

ADDENDUM # 3



Reserve Fund Surety HRTAC-RFP-2023-01

August 19, 2022

This addendum is issued to address further questions received by the Hampton Roads Transportation Accountability Commission (HRTAC) pertaining to Request for Proposal No. HRTAC-RFP-2023-01 (as previously supplemented and/or amended, the “RFP”). The RFP is hereby amended and supplemented as follows:

1. Can you provide detail on the Commonwealth’s budget process –

The following provides general background on the Commonwealth’s budget process:

The Governor is the chief planning and budget officer of the Commonwealth. The Secretary of Finance and the Department of Planning and Budget assist the Governor in the preparation of executive budget documents. The Governor's Secretaries advise the Governor and the Department of Planning and Budget on the relative priority of the budget requests from their respective agencies.

The Governor is required by statute to present a bill detailing his proposed budget for the next biennium (the “Budget Bill”) and a narrative summary of the bill to the General Assembly by December 20th in the year immediately prior to each even-year session. The Budget Bill is introduced in both the House of Delegates and the Senate. It is referred to the House Appropriations and Senate Finance Committees, which hold joint meetings to hear from citizens, from other General Assembly members and from agency representatives. The Budget Bill is then approved by each Committee in an open session and reported to the respective floors for consideration, debate, amendment and passage. After the bill has passed both houses, differences between the House and Senate versions are reconciled by a conference committee from both houses.

Under constitutional provisions, the Governor retains the right in his review of legislative action on the Budget Bill, to suggest alterations to or to veto appropriations made by the General Assembly. After enactment, the Budget Bill becomes law (the “Appropriation Act”).

In the odd-year sessions of the General Assembly, amendments are considered to the Appropriation Act enacted in the previous year. The Governor submits a bill by December 20th, which includes his proposed amendments to the current biennial budget. It is then introduced in both houses and is considered in the same manner as the regular biennial Budget Bill. The Appropriation Act enacted in the odd-year session is effective upon passage, whereas the regular biennial Appropriation Act is effective July 1, the beginning of the biennium.

- a. List of General Assembly’s funding priorities (rank order)?

Please be advised that HRTAC is an independent political subdivision of the Commonwealth of Virginia and is not controlled by the Commonwealth or any agency thereof, but is instead directed by its Board, the voting members of which generally comprise the heads of the various local government units (cities and counties) in Planning District 23. Hence, HRTAC cannot speak for the Commonwealth’s funding

priorities. The HRTAC Board does have ex-officio representatives from the Virginia Senate, the Virginia House of Delegates, the Commonwealth Transportation Board, the Virginia Department of Transportation, the Virginia Department of Rail and Public Transportation, and the Virginia Port Authority.

That said, the General Assembly's funding priorities are set forth in the Commonwealth's biennial budget and hence vary with each budget cycle. Generally, budget priorities for each budget can be determined by reviewing various Committee Reports published on Virginia's LIS website (e.g., <https://budget.lis.virginia.gov/sessionreports/2022/1/>), in addition to reviewing the general allocation of funds set forth in the LIS budget summary (see <https://budget.lis.virginia.gov/bill/2022/2/HB30/Chapter/>).

In recent years, transportation funding has been extensively addressed, with the Virginia General Assembly enacting comprehensive reforms in 2020 and making legislative adjustments to these arrangements in subsequent years.

b. Where does transportation funding fall in the Commonwealth's budget priorities?

See the previous response. The Appropriation Act's general allocation of funds includes significant allocations to the Office of Transportation.

c. What is the amount and percentage of the Commonwealth's budget that has been spent on transportation?

See generally the LIS budget summary referenced above for the allocation to the Office of Transportation. Virginia's Department of Planning and Budget estimated that for the previous budget biennium, approximately 14.3% of budgeted funds went to transportation, the third largest category (<https://dpb.virginia.gov/budget/faq.cfm>).

d. Of the portion of the budget that has been dedicated to transportation, what is the amount and percentage that is attributable to highway projects?

We are unaware if this information is available with respect to the budget as a whole. The budget for the Commonwealth Transportation Fund, which serves as the fund to which transportation revenues are deposited and then distributed to various state programs and funds, provides a breakdown of funds deposited based on usage. For example, see the Revised Fiscal Year 2023 Commonwealth Transportation Fund Budget (July 2022) here: <https://www.ctb.virginia.gov/resources/2022/july/res/15.pdf>.

e. Who advocates on behalf of transportation spending to the General Assembly for appropriations/funding? (CTB? VDOT?)

Generally speaking, one would think that any affected stakeholder advocates for transportation funding, whether at the state level, or through any of the various regional bodies identified in this Addendum #3 (to include HRTAC, NVTA, CVTA but also the Virginia Passenger Rail Authority and the several transit authorities/commissions in Virginia such as the Transportation District Commission of Hampton Roads, the Northern Virginia Transportation Commission, and the Potomac and Rappahannock Transportation Commission), as well as Virginia’s counties, cities and towns. The Commonwealth provides much of the transportation funding at the local level, and organizations such as the Virginia Municipal League and the Virginia Association of Counties maintain committees and task forces to advocate for local funding priorities (this link provides an example of the Fall, 2021 VML transportation policy statement: <https://www.vml.org/wp-content/uploads/pdf/2022-Transportation-Policy-Statement.pdf>).

f. What is the history of HRTAC’s request for appropriations versus actual appropriations? (i.e., has the Commission received 100% of its requested amounts historically)?

To HRTAC’s knowledge, it has received every dollar of regional taxes collected in Planning District 23 (except certain regional fuels tax vendor compliance audit fees) since inception of its dedicated regional funding.

The following paragraphs address “HRTAC specific” aspects of the appropriation process in more detail. The Commonwealth collects the regional taxes that flow into the Hampton Roads Transportation Fund (“HRTF”), although these taxes are state imposed by the legislature and dedicated solely for such fund and for no other purpose. These funds are deposited into the state treasury, as required by Va. Code § 33.2-2600, and credited to the HRTF.

The applicable taxing statutes specify the deposit into the HRTF and hence the use of such funds: As provided in Va. Code § 58.1-638, the “additional revenue generated by increases in the state sales and use tax from Planning District 23 ... shall be deposited by the Comptroller in the [HRTF].” Under Va. Code § 58.1-2299.20, “[i]n the case of Planning District 23, the revenue generated and collected therein shall be deposited into the [HRTF].” The Comptroller pays amounts in the HRTF to HRTAC.

As generally described above, the Commonwealth’s appropriations act provides for the appropriation of these funds to HRTAC, since “[n]o money shall be paid out of the State treasury except in pursuance of appropriations made by law.” Va. Constitution, Article X, Section 7. (Va. Code § 2.2-1919 gives statutory effect to this provision.)

Prior to its adjournment in June, 2022, the General Assembly passed with amendments the Governor’s 2023-2024 budget bill (also referred to herein as the Appropriation Act

once signed into law). The Appropriation Act has several provisions pertaining to the HRTF.

First, the actual appropriation to the HRTF is contained in Item 460 of the Appropriation Act (together with transfers to other local and regional entities). Item 460 (entitled “Financial Assistance to Localities for Ground Transportation”) provides for the distribution of HRTF revenues as follows, with the line item reading “Distribution of Hampton Roads Transportation Fund Revenues,” in the amount of \$285,600,000 in Fiscal Year 2023 and \$292,000,000 in Fiscal year 2024. The Appropriation Act further specifies that “[n]otwithstanding any other provision of law, moneys deposited into the Hampton Roads Transportation Fund shall be transferred to the Hampton Roads Transportation Accountability Commission for use in accordance with § 33.2-2611, Code of Virginia.” (Note: this is part of HRTAC’s enabling statute).

Second, Section 3-5.10 of the Appropriation Act states that “[f]unds collected pursuant to § 58.1-2291 et seq., Code of Virginia, from the additional sales tax on fuel in certain transportation districts under § 58.1-2291 et seq., Code of Virginia, shall be returned to the respective commissions in amounts equivalent to the shares collected in the respective member jurisdictions.”

The Appropriation Act provides mechanisms to handle differences between approved budgeted amounts, based on estimated revenues, and actual results. Item 460(E) provides that the Director of the Department of Planning and Budget “is authorized to adjust appropriations and allotments for the Virginia Department of Transportation Transfer Payments to reflect changes in the official revenue estimates in the dedicated funds.” In addition, Section 4-1.04 of the Appropriation Act provides an administrative process by which collections of HRTF tax revenues, which are non-general fund amounts due to their regional nature and designation for a particular purpose, in excess of appropriation estimates are approved for deposit in the HRTF. It is HRTAC’s understanding that no additional appropriation or General Assembly action is needed for increases in HRTF revenues as such increases are handled administratively by the Department of Planning and Budget and the Department of Accounts – the appropriation process and the Appropriation Act procedures for non-general funds provide that the stated appropriation will apply to HRTF amounts in excess of the amount stated in the Appropriation Act.

Only the General Assembly may change the foregoing arrangements, much as it could do so for any other public entity of the Commonwealth not established in the Constitution. Under current law, no executive branch agency or other board, commission, or authority of the Commonwealth has any degree of control over the HRTF and the uses to which it can be applied.

Because HRTAC is not a part of the Commonwealth (it is an independent body), the HRTF appropriation runs through an executive branch agency, in this case, VDOT, similar to the other regional authorities with regional tax revenues. The CTB/VDOT Fiscal Year 2023 budget linked above sets this out. Once the funds are transferred to

HRTAC in accordance with Virginia statutes, the funds are under the total control of HRTAC for the Commission's use as defined by its enabling legislation.

g. If there is any additional information/studies regarding appropriation risk that you could share?

We are unaware of additional information/studies regarding your request.

Appropriation risk is a common feature in Virginia financings. For instance, at the state level, the Virginia Public Building Authority and the Virginia College Building Authority (21st Century) routinely issue subject to appropriation debt. These programs are rated AAA+/Aa1/AA+. We would also refer you to the rating agency analyses for other appropriation aspects of transportation-backed programs in Virginia, such as the Commonwealth Transportation Board, the Virginia Port Authority (Commonwealth Port Fund), and HRTAC (its senior lien HRTF ratings are AA/Aa2). A general theme of these is that, with regard to the pledged revenues in question, non-appropriation is unlikely given strong support of the Commonwealth of Virginia.

2. Sunset Provision that could impair the rights of bondholders

a. Please provide background/rationale for the inclusion and enactment of Clause 14 of Chapter 766 and Chapter 1230 in the 2020 Acts of Assembly.

HRTAC is unable to speak to the General Assembly's underlying rationale for enacting Clause 14 of Chapter 766 and Chapter 1230 in the 2020 Acts of Assembly, and otherwise refers you to the various impact statements provided by the General Assembly with respect to the respective legislation (see <https://lis.virginia.gov/cgi-bin/legp604.exe?ses=201&typ=bil&val=hb1414>).

That said, one might think that the underlying rationale for this legislative feature is to discourage or make more difficult the legislature's ability to change its mind on the current transportation funding structure and to "raid" transportation funding for other uses.

b. Are HRTAC and NVTa the only two Planning Districts in the Commonwealth that could be impacted if the sunset provision were triggered without the passage of a savings clause?

No, the Virginia General Assembly has provided for regional transportation funding in a variety of contexts. The Central Virginia Transportation Authority also receives regional transportation funding somewhat similar to HRTAC and NVTa (in CVTA's case, a regional sales and use tax and a regional motor vehicle fuels tax), and the Northern Virginia Transportation Commission receives regional motor vehicle fuels

taxes. The Official Statement for NVTC's Transportation District Special Obligation Revenue Bonds (Transforming Rail in Virginia Program), Series 2022 (Green Bonds) generally describes the security structure for NVTC regional gas tax financings: <https://emma.msrb.org/P11611164-P11242259-P11665945.pdf>.

At the state level, the Commonwealth's Interstate 81 funding program receives regional motor vehicle fuels taxes in the various localities along the Interstate 81 corridor. The Official Statement for the Commonwealth Transportation Board's Interstate 81 Corridor Program Revenue Bonds (Senior Lien) Series 2021 generally describes the security structure for Interstate 81 financings: <https://emma.msrb.org/P21486480-P21151830-P21565774.pdf>.

The regional motor vehicle fuels tax is not levied in every locality within the Commonwealth. However, effective July 1, 2020, the General Assembly generally extended the regional motor vehicle fuels tax across the Commonwealth, to include those areas and planning districts outside of the specified regions.

From a somewhat broader perspective, this legislative structure, inasmuch as it applies to large swaths of the Commonwealth's transportation funding structures, applies to the Commonwealth's funding of other debt programs, such as the Virginia Port Authority via the Commonwealth Port Fund (see the VPA's Official Statement for its Commonwealth Port Fund Revenue Refunding Bonds, Series 2020: <https://emma.msrb.org/RE1373024-RE1066377-RE1476294.pdf>) and various Commonwealth Transportation Board programs. For examples, see the respective Official Statements for the CTB's Transportation Capital Projects Revenue and Refunding Bonds, Series 2022: <https://emma.msrb.org/P11577591-P21201841-P11638771.pdf>, and its Transportation Revenue Bonds, Series 2022 (U.S. Route 58 Corridor Development Program): <https://emma.msrb.org/P21560605-P11222915-P11644400.pdf>.

Unless specifically addressed above in this Addendum #3, all other provisions of the RFP, as previously supplemented and/or amended, remain in full force and effect.