. Reject any or all proposals at any time, for any reason. Private entities shall have no recourse against HRTAC for such rejection. A private entity will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate negotiations on an Interim Agreement or Comprehensive Agreement at any time prior to their execution by all parties. (See Section VII below.)
4. Negotiate with a private entity without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any RFP.
7. Revise, supplement or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by a private entity hereunder, except for that portion of the initial fees paid by Proposers with an unsolicited conceptual proposal that were not expended by HRTAC in evaluating the proposal if HRTAC declines to accept the proposal for consideration.
10. Request revisions to conceptual or detailed proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Submit a proposal for review by outside consultants or advisors selected by HRTAC without notice to the Proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential pursuant to an agreement between HRTAC and the Proposer, and to refer all requests for such information to HRTAC.

13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by HRTAC in its sole discretion. Written notice will be provided to any affected Proposers when such departures from a stated timeline are deemed significant.

Under no circumstances shall HRTAC be liable for, or reimburse, the costs incurred by private entities, whether or not selected for negotiations, in developing proposals or in negotiating agreements.

Any and all information HRTAC makes available to Proposers shall be as a convenience to the Proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a Proposer has a question regarding application of these procedures, the Proposer must submit the question in writing to HRTAC's Executive Director and HRTAC will respond in writing as it determines appropriate.

E. Virginia Freedom of Information Act

All proposals submitted to HRTAC become the property of HRTAC and are subject to the Virginia Freedom of Information Act ("FOIA") (Section 2.2-3700 *et seq.* of the Virginia Code). Proposers are advised to familiarize themselves with FOIA to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA.

In accordance with Section 2.2-3705.6(11) of FOIA, proposals and records voluntarily submitted to HRTAC under the PPTA are subject to disclosure except to the extent that they relate to (i) confidential proprietary records submitted to HRTAC under a promise of confidentiality, or (ii) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of HRTAC or private entity or the bargaining position of either party. Cost estimates relating to proposed procurement transactions prepared by or for HRTAC are not open to public inspection pursuant to PPTA Section 33.2-1820(E).

Section 33.2-1803(H) of the PPTA requires HRTAC to take appropriate action to protect confidential proprietary information submitted by a private entity. In order for confidential proprietary information to be excluded from disclosure under FOIA, the private entity must (i) invoke the exclusion when the data or materials for which protection from disclosure is sought are submitted to HRTAC, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why exclusion from disclosure is necessary. HRTAC is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the Proposer without reasonably differentiating between proprietary and non-proprietary information contained herein.

Upon timely receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, HRTAC shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such

appropriate protection, and shall communicate its determination to the Proposer. Upon a final determination by HRTAC to accord less protection than requested by the Proposer, the Proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

To the extent that access to any procurement record or other document or information is compelled or protected by a court order, then HRTAC must comply with such order.

F. Use of Public Funds

Virginia constitutional and statutory requirements regarding appropriation and expenditure of public funds shall apply to any Interim or Comprehensive Agreement entered into under the PPTA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPTA project or projects.

G. Applicability of Other Laws

In submitting proposals and in developing, executing or operating facilities under the PPTA, private entities must comply with all applicable federal, state, and local laws.

X. INDEPENDENT AUDIT

As required by PPTA Section 33.2-1803(F), for any qualifying transportation facility whose construction cost is estimated to exceed \$50 million, HRTAC shall engage a consultant of its choosing to perform an independent audit of the traffic cost estimates associated with the Proposer’s proposal and all the public costs and other liabilities which may require the expenditure of public funds. Such liabilities include improvements to other transportation facilities required as a result of the proposal, the Proposer’s failure to reimburse HRTAC for services rendered, and other risks and liabilities to which taxpayers or HRTAC may be exposed should the Proposer default on the Interim Agreement, the Comprehensive Agreement or bonds issued as part of the financing for the P3 project.

The Proposer shall reimburse HRTAC for the costs for the independent audit and the results of the audit shall be disclosed in accordance with FOIA.

XI. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and procedures and the PPTA, the terms of the PPTA shall control.