



U.S. Route 460 Corridor Improvements Project

Part One

Instructions to Offerors

Prepared in coordination with:



TABLE OF CONTENTS

1.0	INTRODUCTION	1
2.0	BACKGROUND INFORMATION	2
2.1	Legislative Authority for the Project	2
2.2	Procurement Process	2
2.3	Schedule	3
2.4	The Department’s Point of Contact and Project References	4
2.5	RFDP Documents	5
3.0	PROJECT DESCRIPTION AND CORRIDOR INFORMATION	7
3.1	Project History	7
3.2	General Scope of the Concessionaire’s Responsibilities for the Project	7
3.3	General Scope of the Department’s Responsibilities for the Project	7
3.4	Key Technical Assumptions of the Project	8
3.5	Key Financial Aspects of the Project	8
4.0	GENERAL PROCEDURES AND REQUIREMENTS	13
4.1	Relationship of the SFP to the RFDP	13
4.2	Changes in Offeror’s Organization	13
4.3	Data Room	14
4.4	Pre-Submittal Responsibilities	14
4.5	Proprietary Meetings	14
4.6	Proposal Payment	16
4.7	No Exclusive Teaming Arrangements	16
4.8	Independent Engineer	16
4.9	Violations Processing System and Electronic Toll Collections	17
4.10	Information to be Provided by the Department	17
4.11	DBE/SWaM Requirements	17
4.12	Detailed Proposal Security	17
5.0	DETAILED PROPOSAL SUBMITTAL REQUIREMENTS	20
5.1	General Information and Delivery Requirements	20
5.2	Format and Organization of Detailed Proposal	21
5.3	Technical Proposal Submittal Requirements	22
5.4	Financial Proposal Submittal Requirements	22
6.0	EVALUATION AND SELECTION PROCESS	23
6.1	Summary of Evaluation Process	23
6.2	Responsiveness Review	23

6.3	“Pass-Fail” Evaluation Factors	24
6.4	Public Funds Amount	25
6.5	Clarifications Regarding Detailed Proposals	34
6.6	Approval of Comprehensive Agreement	34
6.7	Actions Following Approval Date	35
7.0	QUESTIONS AND REQUESTS FOR CLARIFICATION REGARDING RFDP	39
8.0	RIGHTS AND OBLIGATIONS OF THE DEPARTMENT	40
8.1	Specific Rights and Obligations of the Department	40
8.2	No Assumption of Liability by the Department	41
9.0	MISCELLANEOUS	43
9.1	Virginia Freedom of Information Act.....	43
9.2	Changes Prior to Execution of Comprehensive Agreement	44
9.3	Administrative Requirements	44
9.4	eVA Business-to-Government Vendor System	45
10.0	CONFLICT OF INTEREST	47
10.1	Conflict of Interest Determination	47
10.2	Ethics in Public Contracting Act.....	48

ATTACHMENTS

- A Definitions
- B Technical Proposal Submittal Requirements
- C Pre-Proposal and Financial Proposal Submittal Requirements
- D Detailed Proposal Checklist and Contents
- E Detailed Proposal Forms
 - Form 1 Proposal Submission Letters
 - Form 1-A Financial Proposal Submittal Letter
 - Form 1-B Technical Proposal Cover Letter
 - Form 2 Non-Collusion Affidavit
 - Form 3 Conflict of Interest Disclosure Statement
 - Form 4 Equal Employment Opportunity Certification
 - Form 5 Use of Contract Funds for Lobbying Certification
 - Form 6 Debarment and Suspension Certification
 - Form 7 Detailed Proposal Security Irrevocable Standby Letter of Credit
 - Form 8 Financial Proposal Forms
 - Form 8-A Public Funds Amount Form
 - Form 8-B Initial Toll Rates Form
 - Form 8-C Financial Statements Summary Table
 - Form 8-D Financial Plan Tables
 - Form 8-E Schedule of Values Form
 - Form 8-F Alternative Conceptual Design Valuation Form
 - Form 8-G Declaration of No Material Change Form
 - Form 9 Proposal Payment Form
 - Form 10 Waiver of Proposal Payment Form
- F Other Forms
 - Form A Confidentiality Agreement
 - Form B Critical Infrastructure Information/Sensitive Security Information
Multi-Purpose Non-Disclosure Agreement
 - Form C Opinion of Counsel

1.0 INTRODUCTION

1.1 In accordance with the provisions of the Public-Private Transportation Act of 1995, VA Code §56-556, as amended (“PPTA”), the Department, as the designated responsible public entity for a new west-east transportation link known as the U.S. Route 460 Corridor Improvements Project, hereby requests each Offeror to submit a Detailed Proposal to develop and operate the Project pursuant to a Comprehensive Agreement with the Department as described herein. The purpose of this Request for Detailed Proposals (“RFDP”) is to establish the process for selecting a Concessionaire to enter into the Comprehensive Agreement.

1.2 Refer to Attachment A hereto for the meaning of various capitalized terms and acronyms used but not defined herein.

1.3 As a result of a Solicitation for Conceptual Proposals dated May 5, 2010, the Department received three Conceptual Proposals for the Project in September 2010 from the teams of 460 Partners, Inc., Cintra Infraestructuras, S.A.U., and MultiModal Solutions LLC (collectively, the “Offerors” and each an “Offeror”). The Commonwealth Transportation Board (“CTB”) and the Commissioner of Highways approved each Offeror’s Conceptual Proposal for further evaluation and action under the PPTA. Only the Offerors are invited to respond to this RFDP.

1.4 The Department is procuring this Project under the provisions of the PPTA to secure private sector funds and minimize the need for public allocations to fund the Work. A successful project will satisfy the following transportation objectives:

- a. improve travel safety along the corridor;
- b. create a new westbound emergency evacuation route for Hampton Roads;
- c. accommodate increases in freight movements along the corridor; and
- d. improve military and strategic connectivity.

2.0 BACKGROUND INFORMATION

2.1 Legislative Authority for the Project

2.1.1 The PPTA is the Virginia law that enables the State to enter into agreements authorizing private entities to develop and/or operate qualifying transportation facilities. The State adopted *Implementation Guidelines* (the “2008 Guidelines”) in accordance with the PPTA, which were updated in December 2008 and are available at http://vappta.org/resources/PPTA_Guidelines_FINAL_Revised_081205.pdf. While new guidelines were published in December 2010, procurement of the Project was initiated prior to December 2010; therefore, the procurement process for the Project will follow the process set forth in the 2008 Guidelines. In accordance with the PPTA, the Department will be the coordinating responsible public entity for the Project.

2.1.2 In 2003, Chapter 953 was enacted by the Virginia General Assembly and signed into law by the Governor of the Commonwealth of Virginia. Chapter 953 required the Department to issue a Solicitation for Proposals (“SFP”) for the Project under the PPTA, within ninety (90) days of the CTB’s adoption of the preferred alignment. On November 17, 2005, the CTB approved Candidate Build Alternative (“CBA”) alignment 1. Accordingly, on February 15, 2006, the Department issued the SFP for the Project. The CTB also requested that the Department evaluate a shift in the alignment in Isle of Wight County. In January 2007, the CTB selected the modified alignment as the preferred alignment, known as Modified CBA-1. In a separate resolution, the CTB requested the Department to seek alternative funding sources for this and other specified projects. CTB resolutions are available to the Offerors in the data room.

2.2 Procurement Process

2.2.1 A summary of the phases of the procurement of the Project appears below. Offerors are advised that the Department has, in accordance with the 2008 Guidelines, modified some of the procedures set forth in the 2008 Guidelines in order to meet the specific needs of the Project and the Department. The phases comprise:

- a. Phase One (completed) was a Department-level quality control review to determine if the Conceptual Proposal(s) meet the requirements of law and the 2008 Guidelines.
- b. Phase Two (completed) was an Independent Review Panel (“IRP”), appointed by the Secretary of Transportation, which reviewed and evaluated the Conceptual Proposal(s) and provide a recommendation as to whether to advance one or more of the Conceptual Proposal(s).
- c. Phase Three (completed) was a review by the CTB of the Conceptual Proposal(s), along with the IRP’s recommendation, and a recommendation that VDOT seek Detailed Proposals from the Offerors.
- d. Phase Four generally entails the solicitation and evaluation of detailed proposals. For this Project, the Department has determined to solicit binding Detailed

Proposals consistent with the recommendations of the IRP, CTB and the evaluation criteria set forth in these Instructions to Offerors. The Department has developed distinct evaluation criteria and will utilize an evaluation team to evaluate Detailed Proposals and to make recommendations to the Commissioner, in accordance with the schedule set forth in Section 2.3. The final selection of the Best Value Proposal will be made by the Commissioner.

- e. Phase Five contemplates the initiation of negotiations by the Department with Offerors who have submitted detailed proposals that satisfy the evaluation criteria. However, as the Department is seeking binding Detailed Proposals, the Concessionaire proposed by the Successful Offeror will be required to execute and deliver the Comprehensive Agreement, without modification other than incorporation of information from the Detailed Proposal and only subject to limited negotiations, if any, contemplated by Section 6.6.2. The Department does not anticipate any major unresolved issues at the time of appointment of the Successful Offeror or material negotiations after the selection is made.
- f. Phase Six is the final stage of the procurement prior to and including the execution of the Comprehensive Agreement by the Commissioner and the proposed Concessionaire. The Commissioner has the statutory authority to enter into an agreement under the PPTA once the Department has received written approval of the procurement method from the State's Secretary of Transportation, a presentation of major business points of the Comprehensive Agreement to the CTB, and subject to completion of the statutory audit contemplated by Code of Virginia § 56-560 (E).

2.2.2 On May 5, 2010, the Department issued its SFP. In September 2010, three teams responded. The Department has completed its Quality Control Review (Phase One) and IRP (Phase Two). As a result of the IRP review, each Offeror was recommended for advancement and a list of recommendations for further consideration was developed. On January 19, 2011, the CTB passed a resolution approving the IRP's list of recommendations and on February 24, 2011, the Commissioner advanced all three Offerors to the Detailed Proposal phase (Phase Four), thus completing Phase Three of the procurement process.

2.2.3 This RFDP commences Phase Four of the procurement process. Each of the Offerors is requested to respond. Based on the recommendations of the evaluation committee, the Commissioner will make a selection of the Successful Offeror, if any. The Department will be under no obligation to select the Offeror submitting the Best Value Proposal or to make a selection at all. Should an initially-selected Successful Offeror fail to provide an executed Comprehensive Agreement and other documents and information in accordance with the requirements herein, the Department reserves the right, in its sole discretion, to select an alternative Successful Offeror to proceed with the Project.

2.3 Schedule

The Department anticipates that the Project procurement will proceed in accordance with the following list of milestones leading to execution of the Comprehensive Agreement. The

Department reserves its right to accelerate or further modify this schedule as it finds appropriate, in its sole discretion, including but not limited to the addition of proprietary meetings and their subject matter. The Department will provide notice regarding any further modification to the schedule. In addition, the Department may issue additional Addenda to this RFDP as it determines in its sole discretion to be appropriate.

	Project Milestones	Date
1.	Issue Request for Detailed Proposals	July 28, 2011
2.	Proprietary meeting #1	August 22 – August 26, 2011
3.	RFDP Questions and Clarifications #1 due to the Department	September 2, 2011
4.	Responses to Questions and Clarifications #1	September 9, 2011
5.	Proprietary meeting #2	September 12 – September 14, 2011
6.	Issue Addendum	September 29, 2011
7.	Proprietary Meeting #3	October 11 – October 14, 2011
8.	RFDP Questions and Clarifications #2 due to the Department	October 19, 2011
9.	Responses to Questions and Clarifications #2	October 26, 2011
10.	Issue Final RFDP	November 9, 2011
11.	Last date for the Department responses to Questions and Clarifications	December 30, 2011
12.	Last date for changes to Offeror teams	December 30, 2011
13.	Technical Proposal Due Date	January 20, 2012
14.	Scheduled date for Addendum specifying the Benchmark Interest Rates	February 16, 2012
15.	Financial Proposal Due Date	February 22, 2012
16.	Recommendations to Commissioner	March 22, 2012
17.	Approval Date	March 29, 2012
18.	Presentation to CTB of contract business points (if necessary)	April 18, 2012
19.	Execution of Comprehensive Agreement, Initial Project Financing Agreements and Project Agreements by all parties ¹	May 25, 2012

2.4 The Department's Point of Contact and Project References

2.4.1 The Department's sole Point of Contact ("POC") for the Project will be the person designated below. By having submitted a Conceptual Proposal, each Offeror will be deemed to

¹ **NOTE TO OFFERORS:** Consistent with Section 3.5.8 and as more fully described therein, except in the case of a capital markets issue (e.g. Private Activity Bonds), the Department will only sign the Comprehensive Agreement if the Initial Project Financing Agreements are signed simultaneously.

have agreed to limit all communication regarding its Detailed Proposal within the Executive Branch of the State, including advocacy efforts, to the Department's POC. The Department's POC is the only individual authorized to discuss this RFDP and the Project with any interested parties, including Offerors. All communications with the Department's POC will be by email and will be submitted in Microsoft Office Word Format, as required by the applicable provisions of this RFDP. Offerors may not rely upon any oral responses to inquiries.

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Title: Program Manager
Address: Office of Transportation Public-Private Partnerships
Virginia Department of Transportation
600 East Main Street, Suite 2120
Richmond, VA 23219
Phone: (804) 786-9537
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2.4.2 The Department disclaims the accuracy of information derived from any source other than the Department's POC, and the use of any such information is at the sole risk of the Offerors.

2.4.3 All written communications to the Department from the Offerors will specifically reference the correspondence as being associated with the "U.S. Route 460 Corridor Improvements Project."

2.4.4 Nothing herein will be construed to preclude the Department's POC from speaking with any Offeror at any time prior to the opening of the Detailed Proposals, and the Department expressly reserves such right to do so.

2.5 RFDP Documents

2.5.1 This RFDP, together with any Addenda, attachments or exhibits thereto (collectively the "RFDP Documents"), consist of the following, as well as any attachments and exhibits contained or identified in such sections:

- Part 1 – Instructions to Offerors ("Instructions")
- Part 2 – Technical Information and Requirements ("Technical Requirements")
- Part 3 – Comprehensive Agreement

Offerors are advised that in the event of any conflict or inconsistency among the RFDP Documents, such conflict or inconsistency will be resolved first, by reference to the terms and conditions set forth in the Comprehensive Agreement and its Exhibits (excluding the Technical Requirements), second, by reference to the Technical Requirements and third, by reference to these Instructions.

2.5.2 Each Offeror will review the RFDP Documents and provide questions or requests for clarification regarding any aspect of such documents with which it has any concerns, including terms that it considers to be ambiguous or to which it takes exception. Such questions or requests for clarification will be submitted to the Department's POC according to the schedule

specified in Section 2.3 and in accordance with the requirements included in Section 7.0. The Department will review all questions and/or requests for clarification received and, if it deems appropriate in its sole discretion, may modify the RFDP Documents through Addenda. Offerors will base their Detailed Proposals on the RFDP Documents as so modified.

2.5.3 Addenda to the RFDP Documents, if any, will be posted on the data room. Offerors should monitor the data room for the posting of any Addenda. Hard copies of the Addenda will be available upon request. If there is any conflict between the electronic format and hard copy of any RFDP Document or Addendum, the hard copy on file will have precedence.

2.5.4 Certain information contained in or based on the Successful Offeror's Detailed Proposal will be incorporated into the Comprehensive Agreement, including but not limited to:

- a. the Offeror's Schematic Design, including narrative (see Attachment B);
- b. the Guaranteed Substantial Completion Date (see Attachment B);
- c. Outline Project Development Plans, with the Quality Management System Plan and Public Information and Communications Plan finalized by execution and approved by the Department (see Attachment B);
- d. the Proposed Initial Baseline Schedule (i.e., the Proposed Baseline Schedule, as it may be modified prior to execution of the Comprehensive Agreement) (see Attachment B);
- e. the Public Funds Amount Form (Form 8-A, Attachment E) (see also Attachment C);
- f. the Initial Toll Rates Form (Form 8-B, Attachment E) (see also Attachment C); and
- g. the Schedule of Values Form (Form 8-E, Attachment E) (see also Attachment C).

In addition to the above, the Successful Offeror's Base Case Financial Model (see Attachment C) will be placed into escrow in accordance with Section 18.5 of the Comprehensive Agreement and the Escrow Agreement.

3.0 PROJECT DESCRIPTION AND CORRIDOR INFORMATION

3.1 Project History

The Department previously solicited conceptual proposals for this Project on February 15, 2006. The Department received three responses to that earlier solicitation, but the Department terminated the initial solicitation process on May 3, 2010, before releasing the revised SFP for the procurement of the Project on May 5, 2010.

3.2 General Scope of the Concessionaire's Responsibilities for the Project

Subject to the terms of the Comprehensive Agreement, the scope of the Concessionaire's responsibility will include, amongst other things, the provision of:

- a. design services;
- b. Project Right of Way acquisition services;
- c. utilities services;
- d. construction services;
- e. environmental services;
- f. operation and maintenance services; and
- g. project financing.

3.3 General Scope of the Department's Responsibilities for the Project

Subject to the terms of the Comprehensive Agreement, the scope of the Department's responsibility will include, amongst other things:

- a. providing the Public Funds Amount;
- b. providing Department oversight services at its own expense;
- c. exercising power of eminent domain to acquire property, if necessary;
- d. assisting with stakeholder support;
- e. providing ETC Services, to include customer services, distribution of transponders and collection of tolls, in accordance with the Electronic Toll Collection Agreement; and
- f. if requested pursuant to the Comprehensive Agreement, violations processing services.

3.4 Key Technical Assumptions of the Project

3.4.1 Guaranteed Substantial Completion Date – The Concessionaire must achieve Substantial Completion of the Project not later than 5 years after execution of the Comprehensive Agreement, subject only to the approved extensions permitted for certain delay events during the Construction Period as described in the Comprehensive Agreement.

3.4.2 Base Case – The Offeror will develop the Base Case in accordance with the requirements of Attachment B and the Technical Requirements, consistent with the NEPA approved corridor Modified CBA-1, which is a limited access, four-lane divided highway inclusive of 7 intermediate interchanges and the Project termini. The Proposed Initial Baseline Schedule will identify the date by which the Concessionaire has committed to reach Substantial Completion (the “Guaranteed Substantial Completion Date”). For the avoidance of doubt, the Base Case Financial Model included in the Offeror's Financial Proposal will be based on the Base Case.

3.4.3 Alternative Conceptual Design – The Offeror will develop an alternative conceptual design for the western terminus of the Project in accordance with the requirements of Section B6, included in Attachment B. Together with such design, the Offeror will provide the Alternative Conceptual Design Valuation Form (Form 8-F, Attachment E) in accordance with the requirements of Section C10.2, included in Attachment C.

3.4.4 Tolling Services – The Concessionaire will be required to enter into an Electronic Toll Collection Agreement with the Department prior to Service Commencement in substantially the form attached to the Comprehensive Agreement, in which the Department will perform back-office, customer service and related activities for the Project as it relates to the E-ZPass network (and/or any successor to E-ZPass utilized on State highways at that time).

3.5 Key Financial Aspects of the Project

3.5.1 Public Assistance for the Project – to facilitate the affordability of the Project, the Department:

- a. will provide support for the construction costs of the Project (the “Public Funds Amount”) in accordance with the following principles:
 - i. the maximum amount of which is \$500,000,000 U.S. Dollars in the aggregate;
 - ii. the maximum Public Funds Amount will not be subject to indexation or escalation;
 - iii. the amount of each Public Funds Amount installment will be subject to a pre-defined maximum cumulative Public Funds Amount schedule included in the Public Funds Amount Form (Form 8-A, Attachment E);

- iv. the Public Funds Amount is required to be utilized on a pro-rata basis with sources of debt and equity and will be payable monthly in arrears of expenditure of the relevant costs by the Concessionaire; and
 - v. the Independent Engineer will be required to “sign-off” payment of each Public Funds Amount installment in accordance with the terms of the Comprehensive Agreement; and
- b. will apply for a TIFIA loan for the Project pursuant to the U.S. Department of Transportation’s (USDOT) TIGER III loan program.

3.5.2 Sources of Revenue

- a. **Toll Revenue** – The Concessionaire will have the right, upon Service Commencement, to set and collect tolls solely from the Project. The Concessionaire will not be able to toll or receive funds from any other transportation asset in the State, including but not limited to Route 58, I-64, I-95, I-81 or the Port of Virginia, other than the Project.
- b. **Other Revenues** – Without prejudice to the Concessionaire’s right to sell naming rights with respect to the Project assets pursuant to the Comprehensive Agreement, no third-party revenues, including revenues derived from commercial or retail enterprises or real estate development, will be included within the Project capitalization.

3.5.3 Benchmark Interest Rate Protection – Subject to the maximum Public Funds Amount available, the Department will bear the risk and reward of positive or negative changes in Benchmark Interest Rates for the period beginning 10:00 a.m. prevailing local time in Richmond, Virginia on the date that is 5 Business Days prior to the Financial Proposal Due Date and ending at 10:00 a.m. prevailing local time in Richmond, Virginia on the Agreement Date.

3.5.4 Non-Recourse Financing – The Concessionaire will finance the Project through equity and debt sources which are non-recourse to the State, the Department, and any and all agencies, divisions or political subdivisions thereof. The Comprehensive Agreement sets forth the only contingent liabilities which the Department will assume.

3.5.5 Traffic and Revenue Risk – The Concessionaire assumes all traffic and revenue risk associated with the Project. The Department will not provide any guarantees or indemnities to or in favor of the Concessionaire or any other entity regarding traffic volume or revenue collection.

3.5.6 Toll Rate Adjustment Policy – Annual toll rate increases for each Toll Segment will be limited to the greater of 3% or CPI.

3.5.7 Discount Rate – The discount rate to be used in any Net Present Value calculation will be 5% (nominal) as a proxy for the Department’s weighted average cost of capital.

3.5.8 Committed Financing – Offerors will submit Detailed Proposals with evidence of committed financing. For a bank-financed solution, committed financing includes commitments

from lenders, commitments from equity investors and Detailed Proposal Security in accordance with Section 4.12. For a capital markets bond financed solution, committed financing includes an investment-grade credit rating from at least one of the Major Rating Agencies, a letter of support from underwriters experienced in the infrastructure financing market, commitments from equity investors and Detailed Proposal Security in accordance with Section 4.12. Except in the case of the Successful Offeror's Financial Proposal involving a capital markets issue (*e.g.*, Private Activity Bonds), Offerors should be aware that the Department will only sign the Comprehensive Agreement if the Project Agreements and Initial Project Financing Agreements are signed simultaneously. To the extent that the Successful Offeror's Financial Proposal involves a capital markets issue (*e.g.*, Private Activity Bonds), the Department will only sign the Comprehensive Agreement if the Project Agreements are signed simultaneously and the Initial Project Financing Agreements are in final form (as approved by the Department) and it can be demonstrated to the reasonable satisfaction of the Department that the only outstanding issue in relation to the conclusion of the financing is the establishment of the final pricing in connection with the relevant capital markets issue; in such circumstances, Financial Close must be achieved within 60 Days of execution of the Comprehensive Agreement.

3.5.9 TIFIA – Offerors should assume that TIFIA is **NOT AVAILABLE** for the purposes of developing their financing plan and the Base Case Financial Model. This will be the assumption that will be evaluated in accordance with Section 6.4. However, the Department understands that a TIFIA loan pursuant to the USDOT's TIGER III program would have a significant benefit to the Project, and therefore Offerors are required to submit an alternative Base Case Financial Model that includes such funding. For purposes of developing the alternative Base Case Financial Model, Offerors should assume that the Project will receive the maximum available for TIFIA under the TIGER III program. For the avoidance of doubt, the submission of an alternative Base Case Financial Model will be required in order for an Offeror's Financial Proposal to satisfy the Responsiveness Review set forth in Section 6.2.

3.5.10 Private Activity Bonds (PABs) – the Department will submit an application for allocation of PABs to the USDOT based on a pro-forma plan of finance developed by the Department. This pro-forma plan of finance has been based on estimates of Project development and operating costs and available revenues.

The Department will also arrange for a qualified nonprofit agency to serve as the issuer of the PABs ("PABs Issuer"). Previously, the Department has utilized the Virginia Small Business Administration as an issuer of PABs. The Department will make any USDOT-approved allocation available to the PABs Issuer in order to provide a portion of the financing for the Project. Offerors seeking to use PABs will be solely responsible for obtaining ratings, bond counsel opinions, credit enhancement and an underwriting commitment or placement of the PABs, as well as satisfying any conditions placed on the use of the allocation by USDOT or complying with any other requirements of State and Federal tax laws. Following confirmation from the Department of the allocation, Offerors may directly contact USDOT prior to the Financial Proposal Due Date to discuss the specifics of its finance plans, including cost and revenue projections.

According to USDOT's web site, as of May, 2011, they have approved PABs allocations of approximately \$5.1 billion for 9 projects. As SAFETEA-LU limits the total amount of PABs to \$15 billion, VDOT is confident that sufficient capacity remains available for the Project.

The foregoing approach has been developed by the Department as an accommodation to Offerors and in order to attempt to facilitate the use of PABs to Offerors. The Department makes no representation nor guarantees as to the amount, if any, of PABs that can be issued for the Project or the use of proceeds to finance the Project as a matter of Federal tax law. Offerors should seek the advice of their own tax consultants. Should an Offeror elect to include PABs in its Financial Proposal, it does so at its own risk and cost, and the Department and the State will have no liability with respect thereto.

3.5.11 Revenue and Refinancing Sharing Mechanism – Offerors will be required to share excess Gross Revenues and Refinancing Gains with the Department once the present value of actual Gross Revenues and Refinancing Gains, net of debt service (discounted to the Financial Close Date at the Initial Equity IRR) equals the Gross Revenue and Refinancing Gains, net of debt service included in the Base Case Financial Model (discounted to the Financial Close Date at the Initial Equity IRR).

3.5.12 Design-Build Performance Security & Guarantee – The Design-Build Contractor will provide Performance Security that includes:

- a. letters of credit amounting to at least \$250 million for the benefit of both the Lenders and the Department, subject to the following conditions:
 - i. as part of the Direct Agreement, the Department will commit to not draw on the letter of credit until the Lenders have exercised all of their rights against the Concessionaire and the collateral; and
 - ii. the letters of credit will be from a bank that has a long-term, unsecured debt rating of not less than “AA-” or “Aa3”, as applicable, issued by at least two of the Major Rating Agencies; and
- b. parent company guarantees of the obligations under the Design-Build Contract of not less than 50% of the Design-Build Contract price.

The Department has determined the scope, including the amount, of the security package in order to provide the necessary protection based on the expectation that the aggregate of all Public Funds Amount will represent a significant proportion of the Design-Build Contract price.

3.5.13 Right of Way Acquisition Costs – Offerors will be required to bear the risk and reward of ROW Acquisition Costs up to 10% greater or less than the ROW Baseline Cost. The Department will bear the risk of ROW Acquisition Costs to the extent they are greater than 110% of the ROW Baseline Cost and will receive the benefit of ROW Acquisitions Costs to the extent they are less than 90% of the ROW Baseline Cost. The ROW Baseline Cost is \$104,000,000 U.S. Dollars in nominal terms (i.e. including adjustment for inflation) and Offerors will include and identify this amount within their Base Case Financial Model.

3.5.14 Geotechnical Risk – Offerors are required to develop their proposal to include any contingencies they deem sufficient with regard to sub-surface conditions generally. The Department will not provide protection for any known or unknown sub-surface conditions that will impact the Project.

3.5.15 Hazardous Substances Risk – The Department has undertaken a survey in respect of hazardous substances affecting the Project, the results of which are available to the Offerors in the data room. In accordance with the terms of the Comprehensive Agreement, the Department will retain limited risks in respect of defined categories of hazardous substances discovered during the life of the Project.

3.5.16 Compensation on Termination for Concessionaire Default – There are two distinct phases of the Project for the purpose of analyzing the approach taken to compensation on termination for a Concessionaire default under the Comprehensive Agreement:

- a. **Construction Period** – The methodology for compensation payable during this period is broadly designed to ensure that the Concessionaire is fairly compensated for the value of the Work that it has undertaken up until the point of termination, as adjusted to address any increased cost that the Department will suffer in completing the Work.
- b. **Operating Period** – The Department will be obliged to pay the market value of the Comprehensive Agreement in the event of termination for a Concessionaire Default during the Operating Period. Calculation of the market value will fundamentally be NPV-based and will require independent determination of the projected revenues and costs that the Department would reasonably expect to receive or pay if it operated the Project for the remaining term of the Comprehensive Agreement.

Offerors should note that in no circumstances is the Department prepared to pay levels of compensation upon termination for a Concessionaire Default that would have the effect of returning capital and/or loans to Equity Members. In other words, the compensation provisions have been designed to benefit only the Lenders.

4.0 GENERAL PROCEDURES AND REQUIREMENTS

This Section 4.0 provides general information, procedures and requirements that all Offerors must satisfy in submitting Detailed Proposals. An Offeror's failure to comply with this Section 4.0 may result in rejection of its Detailed Proposal.

4.1 Relationship of the SFP to the RFDP

Offerors are advised that this RFDP contains Project information and evaluation criteria not identified in, or different from, those contained in the SFP. In the event of any conflict between this RFDP and SFP, this RFDP will govern.

4.2 Changes in Offeror's Organization

4.2.1 Offerors are permitted to make changes in the Major Participants as identified in the Conceptual Proposal (including Equity Member additions or withdrawals to/from an Offeror team), subject to the following provisions. If an Offeror wishes to make any such change, or if it wishes to change the percentage of equity participation of one or more Equity Members of its team, or change the role or scope of involvement by a Major Participant, the Offeror will submit to the Department a written request for approval of the change, no later than the last date for changes to Offeror teams shown in Section 2.3.

4.2.2 Any such request will be provided to the Department's POC at the address set forth in Section 2.4.

4.2.3 In order for an Offeror to remain qualified to submit a Detailed Proposal, the ability of such Offeror's organization to successfully finance and undertake the Project must not be materially diminished from the organization identified in the Conceptual Proposal. Accordingly, any request for approval of a change will include:

- a. a written explanation of not more than three pages explaining why the proposed change does not have a material adverse effect on the ability of the Offeror's organization to successfully finance, develop and operate the Project;
- b. a statement by the Offeror that any new Major Participant does not have a conflict of interest, in accordance with the requirements included in Section 10.1; and
- c. if approval is requested to add a new Major Participant or to change the role or scope of involvement by a Major Participant, then all supporting information will be included that would have been required to be submitted with the Conceptual Proposal in accordance with Sections 10.4.1.2 to 10.4.1.4 SFP Addendum #2 issued September 2, 2010 with respect to the qualifications of such Major Participant to perform its proposed scope.

4.2.4 The Department will determine whether or not to approve such change within 10 Business Days of the Department's receipt of such written change request accompanied by a complete package of supporting information (as described above); such approval will not be

unreasonably withheld, *provided*, that the information provided by the Offeror has established to the Department's satisfaction that the proposed changes in the Offeror's organization (as compared to the organization identified in the Conceptual Proposal) would not have a material adverse effect on the Offeror's ability to successfully finance, develop and operate the Project. An Offeror that has made a change in its Major Participants may only receive a "pass" rating under Section 6.3.1 if the Department has approved the change.

4.2.5 Any changes to the Offeror's team after the date shown in Section 2.3 may result in the elimination of the Offeror from further consideration.

4.3 Data Room

4.3.1 The data room can be accessed at www.rt460ppta.sharepointspace.com (the "data room"). Prior to being granted access to the data room, Offerors are required to complete, sign, and return all portions of the Confidentiality Agreement (Form A, Attachment F) and the Critical Infrastructure Information/Sensitive Security Information Multi-Purpose Non-Disclosure Agreement (Form B, Attachment F). The Critical Infrastructure Information/Sensitive Security Information Multi-Purpose Non-Disclosure Agreement (Form B, Attachment F) is also required to be completed, signed and returned by each user. All forms and inquiries related to the RFDP data and access to the data room will be coordinated through the Department POC.

4.3.2 Upon determination of a Successful Offeror, the Department will suspend access to the data room by other Offerors. The Department will terminate access to the data room upon Financial Close.

4.4 Pre-Submittal Responsibilities

Each Offeror will be solely responsible for examining the RFDP, including all Addenda, and any and all conditions which may in any way affect its Detailed Proposal or the performance of the Work on the Project, including:

- a. examining and carefully studying the RFDP, including all Addenda and any other information or data identified in the RFDP;
- b. 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; and
- c. becoming familiar with and satisfying itself as to all Federal, state and local laws and regulations that may affect the cost, progress or performance of its work on the Project.

4.5 Proprietary Meetings

4.5.1 The Department anticipates that it will hold three rounds of proprietary meetings with Offerors prior to the Technical Proposal Due Date.

4.5.2 The Department will invite each Offeror to participate in proprietary meetings with the Department and its representatives or consultants. The dates for such meetings will occur within the timeframes set forth in Section 2.3, or as may be notified to the Offerors in writing with respect to any additional proprietary meetings. Offerors should anticipate that each proprietary meeting will be conducted over half a day and will be held at the address of the Department's POC set forth in Section 2.4 or such other location as may be notified to the Offerors in writing. Further details with regard to the meetings will be distributed at least 10 Business Days in advance of each meeting. Offerors are required to submit to the POC, 5 Business Days in advance of each meeting, an agenda identifying the individual items they wish to discuss and a proposed time allocation. Each proprietary meeting will be private, in that only one Offeror will meet with the Department at a time. Representatives of the Offerors, including consultants of suitable expertise, will be required to attend the proprietary meetings in person.

4.5.3 The purpose of the proprietary meetings is to give each Offeror, in a confidential setting, an opportunity to ask questions and discuss concerns related to the Project, the RFDP, and administrative procedures; and for the Department to engage in fact finding with the Offerors regarding the RFDP and the Project. No negotiation or decision-making will take place during the proprietary meetings. The Department reserves the right to hold the proprietary meetings on matters it deems appropriate in its sole discretion. At least 5 Business Days before each meeting the Offeror will submit to the Department in writing the names and functions of each of its attendees, the issues it would like to address, anticipated timing to discuss each issue and general questions to be addressed. Any written materials provided by an Offeror will be subject to disclosure or exemption from disclosure in accordance with the provisions described in Section 9.1.

4.5.4 Without prejudice to the foregoing, the first proprietary meeting set forth on the schedule in Section 2.3 is intended to provide a forum for the discussion of high-level issues and the provision of feedback in respect of the RFDP process and requirements of the Instructions. In advance of the first proprietary meeting, each Offeror will provide to the Department's POC a written list, not to exceed two pages, setting forth its top 10 issues and/or critical path items, ranked in order of importance to the Offeror from highest to lowest. When putting together their issues lists, each Offeror should be aware that the Department is keen to utilize the first proprietary meeting to determine the extent to which Offerors are comfortable that the requirements of the RFDP process and the requirements of the Instructions broadly represent a biddable proposition.

4.5.5 While the discussions in these proprietary meetings are intended to be confidential, the Department reserves the right to disclose to all Offerors any issues raised during the proprietary meetings, except to the extent that the Department determines, in its sole discretion, that such disclosure would reveal an Offeror's confidential business strategies. Nothing will preclude the Department from exercising any rights that it may have under this RFDP or State Law, including the right to issue a clarification or revision of the RFDP, or an Addendum, as a result of what is discussed in such meetings.

4.5.6 Proprietary meetings are designed for the exchange of information. Offerors will not seek to obtain commitments from the Department in the proprietary meetings or otherwise seek to obtain an unfair competitive advantage over any other Offeror.

4.5.7 No aspect of these proprietary meetings is intended to provide any Offeror with access to information that is not similarly available to other Offerors, and the evaluation of Detailed Proposals will be based on the information provided in the Detailed Proposals and not on the conduct or discussions that occur during these proprietary meetings.

4.6 Proposal Payment

Notwithstanding Section 8.2.1, the Department is willing to pay those Offerors who submit a responsive Detailed Proposal, but are not selected as the Successful Offeror, a Proposal Payment in the amount of \$1,000,000.

Prior to the Financial Proposal Due Date, if the Department cancels this RFDP for any reason, the Commonwealth, the Commissioner, CTB or the Department will not be responsible for any Proposal Payments, in whole or in part, or for the payment of any costs incurred by any Offeror in developing proposals.

After one or more proposals have been received by the Department and deemed responsive, if the Department makes the decision to cancel the procurement or not enter into a Comprehensive Agreement, all responsive Offerors will receive a Proposal Payment. The Proposal Payment will be made within forty-five (45) days following the earlier of a) 180 days following the Financial Proposal Due Date; b) cancellation of this RFDP; or c) execution and delivery of the Comprehensive Agreement by the Successful Offeror and the Department.

Payment to an Offeror of the Proposal Payment is expressly conditioned upon such Offeror providing an executed Proposal Payment Form (Form 9, Attachment E), and being fully compliant with the conditions established in such agreement for payment of the Proposal Payment.

Under no circumstances will the Commonwealth, the Commissioner, CTB, or the Department be liable for or reimburse any costs incurred by Offeror, whether or not selected for negotiations, in developing proposals unless otherwise noted in the RFDP.

4.7 No Exclusive Teaming Arrangements

In order to ensure a fair procurement process, the Department has determined that no Offeror may enter into an exclusive teaming arrangement with any potential Lender or provider of letters of credit. Each Offeror, by submitting its Detailed Proposal, represents and warrants that it has made no exclusive arrangement prohibited by this Section 4.7.

4.8 Independent Engineer

Pursuant to Section 10.08 of the Comprehensive Agreement, certain quality assurance services for the Project may be provided by an Independent Engineer under a joint contract among the Department, the Concessionaire, the Collateral Agent and the Independent Engineer. Refer to the Comprehensive Agreement for a draft form of this contract and a general scope of work for the Independent Engineer. The Concessionaire will conduct a procurement to select the firm that will be the Independent Engineer following selection as the Successful Offeror. The Department will have the right to monitor this process and approve the final party prior to entering into the

contract. The Department will reimburse the Concessionaire for 50% of the costs of the Independent Engineer. The Department's estimate of the cost of the baseline services to be provided by the Independent Engineer is provided in C8.6 of Attachment C.

In accordance with the terms of the Comprehensive Agreement, the Independent Engineer will be required to certify to the Department that the Public Funds Amount requested by the Concessionaire is consistent with its projected costs and expenses to be incurred over the course of the next month. The Department anticipates that the Lenders will require an independent party to certify monthly costs and expenses as a condition precedent to the utilization of senior debt and to that extent, the Department would be prepared to adopt the same certification process as the Lenders. The Department sees the potential benefits of the same entity acting as both Independent Engineer and Lenders' technical consultant and would welcome such proposals from Offerors.

4.9 Violations Processing System and Electronic Toll Collections

As specified in Section 5.01(f) of the Comprehensive Agreement, the Concessionaire may choose to enter into an agreement with the Department to obtain the benefits of the Department's toll violation enforcement system. A copy of the form of the violation processing services agreement in use by the Department as of the date hereof is available for review in the Project data room. Additionally, and as specified in Section 5.01(e) of the Comprehensive Agreement, the Concessionaire will contract with the Department for electronic toll processing services. Refer to the Comprehensive Agreement for the form of the Electronic Toll Collection Agreement. The Concessionaire will be required to pay the Department its customary charges in effect from time to time for any and all such services provided by the Department.

4.10 Information to be Provided by the Department

By Addenda issued on the date specified in Section 2.3, the Department will notify the Offerors regarding the values of the Benchmark Interest Rates, including complete term structures.

4.11 DBE/SWaM Requirements

During the Construction Period, the Federal Disadvantaged Business Enterprise ("DBE") contract goal for this procurement is 15% and the Small, Women and Minorities ("SWaM") contract goal for this procurement is 25%. During the Operating Period, the DBE contract goal for this procurement is 2% and the SWaM contract goal for this procurement is 4%. Each Offeror will submit its outline plan to achieve such goals (as required by Section B3.8 of Attachment B) and will commit in its Financial Proposal Submittal Letter to make a good faith effort to achieve these goals for the Project in accordance with the Comprehensive Agreement.

4.12 Detailed Proposal Security

On the Financial Proposal Due Date, each Offeror will submit with its Financial Proposal a letter of credit, initially in the amount of \$20,000,000 U.S. Dollars (and providing for an increase to \$50,000,000 U.S. Dollars if the Offeror is designated as the Successful Offeror hereunder), substantially in the form of Form 7, Attachment E or in such other form as the Department may approve in writing prior to the Financial Proposal Due Date (the "Detailed Proposal Security").

An Offeror may submit more than one letter of credit as Detailed Proposal Security, provided that the Detailed Proposal Security is initially in the amount of \$20,000,000 U.S. Dollars in the aggregate (and provides for an increase to \$50,000,000 U.S. Dollars in the aggregate if the Offeror is designated as the Successful Offeror hereunder).

Except as otherwise approved by the Department in writing prior to the Financial Proposal Due Date, the Detailed Proposal Security will be issued by a commercial bank or trust company that is a member of the New York Clearing House Association and that has and maintains current credit ratings no lower than "A" by Standard & Poor's Rating Services and "A2" by Moody's Investors Service, Inc. If, after the Financial Proposal Due Date, the issuer of the Detailed Proposal Security receives a current credit rating lower than "A" by Standard & Poor's Rating Services or "A2" by Moody's Investors Service, Inc., then the Offeror will immediately notify the Department thereof in writing and the Department will have the right to require the Offeror promptly to replace its Detailed Proposal Security with new Detailed Proposal Security issued by a commercial bank or trust company satisfactory to the Department, acting reasonably.

The office for presentment of sight drafts specified in the Detailed Proposal Security will be located at a specified street address within the City of New York, New York or the City of Richmond, Virginia or such other location within the continental United States as is reasonably acceptable to the Department.

4.12.1 Forfeiture of Detailed Proposal Security

In submitting a Detailed Proposal, each Offeror understands and agrees that the Department will be entitled to draw on the Detailed Proposal Security in its entirety if the Offeror:

- a. withdraws any part or all of its Detailed Proposal while the Detailed Proposal is in full force and effect as set forth in Section 6.6.7 without the prior written consent of the Department;
- b. if negotiations are held, fails to negotiate in good faith as more fully described in Section 6.6.2;
- c. refuses or otherwise fails to enter into the Comprehensive Agreement;
- d. following the Approval Date, refuses or otherwise fails to perform all of the acts or furnish all of the documents as provided herein (including failure to cooperate with the statutory audit requirements of Code of Virginia § 56-560 (E) or failure to pay the costs of such audit);
- e. prior to execution of the Comprehensive Agreement, refuses or otherwise fails to meet any commitments made in its Detailed Proposal; or
- f. following the Approval Date, fails to achieve Financial Close by the Financial Close Deadline Date.

The Offeror acknowledges that the forfeit of the Detailed Proposal Security constitutes liquidated damages and is not a penalty, and the amount forfeited is fair and reasonable and such payment

represents a reasonable estimate of fair compensation to the Department for the work required to procure the Project and the reputational losses which may accrue. Following a draw on the Successful Offeror's Detailed Proposal Security, the Department may re-calculate the lowest Public Funds Amount to identify the next highest ranked Offeror, select them as the Successful Offeror and proceed to execute a Comprehensive Agreement with that Offeror, or the Department may re-advertise and complete the work under a different contract, or otherwise, as the Department may decide in its sole discretion.

4.12.2 The Department will retain the Detailed Proposal Security for each Offeror until the earlier of:

- a. 180 days following the Financial Proposal Due Date;
- b. cancellation of this RFDP; or
- c. achievement of Financial Close pursuant to the terms of the Comprehensive Agreement.

Upon the occurrence of one of the preceding events, the Department will return the Detailed Proposal Security to each Offeror, excluding any Detailed Proposal Security previously drawn upon by the Department.

4.12.3 The Offeror understands that any material alteration, as determined by the Department in its sole discretion, of documents specified in this Section 4.12, or the form of Detailed Proposal Security (Form 7, Attachment E), will render the Detailed Proposal non-responsive and non-compliant, unless such alteration was authorized by the Department in writing prior to the Financial Proposal Due Date.

5.0 DETAILED PROPOSAL SUBMITTAL REQUIREMENTS

5.1 General Information and Delivery Requirements

5.1.1 This Section 5.1 identifies requirements to be addressed in Detailed Proposals.

5.1.2 Offerors will submit a two-part Detailed Proposal, consisting of a Technical Proposal and a Financial Proposal.

5.1.3 The Department reserves the right to conduct an independent investigation of any information identified in the Detailed Proposal, including prior experience, by contacting project references, accessing public information, contacting independent parties, or any other means. The Department also reserves the right to request additional information from an Offeror during the evaluation of its own Detailed Proposal.

5.1.4 Detailed Proposals are to be sealed in packages bearing the Offeror's name, its address and the words "U.S. Route 460 PPTA Project - Detailed Proposal, Volume xx" clearly written on the outside. All Technical Proposals must be actually received and date-stamped prior to 2:00 p.m., local prevailing time on the Technical Proposal Due Date and all Financial Proposals must be actually received and date-stamped prior to 2:00 p.m., local prevailing time on the Financial Proposal Due Date. Detailed Proposals must be delivered to the address provided below. Fax or email submissions will not be accepted.

Commonwealth of Virginia
Department of Transportation (VDOT)
Central Office Mail Center
Loading Dock Entrance
1401 E. Broad Street
Richmond, Virginia 23219
Attention: Brenda L. Williams

5.1.5 Each Offeror is responsible for effecting delivery by the stated deadline. Late submissions will be rejected and returned unopened to the sender following selection of a Successful Offeror. For the avoidance of doubt, if an Offeror's Financial Proposal is not delivered by the stated deadline, the Department may cease review of such Offeror's Technical Proposal immediately and the Detailed Proposal may be rejected in full and returned to the sender following selection of a Successful Offeror. The Department accepts no responsibility for misdirected or lost Detailed Proposals.

5.1.6 Each Offeror will deliver 15 identical paper copies of each part of the Detailed Proposal, one which must bear original signatures, two CD-ROM or comparable electronic device copies containing the entire Detailed Proposal in a cohesive Adobe PDF file and two additional CD-ROM or comparable electronic device copies containing the entire Detailed Proposal in Microsoft Word and, where appropriate, Microsoft Excel format. Adobe PDF files must be compatible with Adobe Acrobat Reader version 5.0 and later and Microsoft Word and Excel files must be compatible with Microsoft Office 2007 and later. Offerors may NOT

password-protect any PDF, Word or Excel files submitted to the Department in connection with this RFDP or their Detailed Proposal.

5.2 Format and Organization of Detailed Proposal

5.2.1 To facilitate the evaluation of Detailed Proposals, each volume of the Detailed Proposal submittal described below will be submitted in one or more sealed packages separate from the other volumes. Detailed Proposals will follow the format prescribed in this Section 5.2.1. Submittals that do not follow the format provided below may be considered non-responsive and may be eliminated from further consideration.

- a. All pages of the Detailed Proposal will be numbered and single sided with minimum 0.75” margins. Offerors should use cross-referencing rather than repetition throughout the Detailed Proposal. The Detailed Proposal will contain a table of contents, and will follow the format described herein.
- b. Detailed Proposals will be placed in three-ring binders and will be organized in accordance with Attachment D.
- c. Unless otherwise specified in this RFDP, all written submittals that are subject to page limitation as set forth in Attachment D will be prepared on 8-1/2” x 11” or A4 sized, white paper. Any submittal requested on paper larger than 8-1/2” x 11” or A4 format will be considered one page.
- d. All written submittals, regardless of paper size, must be prepared on white paper and included in the applicable binder.
- e. Each section within a volume will have sequentially numbered pages (*i.e.*, “Vol. 2 – Section 2, p.2,” for page 2 of Section 2 in Volume 2), will be separated by a divider with a labeled tab, and will be prepared using no smaller than 11-point font size, except for tables, which may be prepared using 10-point font size.
- f. Certain portions of the Detailed Proposal are subject to an overall 150 page limit, as set forth in Attachment D. The Department may disregard documents not complying with these page limitations. Offerors will not include standard corporate brochures, awards, licenses or marketing materials, and the Department will not evaluate such materials.
- g. The electronic submittals (CDs and/or DVDs) will follow equivalent organizational standards, and will use a searchable format with appropriate bookmarks.
- h. Any financial statements or updates to financial statements will be submitted electronically to the extent possible, including links to SEC filings.
- i. Within each volume binder will be a page executed by the Offeror that sets forth the specific scope and nature of items the Offeror deems confidential, trade secret or proprietary information that the Offeror would like the Department to evaluate

to determine whether it can be protected from public disclosure in accordance with Section 9.1.

5.3 Technical Proposal Submittal Requirements

The Technical Proposal will contain the Technical Proposal Cover Letter (Form 1-B, Attachment E) and the other forms and information required by Attachment B, separated and labeled appropriately and organized in accordance with Attachment D.

5.4 Financial Proposal Submittal Requirements

The Financial Proposal will contain the Financial Proposal Submittal Letter (Form 1-A, Attachment E), Detailed Proposal Security (Form 7, Attachment E) and the information, materials and forms required by Attachment C, separated and labeled appropriately and organized in accordance with Attachment D. The Financial Proposal Submittal Letter must enumerate all Addenda issued and acknowledge receipt thereof.

5.4.1 Benchmark Interest Rates and Base Case Financial Model

In developing the Financial Plan, Base Case Financial Model and the proposed Public Funds Amount, the Offeror will select, from among the Benchmark Interest Rates identified by the Department pursuant to Section 4.10, the benchmark index or, in the case of multiple debt types, the set of indices (and associated weightings, if relevant), that best match the reference rate(s) of the Offeror's debt structure(s). The Offeror will use this index (or set of indices) in the Base Case Financial Model and to develop its Financial Plan and proposed Public Funds Amount. After selecting the appropriate benchmark index (or set of indices), the Offeror will select the rates that correspond to the debt term or series of debt terms from each selected benchmark index that best matches the Offeror's debt structure(s) as described in the Project Financing Agreements and shown in the Base Case Financial Model submitted with the Detailed Proposal. The Offeror will identify these rates in Table 5 of the Financial Plan Tables (Form 8-D, Attachment E).

6.0 EVALUATION AND SELECTION PROCESS

Selection of the Successful Offeror is an important decision and many factors must be evaluated in determining the most appropriate and qualified Offeror for this Project. Prior to receipt of Detailed Proposals, the Department will form a proposal evaluation team to review the Detailed Proposals as described in this Section 6.0 and to provide a selection recommendation to the Commissioner.

6.1 Summary of Evaluation Process

6.1.1 The evaluation process will include an initial review of each part of a Detailed Proposal to verify responsiveness in accordance with Section 6.2 and a “pass-fail” evaluation in accordance with Section 6.3. Each Detailed Proposal that has (a) been deemed responsive under Section 6.2 and (b) achieved a “pass” evaluation under Section 6.3 will then be ranked based on its Public Funds Amount in accordance with Section 6.4. The Detailed Proposal with the lowest nominal Public Funds Amount will be considered the apparent Best Value Proposal. The Offeror that provided the apparent Best Value Proposal will then be considered the Successful Offeror.

For the avoidance of doubt, if it has been deemed responsive under Section 6.2, an Offeror’s Technical Proposal may proceed to “pass-fail” evaluation under Section 6.3 prior to the Department’s receipt of such Offeror’s Financial Proposal; *provided*, that if such Offeror’s Financial Proposal is deemed non-responsive, the Department may immediately cease its “pass-fail” evaluation of such Offeror’s Technical Proposal and return the full Detailed Proposal to such Offeror following selection of a Successful Offeror.

6.1.2 Upon determination of the Successful Offeror, the Department’s evaluation team may proceed with a recommendation to the Commissioner to approve the Department’s entering into the Comprehensive Agreement with the Concessionaire proposed by the Successful Offeror. In the alternative, the Department may, in its sole discretion, proceed with limited negotiations with the Successful Offeror as described in Section 6.6.2, in which event the Department’s evaluation team will conduct such negotiations and provide such a recommendation only after successful conclusion of negotiations.

6.1.3 Evaluations and rankings of Detailed Proposals are subject to the sole discretion of the Department. The Department may, in its sole discretion, reject all Detailed Proposals or advertise for new Detailed Proposals, if, in the judgment of the Department, such action is in the best interests of the public.

6.2 Responsiveness Review

6.2.1 The Offeror will submit a Detailed Proposal that provides all the information required by these Instructions and which satisfies the criteria set forth below:

- a. the Technical Proposal will contain all of the components set forth in these Instructions and Volume I of Attachment D and will have been received at the address set forth in Section 5.1.4 on or prior to the Technical Proposal Due Date in accordance therewith; and

- b. the Financial Proposal will contain all of the components set forth in these Instructions and Volume II of Attachment D and will have been received at the address set forth in Section 5.1.4 on or prior to the Financial Proposal Due Date in accordance therewith.

6.2.2 If both parts of the Detailed Proposal do not fully comply with these requirements, the Department may deem the entire Detailed Proposal non-responsive, in which case the Offeror may be disqualified. For example, the Department may consider Detailed Proposals non-responsive and the Offeror disqualified for the following reasons:

- a. if either part of the Detailed Proposal is not submitted in the format specified in these Instructions or is illegible;
- b. if either part of the Detailed Proposal contains multiple, conditional or alternate proposals (other than those required by the RFDP) or contains any omission, erasures, alterations, unauthorized additions or other irregularities of any kind; or
- c. if either part of the Detailed Proposal does not include, as applicable, the required Technical Proposal Cover Letter, Financial Proposal Submittal Letter, Detailed Proposal Security or one or more of any of the certifications or forms required by these Instructions to be completed and/or executed by the Offeror or any of the Major Participants.

6.2.3 Each of the Technical Proposal and the Financial Proposal must be determined to be responsive with respect to each of the items referenced in this Section 6.2. If the Department determines that an Offeror's Technical Proposal does not comply with or satisfy any of the requirements of this Section 6.2, such Offeror's Financial Proposal may not be opened for review of its responsiveness and may be returned unopened, together with the non-responsive Technical Proposal. Failure to be determined responsive may result in disqualification of the Offeror. Prior to making such determination, the Department may offer an Offeror the opportunity to clarify its Detailed Proposal (see Sections 6.5 and 7.0(h)).

6.3 "Pass-Fail" Evaluation Factors

Each Detailed Proposal must achieve a rating of "pass" on each "pass-fail" evaluation factor listed in Sections 6.3.1 and 6.3.2. If the Department determines that an Offeror's Technical Proposal does not achieve a rating of "pass" on each "pass-fail" evaluation factor listed in Sections 6.3.1 and 6.3.2, such Offeror's Financial Proposal may not be opened for "pass-fail" review and may be returned unopened, together with the non-responsive Technical Proposal following selection of a Successful Offeror. Failure to achieve a "pass" rating on any "pass-fail" factor will result in the Department declaring the Detailed Proposal and the Offeror disqualified. Prior to making such determination, the Department may offer an Offeror the opportunity to clarify its Detailed Proposal (see Sections 6.5 and 7.0(h)).

6.3.1 Technical "Pass-Fail" Requirements

The technical pass/fail requirements are as follows:

- a. the Equity Members and Major Participants listed in the Offeror's Conceptual Proposal have not changed since submission of the Conceptual Proposal, unless the Offeror has previously obtained the Department's prior written approval of such change;
- b. information in the Detailed Proposal indicates that neither the Offeror nor any Major Participant could be precluded from prequalification pursuant to Section 2.2-4317 C(5) or (6) of the Code of Virginia and that the Design-Build Contractor and all other Contractors identified in the Detailed Proposal that will be responsible for the performance of Work on the Project have been prequalified for such work by the Department;
- c. the Offeror's scope meets or exceeds the Base Case;
- d. each Outline Project Development Plan set forth in Table 6.4A received a "pass" rating; and
- e. the Proposed Initial Baseline Schedule received a "pass" rating on each factor set forth in Table 6.4B.

6.3.2 Financial "Pass-Fail" Requirements

The Financial Proposal must receive a "pass" rating based on the evaluation criteria set forth in Table 6.4C.

6.4 Public Funds Amount

Unless the Department determines that an Offeror's Detailed Proposal is non-responsive under Section 6.2 or gives such Detailed Proposal a "fail" rating under Section 6.3, the Department will evaluate each Offeror's Financial Proposal to determine the lowest net cost to the Department based on the nominal value of the Public Funds Amount cash flows.

6.4.1 Table 6.4A contains the criteria for evaluating the Outline Project Development Plans on a “pass”/“fail” basis.

Table 6.4A Outline Project Development Plans	
Section Reference	Evaluation Criteria and “Pass” Ratings
B3.1 Outline Concessionaire Management Plan	<p>Extent to which an outline Concessionaire Management Plan clearly identifies responsibilities and procedures for each activity and demonstrates a thorough understanding of the Project’s requirements.</p> <p>Extent to which the team is organized with clear lines of responsibility and with well-defined roles that can respond to the Concessionaire’s obligations.</p> <p>Extent to which the plan provides a well-defined approach to Project schedule methodology, and schedule and cost information in detail sufficient for assessing the linkage between Project schedule and cost.</p> <p>Extent to which the plan demonstrates an effective approach to mitigation of significant Project risks, including risks allocated under the Comprehensive Agreement to the Department as well as risks allocated to the Concessionaire.</p> <p>Extent to which the roles and relationships of the Department, Concessionaire and third parties are appropriately structured, with reasoned assumptions to include the Department and the Independent Engineer participation in oversight.</p> <p>Extent to which team decision making and the independence of the quality process are coordinated to create an environment to meet the Project goals.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror’s plan demonstrates an understanding of project management principles and appropriately identifies roles and responsibilities of the Concessionaire and all its team members to include integration of team members as well as identification of issues and issue resolution. The Offeror has demonstrated an adequate understanding of the project control procedures throughout the Term. The Offeror identifies quality management principles that are key to Project success and identifies the Department and Independent Engineer participation. The Offeror’s plan provides specific detail defining how it plans to mitigate and manage risk items that are consistent with the Department’s allocation of risk in the Comprehensive Agreement. The Offeror’s approach to managing the Project is adequate to provide confidence that the Project can be successfully delivered and meets the Project goals with minimal Department oversight.
B3.2 Outline Quality Management System Plans (QMSP)	<p>Extent to which there is demonstrated relevant experience and commitment of the management team to quality management principles.</p> <p>Extent to which the outline QMSP is capable of being used to monitor compliance with the contract documents, identify and document corrective action procedures, and improve quality procedures.</p> <p>Extent to which the approach identifies a methodology and implementation process for an independent quality control process.</p> <p>Effectiveness and application of proposed quality system to monitor and address quality performance.</p> <p>Effectiveness of steps the Offeror proposes to address quality deficiencies, ensuring they are corrected in an acceptable and expeditious manner promoting the</p>

Table 6.4A Outline Project Development Plans

Section Reference	Evaluation Criteria and “Pass” Ratings
	<p>efficiency of facility administration.</p> <p>Extent to which Offeror demonstrates internal processes for design reviews including reporting procedures, responsibilities, documentation and correcting deficiencies aligns with the Department’s aim to minimize its own design review requirements, and how design reviews will be coordinated with other stakeholders to include the O&M Contractor.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror demonstrates that its quality management systems will be capable of ensuring and maintaining compliance with the Comprehensive Agreement and the Technical Requirements. The Offeror includes in its plan procedures such as reporting and auditing functions consistent with the Department’s guidance or requirements. The Offeror’s quality assurance and quality control process is integrated with other components of the Offeror’s Project Development Plans and delivery of the Project. The Offeror organization and team members provide corporate commitment to QA/QC (e.g. aspiration to ISO 9000 certification). The Offeror demonstrates adequate experience in quality assurance and quality control, presenting a good understanding of the Department’s limited oversight role and providing some confidence to the Department that the Department will be able to minimize its own independent verification efforts. • The Offeror demonstrates that its Design-Build Quality Management Plan will result in quality design documents. The Offeror includes commitment to independent quality review of all submittals. • The Offeror provides a construction quality team which is qualified and independent from both the design and construction team. The Offeror includes adequate understanding of different types and categories of inspection required to ensure successful project completion. The Offeror provides corporate commitment to high quality of construction. • The Offeror’s approach to O&M quality management is adequately addressed in its description of the defined procedures. • The Offeror identifies a satisfactory strategy to address deficiencies or trends indicating declining quality. The Offeror’s quality management system approach provides confidence to the Department that the Offeror will identify and correct any adverse trends without the need for Department intervention and there is little risk to the Department that it will need to implement unplanned oversight to identify and rectify defects. The Offeror’s plan has few weaknesses and identifies little risk to the Department.
<p>B3.3 Outline Environmental Management Plan</p>	<p>Extent to which the outline Environmental Management Plan displays a thorough understanding and approach to responsible environmental management. The plan should demonstrate the experience and capability needed to manage environmental risk.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror provides an adequate Environmental Management Plan, with evidence of integration between environmental commitments and the design and construction of the Project. The plan highlights and provides explanation as to how the Offeror

Table 6.4A Outline Project Development Plans	
Section Reference	Evaluation Criteria and “Pass” Ratings
	<p>resolves Project-specific challenges, to include identification of wetland mitigation and stream restoration requirements. The Offeror draws on evidence from previous projects with similar features and Project-specific cross-references to the Offeror’s Schematic Design. The Offeror demonstrates a sound understanding of the needs of the resource agencies and provides evidence of an understanding of the protocols needed to secure the necessary permits. The Offeror demonstrates a commitment to implement environmental risk elimination and reduction strategies and the plan describes most of the highest risks and potential methods to eliminate or mitigate some of those risks.</p>
<p>B3.4 Outline Right of Way Acquisition and Relocation Plan</p>	<p>Extent to which the outline Right of Way Acquisition and Relocation Plan presents a clear structure to the ROW acquisition and relocation process and demonstrates a clear understanding of each party’s roles.</p> <p>Extent to which the approach to ROW acquisition procedures provides assurance that property owners, lessees, and other occupants will be dealt with in compliance with State and Federal requirements and in a sensitive manner.</p> <p>Extent to which the Offeror has taken into account ROW acquisition and relocation in the Proposed Baseline Schedule (for example, allowing flexibility to account for problematic ROW acquisition) so that the impact of any risk to the Project is minimized.</p> <p>Extent to which the Offeror’s approach minimizes the impacts to the residents, businesses and private property within the Project corridor.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • Offeror’s approach to ROW acquisition demonstrates competence and a sound level of Project-specific understanding of the challenges (such as replacement housing, splitting parcels, and minimizing impact to residences and businesses). The Offeror provides Project-specific examples demonstrating how the Offeror team has encountered similar challenges and planned the work and mitigated/eliminated risks. The Offeror demonstrates a sound understanding of procedures necessary to comply with State and Federal requirements and the ROW acquisition process allows adequate time for the Department’s review and approval of acquisition packages. The Offeror has a flexible approach in the Baseline Schedule for ROW acquisition which should allow for mitigation of any potential unforeseen delay.
<p>B3.5 Outline Utilities Plan</p>	<p>Extent to which the outline Utilities Plan demonstrates a good understanding of Project-specific protocols and procedures for utility relocations, while minimizing impact to residences and businesses.</p> <p>Extent to which the plan demonstrates an approach that will maximize cooperation by utilities.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror presents coordination and relocation plans which demonstrate satisfactory understanding of Project-specific-protocols and cross-references to the Offeror’s Schematic Design for coordinating with utilities; and procedures for utility relocations that will ensure cooperation by utilities. The Offeror’s approach provides few weaknesses and there is little risk that the approach to utility relocation would result in delays to the Project. The Offeror has a flexible approach in the Baseline Schedule for

Table 6.4A Outline Project Development Plans	
Section Reference	Evaluation Criteria and “Pass” Ratings
	utility relocations which should allow for mitigation of any potential unforeseen delay.
B3.6 Outline Transportation Management Plan	<p>Extent to which the outline Transportation Management Plan (“TMP”) demonstrates a comprehensive understanding of local conditions and demonstrates commitment to minimizing inconvenience to road users and maintaining access for residential and local businesses.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The TMP provided by Offeror shows satisfactory level of detail for construction phasing and continuity of access. The Offeror demonstrates an understanding of local conditions and requirements. The Offeror provides Project-specific examples that demonstrate its understanding of the Project requirements as demonstrated in its narrative and the Offeror’s Schematic Design. There are few weaknesses and there is a small risk of avoidable inconvenience to traveling public.
B3.7 Outline Public Information and Communications Plan	<p>Extent to which the outline Public Information and Communications Plan demonstrates a commitment of the required resources to assist the Department in administering the Public Information and Communications Plan during the Construction Period and utilizes the Concessionaire in a leading role during the Operating Period. The plan should detail a comprehensive approach to providing and soliciting public information in a timely manner that is coordinated through the Department and as described in the Technical Requirements.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror’s plan provides a reasonable public involvement strategy that is consistent with the Technical Requirements and identifies the process for review and comment by the Department to include release of public information through the Department. The Offeror’s approach to public meetings and other forms of public outreach is backed up by previous experience on similar projects of this size and complexity. The Offeror’s approach to public information and communications has continuity between design, construction, and operations. The Offeror demonstrates an approach to advertising activities that would ensure involvement of stakeholders. The Offeror’s Public Information and Communications Plan shows lines of communication between the Project team and other stakeholders. The plan provides reasonable confidence that the Offeror will work closely with the Department to provide information to stakeholders in a timely, organized fashion that results in smooth project execution and maintains public and stakeholder support.

Table 6.4A Outline Project Development Plans	
Section Reference	Evaluation Criteria and “Pass” Ratings
B3.8 Outline DBE/SWaM Plan	<p>Extent to which an outline DBE/SWaM Plan contains effective strategies for promoting and delivering business opportunities for small, woman and disadvantaged businesses.</p> <p>Extent to which the Offeror provides a good understanding of concepts, strategies, and criteria needed to create an effective DBE/SWaM Plan that creates opportunities and training for DBE/SWaM vendors.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror provides an adequate and effective strategy for promoting and delivering business opportunities for disadvantaged businesses that has a reasonable chance for success. The Offeror defines efforts among team members to maximize the use of and training for DBE/SWaM vendors. There are few weaknesses and small, but manageable risk in meeting the Project DBE/SWaM goals.
B3.9 Outline Health, Safety and Security Plan	<p>Extent to which the outline Health, Safety and Security Plan addresses Project-specific issues and bases its approach on experience from the development and operation of projects of similar size and complexity.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror describes an effective approach for implementing a management program that maintains health, safety and security while maintaining compliance with State and Federal laws. The Offeror identifies some of the risks and potential methods to eliminate or mitigate risks. The Offeror’s approach provides few weaknesses and there is little risk that the Offeror’s approach to health, safety and security will result in an unsafe Project.
B3.10 Outline Operations and Maintenance Plan	<p>Extent to which the outline Operations and Maintenance Plan (“O&M Plan”) demonstrates commitment to providing good service to road users.</p> <p>Extent to which the outline O&M Plan demonstrates the ability to successfully manage the maintenance, and operation of each Asset to the Department in a manner which provides certainty of delivery of the Project’s objectives.</p> <p>Extent to which the outline O&M Plan addresses a well-defined and executable approach for incident management and emergency response to include mass evacuation.</p> <p>Extent to which the plan addresses: an integrated approach between proposed tolling facilities and its tolling operations linked to its planned communication protocols and communication/coordination with the Department and stakeholders; and integration into a regional operations network.</p> <p>Extent to which the plan demonstrates an understanding of operations, maintenance and tolling for a project of this size and character.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror demonstrates adequate tolling, operations and maintenance procedures which provide information on how maintenance work will be coordinated with toll operations and operation of the facility with cross-references to the Offeror’s Schematic Design. The Offeror has an adequate understanding of roadway operations and maintenance management to provide good customer service and a quality roadway, which is demonstrated through descriptions of complexities, challenges, and

Table 6.4A Outline Project Development Plans	
Section Reference	Evaluation Criteria and “Pass” Ratings
	<p>scope in operating a facility of this magnitude. The Offeror provides Project-specific examples of operations and maintenance interfaces and how they are integrated into the proposed procedures and management approach. The Offeror demonstrates adequate integration of change management and quality management systems and addresses most of the main processes involved. The Offeror provides evidence of understanding of toll operations and implementation of a tolling program and integration with a regional roadway network. The Offeror demonstrates an approach to tolling, operations and maintenance which gives confidence to the Department that the facility will be operated in a manner that clearly benefits the public, and with limited oversight.</p>
B3.11 Outline Life Cycle Maintenance Plan	<p>Extent to which the outline Life Cycle Maintenance Plan identifies well-researched life cycle maintenance procedures that provides confidence that the underlying Assets will be preserved throughout the Operating Period.</p> <p>Extent to which the plan demonstrates a comprehensive approach to meeting Handback Requirements, including but not limited to inspections, procedures and mechanisms for ensuring a smooth transition, adequate reserves, and usable facility.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror provides an effective approach to life cycle maintenance that identifies many of the Project-specific issues. The Offeror provides evidence of an adequate understanding of the Handback Requirements and the approach for handback is clearly described and adequate to address many of the Project risks. The approach has few weaknesses and identifies little risk that provides some confidence that the facility can be returned to the Department with minimal rehabilitation.

6.4.2 Table 6.4B contains the criteria for evaluating the Proposed Initial Baseline Schedule on a “pass”/“fail” basis.

Table 6.4B Proposed Initial Baseline Schedule Evaluation
Evaluation Criteria and “Pass” Ratings
<p>Extent to which the Proposed Initial Baseline Schedule presents a realistic approach to the design, construction and start of operations of the Project, consistent with completion on or before the Guaranteed Substantial Completion Date.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The Offeror’s approach to schedule includes satisfactory graphical representation and narratives describing how the construction of each activity by segment has been determined taking into account constraints. The Proposed Initial Baseline Schedule contains appropriate logic links and sufficient detail. The Proposed Initial Baseline Schedule is comprehensive, identifying construction phasing, environmental constraints, Project Right of Way acquisition, Project restrictions, public involvement and QA/QC reviews.
<p>Effectiveness of procedures for tracking progress, roles and responsibilities for reporting results internally and externally and proposed methods for addressing delays. Effectiveness of the schedule in providing a tool for anticipating, evaluating and managing the impacts of unforeseen events.</p>

The Offeror’s requirements to achieve a “pass” rating are:

- The Offeror’s schedule procedures for tracking progress meet the Technical Requirements. The Offeror provides evidence that the schedule management techniques would enable potential delays to be identified early and mitigated. The Offeror presents a satisfactory approach, for example allocation of appropriate roles and responsibilities to personnel who can enable schedule recovery in the event that delays are identified. The Offeror’s approach to schedule control gives rise to little risk that any threat to schedule will fail to be identified, reported and mitigated early. The Offeror provides some evidence from previous projects of similar schedule controls. The Offeror’s approach gives rise to limited risk that there will be delays to the schedule.

6.4.3 Table 6.4C contains the criteria for evaluating the Financial Proposal on a “pass”/“fail” basis.

Table 6.4C Financial Proposal Feasibility
General Evaluation Criteria and “pass” Rating
<p>Level of support from lenders: degree of firmness of debt underwriting commitments and associated due diligence progress, existence of extra capacity from lending sources and creditworthiness of lenders; existence and credibility of back-up finance plans (<i>i.e.</i>, if bond financing is proposed, an alternative(s) including bank financing, and vice-versa).</p> <p>Creditworthiness of equity sources and the debt-to-equity leverage considerations throughout the concession term.</p> <p>Coherence and robustness of the Financial Plan and Base Case Financial Model, including macroeconomic and tax assumptions, level of cover ratios, cash reserves and security packages, and sensitivity results.</p> <p>The Offeror’s requirements to achieve a “pass” rating are:</p> <ul style="list-style-type: none"> • The commitment letters are from proposed Lenders experienced in infrastructure financing, signed by a member of the Lender’s senior management, or for a Detailed Proposal including a capital markets bond financing solution, an investment grade rating from a Major Rating Agency. • The above letters show combined underwriting commitments (or intended underwriting interest) equal to or in excess of the required debt amounts identified in the Financial Plan and the Base Case Financial Model. • The Financial Proposal includes fully underwritten debt commitments, or if it does not, then the Financial Plan: <ul style="list-style-type: none"> (a) includes a narrative: (i) detailing the Financial Plan strategy; (ii) explaining the progress made toward obtaining Lenders’ commitments, showing evidence of advanced development in the financial structuring of the Project; (iii) describing the Offeror’s approach and schedule to secure underwritten debt commitments; and (iv) outlining advantages of the current strategy over other financial structures; (b) does not rely on overly aggressive assumptions as to macroeconomic, tax, debt-to-equity leverage and debt coverage ratios, equity and debt drawdown schedules, equity distributions policy and other Project Financing Agreements conditions; and (c) demonstrates the reasonableness of such assumptions, in part by citing relevant precedent transactions. • The Financial Proposal contains evidence of equity financial commitments consistent with the Financial Plan and Base Case Financial Model, signed by duly authorized signatories of the proposed equity contributors, and accompanied by board resolutions or other applicable supporting documentation. The

Table 6.4C Financial Proposal Feasibility

General Evaluation Criteria and “pass” Rating

stated Committed Investments will not be subject to the availability or obtaining of any debt identified in the Financial Plan.

- The Financial Model Audit Letter confirms the logic and integrity of the model (including the model reference number) and this logic is materially consistent with the Comprehensive Agreement
- The Base Case Financial Model is free from obvious calculation errors, conforms with the requirements of Attachment C and is able to calculate all sensitivity scenarios required therein.
- The letter(s) from letter of credit provider(s) indicate that the provider has reviewed the Comprehensive Agreement and the RFDP requirements regarding the Performance Security and is prepared to issue the Performance Security without further amendment.
- The letter(s) from provider(s) of the Financial Close Security indicate that the provider has reviewed the Comprehensive Agreement and the RFDP requirements regarding the Financial Close Security and is prepared to issue the same without further amendment.
- There is no material concern that the Equity Members or Design-Build Contractor lack the financial capacity to: (1) undertake the Project, (2) achieve Financial Close, and (3) deliver the associated investment and guarantees; and there is no material concern regarding the ability of any Equity Member or the Design-Build Contractor to continue as a going concern.
- The traffic and revenue projections included in the Financial Proposal are supported by a comprehensive traffic and revenue report produced in accordance with best industry practice.
- The proposed Equity Internal Rate of Return, as reflected in the Base Case Financial Model, provides no more than a reasonable return pursuant to § 56-566 of the Code of Virginia, as determined by the Department.

6.4.4 Each evaluation team member responsible for evaluating elements relevant to the pass/fail criteria will review the Detailed Proposals and will indicate whether a Detailed Proposal has passed or failed with respect to each criteria. After the individual ratings have been completed, the evaluation team will meet to discuss their findings and determine a consensus rating.

6.4.5 A non-voting Department employee, who is Virginia Contract Officer (“VCO”) certified, will facilitate evaluation meetings and ensure fairness in the process. The VCO will certify the ratings after the process is complete, and will be responsible for calculating the Public Funds Amount as described above. A representative of the Department’s Civil Rights Division will also be invited to observe the evaluation as a non-voting member of the evaluation team.

6.5 Clarifications Regarding Detailed Proposals

6.5.1 The Department may at any time issue one or more requests for clarification to the individual Offerors, requesting additional information or clarification from an Offeror, or may request an Offeror to verify or certify certain aspects of its Detailed Proposal. Offerors will respond to any such requests within 2 Business Days (or such other time as is specified by the Department in such request) from receipt of the request. The scope, length and topics to be addressed in clarifications will be prescribed by, and subject to the discretion of, the Department.

6.5.2 Upon the Department’s receipt of requested clarifications and additional information as described above, if any, the Detailed Proposals may be re-evaluated to factor in the clarifications and additional information.

6.6 Approval of Comprehensive Agreement

6.6.1 Upon completion of the evaluations, the evaluation team will determine the apparent Best Value Proposal. The Department may, in its sole discretion, initiate limited negotiations as described herein or recommend execution of the Comprehensive Agreement without negotiations. For the avoidance of doubt, by submitting a Detailed Proposal Offerors commit to enter into the Comprehensive Agreement in the form included in the RFDP Documents, without negotiation or variation, except as necessary to fill in blanks and include information that the form of the Comprehensive Agreement indicates is required from the Successful Offeror's Detailed Proposal.

6.6.2 Negotiations (if any) will generally be limited as specified in 23 CFR 636.513, and will be further limited to those issues that the Department determines, in its sole discretion, are appropriate to include in the negotiations, which issues the Department will set forth in writing to the Successful Offeror. The Successful Offeror will be deemed not to have negotiated in good faith if it fails to attend and actively participate in reasonably scheduled negotiation meetings with the Department or insists upon terms or conditions that are (a) materially inconsistent with the Successful Offeror's Detailed Proposal or (b) outside the scope of the issues identified in writing by the Department as included in the negotiation.

6.6.3 Offerors are advised that the Department is required by Law to determine the reasonableness of the Offeror's return on investment before entering into a Comprehensive Agreement. As such, the Department will evaluate reasonableness by benchmarking the proposed post-tax Equity Internal Rate of Return and post-tax Project Internal Rate of Return (as reflected in the Base Case Financial Model) against recent comparable greenfield toll road transactions. The Department will exercise its sole discretion to adjust the findings of its benchmark research to reflect the particular risk, terms and conditions of the project and to determine whether the Detailed Proposal meets statutory requirements. If the Department is unable to make such determination based on the Detailed Proposal, the negotiations process may include a request for the Successful Offeror to reduce its proposed Public Funds Amount or to take other measures enabling the Department to make the required determination.

6.6.4 If the Department fails to reach an agreement with the Offeror initially determined to have provided the apparent Best Value Proposal, the Department will formally end negotiations with that Offeror and take action as the Department determines in its sole discretion. Such action may include (a) rejection of all Detailed Proposals or (b) re-calculation of the Best Value Proposal based on the remaining Offerors (excluding the Offeror initially determined to have provided the apparent Best Value Proposal) and, based on this re-calculation, proceeding to the Offeror that submitted the most highly ranked Detailed Proposal to finalize or attempt to negotiate a Comprehensive Agreement with that Offeror in accordance with this Section 6.6. If option (b) is selected, the next most highly ranked Detailed Proposal will then be considered the apparent Best Value Proposal and the Offeror that submitted such Detailed Proposal will be considered the Successful Offeror. If negotiations fail with the second ranked Offeror, the Department may formally terminate negotiations with that Offeror and proceed with negotiations with the third ranked Offeror.

6.6.5 Upon completion of the evaluations and successful negotiations (if any), the evaluation team will recommend to the Commissioner that the Department enter into a Comprehensive Agreement with the Concessionaire proposed by the Successful Offeror.

6.6.6 Once approved by the Commissioner, the Department will notify all Offerors of the selection. The Department will deliver notice to the Successful Offeror and the Successful Offeror will proceed to execute and deliver the Comprehensive Agreement and other documents as further described in Section 6.7. The date of delivery of such notice is referred to herein as the "Approval Date."

6.6.7 The offer represented by each Detailed Proposal will remain in full force and effect for 180 days after the Financial Proposal Due Date. If the Approval Date does not occur within said 180-day period, each Offeror that has not previously agreed to an extension of such deadline will have the right to withdraw its Detailed Proposal.

6.7 Actions Following Approval Date

6.7.1 Within 45 days after the Approval Date, the Department will provide to the Successful Offeror duplicate copies of the Comprehensive Agreement to be executed by the Concessionaire, with all Exhibits attached, including those derived from the Successful Offeror's Detailed Proposal.

6.7.2 Section 56-560 (E) of the Code of Virginia requires the Successful Offeror to pay the costs for an independent audit of any and all cost estimates associated with the Successful Offeror's Detailed Proposal, as well as a review of all public costs and potential liabilities to which taxpayers could be exposed (including improvements to other transportation facilities that may be needed as a result of the Detailed Proposal, failure by the Concessionaire to reimburse the Department for services provided and potential risk and liability in the event the Concessionaire defaults on the Comprehensive Agreement). The Department will select the independent auditor. The Successful Offeror will confirm the independence of the auditor at its sole discretion. The Successful Offeror will cooperate with the auditor and pay the costs of such audit within 30 days following receipt of an invoice therefore. Completion of such audit and review and reimbursement of the Department's associated costs will be conditions precedent to the Department's execution of the Comprehensive Agreement. The failure of the Successful Offeror to pay the costs of the audit will constitute cause to disqualify the Successful Offeror, entitling the Department to draw on the Detailed Proposal Security.

6.7.3 As a condition precedent to execution of the Comprehensive Agreement by the Department, the Successful Offeror will ensure that the following actions take place by the deadlines specified below:

- a. The Successful Offeror will immediately notify the Department of any material adverse change in the financial condition of any firm whose financial statements were provided with the Detailed Proposal, or any material adverse change in the financial condition of any proposed Lender, and take action with respect thereto as required by the Department.
- b. Within 15 days after the Approval Date, the Successful Offeror will provide a final draft of Exhibit C to the Comprehensive Agreement for the Department review and approval.
- c. Within 15 days after the Approval Date, the Successful Offeror will (to the extent required by the Department in its sole discretion) provide an updated Schedule of Values for review and approval by the Department.
- d. If it has not already done so as part of its Detailed Proposal, the Successful Offeror will complete the formation of the Concessionaire and, within thirty (30) days after the Approval Date: (i) will submit certified copies of the organizational documents to the Department, together with evidence (if not previously provided) as to the authority, power, and capacity of the individuals executing the Comprehensive Agreement to bind the Concessionaire to the Comprehensive Agreement; and (ii) will notify the Department in writing of the name and address of the Concessionaire's agent for service of legal process for this Project and the Concessionaire's Federal Internal Revenue Service employer identification number.
- e. Within 30 days after the Approval Date, the Concessionaire (i) will execute and deliver to the Department the Escrow Agreement in the form attached to the Comprehensive Agreement; and (ii) will deliver its Escrow Documents to the

Department, in sealed containers labeled “U.S. Route 460 Corridor Improvements Project D-B Escrow Documents” or “U.S. Route 460 Corridor Improvements Project Financing Escrow Documents”, as applicable. After delivery to the Department, the Escrow Documents will be examined, organized and inventoried by representatives of the Department, assisted by individuals designated by the Concessionaire who are knowledgeable in how the Escrow Documents were prepared. This examination is to ensure that the Escrow Documents are legible and complete.

- f. Within 30 days after the Approval Date, the Concessionaire will provide an execution version of the Independent Engineer Agreement in the form attached to the Comprehensive Agreement, with appropriate information completed for the Department’s review and approval.
- g. Within 30 days after the Approval Date, the Concessionaire will provide draft versions of all Initial Project Financing Agreements.
- h. At least 30 days prior to the scheduled date of execution of the Comprehensive Agreement, the Concessionaire will identify the attorneys and law firms that will provide the legal opinions identified in the completed Opinion of Counsel (Form C, Attachment F) and provide draft opinion letter(s) to the Department for the Department’s approval, not to be unreasonably withheld.
- i. Concurrently with or prior to delivery of the executed Comprehensive Agreement, the Concessionaire will provide to the Department all documents required by the Comprehensive Agreement, including but not limited to:
 - i. the Performance Security;
 - ii. an audit of the Base Case Financial Model conducted by an independent audit firm satisfactory to the Department (at the Successful Offeror’s sole expense) addressed to the Department; the audit of the Base Case Financial Model for this purpose may be the same as the audit required by the Offeror’s lenders. If the Concessionaire is submitting a lender’s model audit, the Department is to be a co-addressee of the lender’s audit of the Base Case Financial Model. In the event that the audit recommends that any amendments be made to the Base Case Financial Model, such amendment will be made only in accordance with Article 6 of the Comprehensive Agreement and will not result in an increase to the Public Funds Amount;
 - iii. Initial Project Financing Agreements;²
 - iv. the executed Design-Build Contract;

² **NOTE TO OFFERORS:** The requirement to deliver the Initial Project Financing Agreements with or prior to delivery of the executed Comprehensive Agreement will be subject to the provisions of Section 3.5.8 in respect of a capital markets (e.g. Private Activity Bonds) financing solution.

- v. the executed O&M Contract; and
- vi. the Independent Engineer Agreement, executed by all parties other than the Collateral Agent.
- j. Within 60 days of the Approval Date, the Concessionaire will deliver to the Department the executed Comprehensive Agreement, together with evidence of authorization thereof and legal opinions in the form previously approved by the Department.

6.7.4 Should the Successful Offeror fail to comply with any of the requirements specified in Sections 6.7.2 or 6.7.3, within 15 days following delivery by the Department of notice of such failure (or such longer time as may be allowed by the Department in its sole discretion), the Department will have the right to call upon the Detailed Proposal Security in its entirety. The Department may then identify the next highest ranked Offeror as the Successful Offeror and proceed to execute a Comprehensive Agreement with that Offeror, or the Department may re-advertise and complete the work under a different contract, or otherwise, as the Department may decide in its sole discretion.

6.7.5 The Department will execute the Comprehensive Agreement and deliver it to the Concessionaire only after the Commissioner (or his designee) has presented the major business points of the Comprehensive Agreement to the CTB.

7.0 QUESTIONS AND REQUESTS FOR CLARIFICATION REGARDING RFDP

Offerors may submit questions and requests for clarification regarding the Project and the RFDP provided they are submitted in accordance with the following provisions:

- a. all questions and requests for clarification will be submitted in accordance with Section 2.4;
- b. except as set forth in Section 9.1.5, all questions and requests for clarification submitted by the Offerors will be disclosed publicly;
- c. the Department will not be bound by any oral communications, or any written interpretations or clarifications that are not set forth in an Addendum;
- d. if the Department determines, at its sole discretion, that a question or request for clarification, or the related response thereto, necessitates a change to this RFDP, the Department may, at its sole discretion, issue an addendum to the RFDP;
- e. questions and requests for clarification regarding the RFDP may be submitted up to and including the deadlines identified in Section 2.3;
- f. except as set forth in Section 9.1.5, questions and requests for clarification will be posted to the RFDP data room;
- g. the Department reserves the right, at its sole discretion, to edit or not to respond to questions and requests for clarification (or parts thereof);
- h. the Department, at its sole discretion, will have the right to seek clarification from any Offeror to fully understand information contained in the Detailed Proposal;
- i. question and request for clarification submittals must contain the Offeror's full contact information, date of submittal, appropriate document and section references and page numbers; and
- j. questions and requests for clarification should be identified and organized according to whether (i) they are administrative, commercial, financial, technical or legal in nature and (ii) the submitting Offeror is requesting that they be treated confidentially pursuant to Section 9.1.5.

8.0 RIGHTS AND OBLIGATIONS OF THE DEPARTMENT

8.1 Specific Rights and Obligations of the Department

In connection with this procurement, the Department reserves to itself all rights (which rights will be exercisable by the Department in its sole discretion) available to it under Law. In addition to all rights reserved as specified by Law, the Department further reserves to itself, without limitation or with or without cause and with or without notice, the rights set forth below.

- a. The right to cancel, withdraw, postpone or extend this RFDP in whole or in part at any time prior to the execution by the Department of a Comprehensive Agreement or interim agreement, without incurring any obligations or liabilities.
- b. The right to issue a new RFDP.
- c. The right to reject any and all submittals, responses and proposals received at any time.
- d. The right to modify all dates set or projected in the RFDP Documents.
- e. The right to terminate evaluations of responses received at any time.
- f. The right to suspend and/or terminate the procurement process for the Project, at any time.
- g. The right to revise and modify, at any time prior to the Financial Proposal Due Date, factors it will consider in evaluating responses to this RFDP and to otherwise revise its evaluation methodology.
- h. The right to waive or permit corrections to data submitted with any response to this RFDP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFDP has been completed and closed.
- i. The right to issue Addenda to this RFDP.
- j. The right to permit submittal of addenda and supplements to data previously provided with any response to this RFDP until such time as VDOT declares in writing that a particular stage or phase of its review of the responses to this RFDP has been completed and closed.
- k. The right to hold meetings and conduct discussions and correspondence with one or more of the Offerors responding to this RFDP to seek an improved understanding and evaluation of the responses to this RFDP.
- l. 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 RFDP, including the right to seek clarifications from Offerors.

- m. The right to permit Offerors to add or delete firms.
- n. The right to add or delete the Offeror's responsibilities from the information contained in this RFDP.
- o. The right to appoint and change members of the proposal evaluation team.
- p. The right to use the assistance of outside technical and legal experts and consultants in the evaluation process.
- q. The right to waive deficiencies, informalities and irregularities in a Detailed Proposal, and review a non-conforming Detailed Proposal or seek clarifications or supplements to a Detailed Proposal.
- r. The right to disqualify any Offeror that changes its submittal without Department's approval or is found to have made a misrepresentation or incorrect certification in its Detailed Proposal.
- s. The right to respond to all, some, or none of the inquiries, questions and/or request for clarifications received relative to the RFDP.
- t. The right to use all or part of an unsuccessful Detailed Proposal if the Offeror of such Detailed Proposal accepts a Proposal Payment.
- u. The right to suspend, discontinue and/or terminate any 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.
- v. The right to negotiate with an Offeror without being bound by any provision in the Offeror's Detailed Proposal.
- w. The right to negotiate and enter into an interim agreement with the Successful Offeror instead of immediately entering into a Comprehensive Agreement.
- x. The right to engage in discussions and request revisions to the Detailed Proposal, in accordance with 23 CFR Part 636, Subpart E.
- y. The right to request revisions to the Detailed Proposal.
- z. The right to terminate an Offeror's access to the data room based on any violation of its confidentiality agreement or breach of security.

8.2 No Assumption of Liability by the Department

8.2.1 The Department assumes no obligations, responsibilities, or 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 RFDP. Except to the extent an

Offeror is eligible for the Proposal Payment pursuant to Section 4.6, all such costs will be borne solely by each Offeror and its team members.

8.2.2 In no event will the Department be bound by, or liable for, any obligations with respect to the Project until such time (if at all) as a Comprehensive Agreement, in form and substance satisfactory to the Department, has been executed and authorized by the Department and, then, only to the extent set forth therein.

8.2.3 Any and all information made available to the Offerors is made for convenience purposes only and is without representation or warranty of any kind, except to the extent expressly provided to the Concessionaire pursuant to the Comprehensive Agreement.

8.2.4 In no event will the State, the Commissioner or the Department be responsible for any failure of Offerors to fully comply with Laws, or for tax assumptions made by the Offerors.

9.0 MISCELLANEOUS

9.1 Virginia Freedom of Information Act

9.1.1 All proposals or other written materials submitted to the Department are subject to the disclosure requirements of the PPTA and the Virginia Freedom of Information Act (“VFOIA”) (Section 2.2-3700 *et seq.* of the Code of Virginia). Offerors are advised to familiarize themselves with the provisions of each act referenced herein to determine whether documents identified as confidential will not be subject to disclosure under VFOIA. In no event will the State, the Commissioner, or the Department be liable to an Offeror or its team members or any other person for the disclosure of all or a portion of a proposal or other written material submitted pursuant to this request.

9.1.2 If a responding Offeror desires to make information available to the Department which the Offeror believes constitutes a trade secret, proprietary information, or other confidential information exempted from disclosure, upon submission of its information such Offeror will specifically and conspicuously designate that information as such and state in writing why protection of that information is needed. The Offeror will make such written request to the Department’s POC, in accordance with Section 2.4. The written request will:

- a. invoke such exemption upon the submission of the materials for which protection is sought;
- b. identify specifically and conspicuously the data or other materials for which the protection is sought;
- c. state the reasons why protection is necessary; and
- d. 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.

9.1.3 Blanket designations that do not identify the specific information will not be acceptable and may be cause for the Department to treat the entire proposal as public information. Nothing contained in this provision will modify or amend requirements and obligations imposed on the Department by Law, and the Law(s) will control in the event of a conflict between the procedures described above and any Law(s).

9.1.4 In the event that the Department receives a request for public disclosure of a portion of a proposal, such requests will be processed in accordance with Law, and the Department will determine whether or not the requested materials are exempt from disclosure. In the event that the Department elects to disclose the requested materials, it will endeavor to provide notice to the Offeror of its intent to disclose.

9.1.5 Offerors are on notice that written questions and requests for clarification submitted to the Department, together with any written responses thereto, will be made available in the data

room for review by each of the other Offerors unless the submitting Offeror makes, together with such question or request for clarification, a written request to the Department's POC to treat such question or request for clarification as a trade secret, proprietary information, or other confidential information in accordance with the procedures and limitations set forth in Sections 9.1.2 through 9.1.3.

9.1.6 Offerors are on notice that once a Comprehensive Agreement is executed, some or all of the information submitted to the Department may become available for public inspection under the Laws of the State.

9.1.7 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 information will be processed in accordance with Section 2.2-3705.2 of the Code of Virginia.

9.2 Changes Prior to Execution of Comprehensive Agreement

9.2.1 If, prior to satisfaction of all requirements under Section 6.7.3, the Department is advised by the Offeror or otherwise becomes aware of any material adverse change in the financial condition of any firm whose financial statements were provided with the Detailed Proposal, or of the proposed Lender(s), the Department will consider whether such change would have resulted in the Offeror receiving a "fail" for any of the criteria set forth in Section 6.3.2. If the Department determines that the Offeror would have received a "fail," it may, in its sole discretion, require the Offeror to submit additional security or take other measures to maintain its "pass" rating, or take other action deemed appropriate by the Department. Should the Successful Offeror fail to take action within 15 days of delivery of notice from the Department identifying the required action (or such longer time as may be allowed by the Department in its sole discretion), the Department may declare the Offeror in breach and select an alternative Successful Offeror to proceed with the Project, in which event the Department will have the right to draw on the Detailed Proposal Security in its entirety.

9.2.2 If, between the deadline set forth in Section 2.3 for submission of changes in Offeror's organization and execution of the Comprehensive Agreement, an Offeror seeks to change the composition of its team or the percentage of equity participation of one or more Equity Member, the Offeror is required to seek the Department's approval of such change. The Department will consider requests by Offerors to make such changes, based only on unusual circumstances beyond the Offeror's control, and will approve or reject them, as it deems appropriate in its sole discretion. If any unapproved change is implemented after the Approval Date, the Department will have the right to declare the Offeror in breach and select an alternative Successful Offeror to proceed with the Project, in which event the Department will have the right to draw on the Detailed Proposal Security in its entirety.

9.3 Administrative Requirements

9.3.1 Prior to the execution of a 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. Any business entity other than a professional corporation, professional limited liability company or sole proprietorship must be registered in the State with the Department of Professional & Occupational Regulation, Virginia Board for Architects, Professional Engineers, Land Surveyors and Landscape Architects (http://www.dpor.virginia.gov/dporweb/ape_reg.pdf). Board regulations require that all professional corporations and business entities that have branch offices located in Virginia which offer or render any professional services relating to the professions regulated by the Board be registered with the Board. Registration involves completing the required application and submitting the required registration fee for each and every branch office location in the State. All branch offices that offer or render any professional service must have at least one full-time resident professional in responsible charge that is licensed in the profession offered or rendered at each branch. All firms involved that are to provide professional services must meet these criteria prior to the performance of any services within the State or the execution of any agreement with the Department.

9.3.2 In accordance with Section 2.2-4311.1 of the Code of Virginia, the Concessionaire will be required to certify that it does not, and to agree that it will not, during the performance of the Comprehensive Agreement, knowingly employ an unauthorized alien as defined in the Federal Immigration Reform and Control Act of 1986. In addition, the Contractors (at all tiers) will be required to provide the same certification and agreement in their subcontract agreements.

9.3.3 The Concessionaire must have internal control systems in place that meet Federal requirements for accounting prior to the execution of the Comprehensive Agreement. These systems must comply with requirements of 48 CFR 31, "Federal Acquisition Regulations, Contract Cost Principles and Procedures," and 23 CFR 172, "Administration of Negotiated Contracts."

9.3.4 The Department assures compliance with Title VI of the Civil Rights Act of 1964, as amended. The Concessionaire and all of its subconsultants will be required to submit a Title VI Evaluation Report (EEO-D2) upon approval of execution of the Comprehensive Agreement. This requirement applies to all consulting firms with 15 or more employees.

9.3.5 The Department 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.

9.4 eVA Business-to-Government Vendor System

Offerors will 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 State. 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 State will 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>. The successful Offeror must register prior to execution of a Comprehensive Agreement. All Offerors are encouraged to register prior to submission of Detailed Proposals.

10.0 CONFLICT OF INTEREST

10.1 Conflict of Interest Determination

10.1.1 Each Offeror will require its proposed team members to identify potential conflicts of interest or a real or perceived competitive advantage relative to this procurement. Offerors are notified that prior or existing contractual obligations between a company and a Federal or state agency relative to any project included in the Department's PPTA program may present a conflict of interest or a competitive advantage. If a potential conflict of interest or competitive advantage is identified, the Offeror will submit in writing the pertinent information to the Department's POC in the Conflict of Interest Disclosure Statement (Form 3, Attachment E).

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

10.1.3 Portions of the documents contained in the RFDP will include work product developed by the following firms:

- a. Rummel, Klepper, and Kahl LLP, due to the firm's participation in assisting the Department with development of the Preliminary Reference Design.
- b. The firms of Halcrow, Inc., Public Resources Advisory Group, C&M, Jeffrey A. Parker and Associates, KPMG LLP, Warner Construction Consultants, Inc., Capital Project Strategies, LLC, Nossaman LLP / Nossaman, O'Connor & Hannan LLP, and Allen & Overy LLP, Ballard Spahr LLP, Christian & Barton LLP due to their participation in assisting the Department with procurement documents; negotiation strategies and negotiations; business and policy decisions; contract management and administration; development, negotiation, and execution of comprehensive/interim agreements; and reports and contract language.
- c. The firms of Parsons Brinkerhoff and Michael Baker have completed work that is available to prospective Offerors and the Department 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.

10.1.4 The firms listed above will not be allowed to participate or assist any Offeror or any of its team members in connection with this Project. Any Detailed Proposal received in violation of this requirement will be rejected.

10.1.5 The Department reserves the right to make additional determinations concerning conflicts of interest or competitive advantages involving any other firm(s) if and when such issues are brought to the attention of the Department.

10.2 Ethics in Public Contracting Act

The Department may, in its sole discretion, disqualify the Offeror and its Major Participants from further consideration in connection with the Project if it is found after due notice and examination by the Department that there is a violation of the Ethics in Public Contracting Act, Section 2.2-4367 of the Code of Virginia, or any similar statute, with respect to a procurement in the State.

**VIRGINIA DEPARTMENT OF TRANSPORTATION
U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT A

DEFINITIONS

Following are definitions of capitalized terms that appear in RFDP Part 1. Refer to Exhibit A to the Comprehensive Agreement (RFDP Part 3) for the meaning of capitalized terms and acronyms used but not defined herein or in the Instructions. Cross-references herein are to Sections of or Attachments to the Instructions unless otherwise specified.

Acronym	Definition
AADT	Average Annual Daily Traffic
AASHTO	American Association of State Highway and Transportation Officials
CBA	Candidate Build Alternative
CII/SSI	Critical Infrastructure Information / Sensitive Security Information
CPI	Consumer Price Index
CTB	Commonwealth Transportation Board
DBE / SWaM	Disadvantaged Business Enterprise / Small, Women and Minority-owned Businesses
DEIS	Draft Environmental Impact Statement
DSCR	Debt Service Coverage Ratio
EEO	In 'EEO-D2' and 'EEO-1'
ETC	Electronic Toll Collection
ETTM	Electronic Toll and Traffic Management
FEMA	Federal Emergency Management Agency
FHWA	Federal Highways Administration
FOIA	Freedom of Information Act
GAAP	Generally Accepted Accounting Principals
GDP	Gross Domestic Product
GIS	Geographic Information System
I-295	Interstate 295
IPD	Innovative Project Delivery
IRP	Independent Review Panel
IRR	Internal Rate of Return
ISO	International Organization for Standardization
LIBOR	London Inter-Bank Offer Rate
LLCR	Loan Life Coverage Ratio
MOT	Maintenance of Traffic
NEPA	National Environmental Policy Act

Acronym	Definition
NPV	Net Present Value
O&M	Operations & Maintenance
PABs	Private Activity Bonds
PLCR	Project Life Coverage Ratio
POC	Point of Contact
PPTA	Public Private Transportation Act of 1995
QA/QC	Quality Assurance / Quality Control
QMSP	Quality Management System Plan
RFDP	Request for Detailed Proposals
ROW	Right of Way
SAFETEA-LU	Safe, Accountable, Flexible, Efficient Transportation Equity Act, a Legacy for Users
SEC	Securities and Exchange Commission
SFP	Solicitation for Proposals
TIFIA	Transportation Infrastructure Finance and Innovation Act
TMP	Transportation Management Plan
TMS	Traffic Management System
USDOT	United States Department of Transportation
VCO	Virginia Contract Officer
VDOT	Virginia Department of Transportation
VFOIA	Virginia Freedom of Information Act
VPA	Virginia Ports Authority

Addenda or Addendum means supplemental additions, deletions, and modifications to the provisions of the RFDP after the release date of the RFDP.

Affiliate means, when used to indicate a relationship with a specified Person, a Person that: (a) directly or indirectly, through one or more intermediaries has a 10% or more voting or economic interest in such specified Person or (b) controls, is controlled by or is under common control with such specified Person, and a Person is deemed to be controlled by another Person, if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise.

Affiliate Contract means a Contract with an Affiliate.

Agreement or Comprehensive Agreement means the Comprehensive Agreement to be entered into between the Concessionaire and the Department relating to the U.S. Route 460 Corridor Improvements Project and all exhibits and schedules thereto, in the form attached as RFDP Part 3, as supplemented or further amended from time to time, including pursuant to Addenda.

Agreement Date means the date on which the parties execute and deliver the Comprehensive Agreement.

Approval Date is defined in Section 6.6.6 of the Instructions.

As-Built Schedule means the last Project Schedule Update submitted to and approved by the Department.

Asset means an individual component, system or subsystem of the Project, as identified in the first column of the Performance Requirements Baseline Table.

Base Case means the Department’s preferred scope for the U.S. Route 460 Corridor Improvements Project consistent with the NEPA approved corridor, Modified CBA-1, and including sufficient right of way to accommodate the Ultimate Configuration. The requirements of the Department’s Base Case are summarized on Table A.1 at the end of these definitions.

Base Case Financial Model means the financial model submitted by each of the Offerors in accordance with Attachment C.

Base Truck is defined in Section 1 of Form 8-B, Attachment E (Initial Toll Rates Form) of the Instructions.

Base Truck Toll Rate Schedule means the schedule of Initial Toll Rates for Base Trucks set forth in Section 1 of Form 8-B, Attachment E (Initial Toll Rates Form) of the Instructions.

Baseline Schedule OR Proposed Baseline Schedule means the schedule proposed by the Offerors identifying the major Work activities in sufficient detail to enable the Department to monitor and evaluate design and construction progress throughout the Construction Period, as more particularly described in the Agreement and the Technical Requirements.

Benchmark Interest Rate means the publicly-documented interest rates of each maturity included in the following indices:

- a. the LIBOR swap spot curve as provided by Thomson Reuters or Bloomberg;
- b. the LIBOR swap forward curves, as provided by Thomson Reuters or Bloomberg;
- c. the U.S. Spot Treasury Yield Curve;
- d. the Municipal Market Data (MMD) Benchmark, supplied by Thomson Reuters;
- e. the Securities Industry and Financial Markets Association (SIFMA) Municipal Swap Index (formerly known as the Bond Market Association (BMA) Municipal Swap Index); and
- f. the State and Local Government Series (SLGS) index, provided by the US Treasury.

The Benchmark Interest Rates do not include any additional credit spread, margin or fee components..

Best Value Proposal means the Detailed Proposal that is responsive to the requirements of the RFDP Documents as described in Section 6.2 of the Instructions, achieves a “pass” evaluation in accordance with the requirements of Section 6.3 of the Instructions and, except as otherwise provided in Section 6.6 of the Instructions, contains the lowest nominal Public Funds Amount.

Breakage Costs means any prepayment premiums or penalties, make-whole payments or other prepayment amounts (including premiums) that the Concessionaire must pay under any Project Financing Agreement as a result of the early repayment of Concessionaire Debt prior to its scheduled maturity date.

Business Day means any day on which the Department is officially open for business.

Capital Expenditure means projected design and construction costs of the Project during the Construction Period, as identified in the Base Case Financial Model.

Civil Rights Act of 1964 means the Civil Rights Act of 1964, Pub.L. 88–352, July 2, 1964, 78 Stat. 241.

Code of Virginia means the Code of Virginia of 1950, as amended from time to time.

Collateral Agent means the agent acting on behalf of or at the direction of the other Lenders or the Person or Persons so designated in an intercreditor agreement or other document executed by all Lenders to whom Financing Assignments are outstanding at the time of execution of such document, a copy of which will be delivered by the Concessionaire to the Department.

Committed Investments means (a) any form of direct investment by Equity Members, including the purchase of equity shares in the Concessionaire; (b) any bona fide indebtedness of the Concessionaire for funds borrowed that (i) is held by any Equity Member and (ii) is subordinated in priority of payment and security to all Concessionaire Debt held by Persons who are not Equity Members; or (c) an irrevocable on-demand letter of credit issued by or for the account of an Equity Member naming Concessionaire as beneficiary and guaranteeing the provision of the direct investment or loan referenced in clause (a) or (b) of this definition.

Commonwealth Transportation Board (CTB) means a board of the State affiliated with the Department.

Commonwealth Transportation Commissioner (Commissioner) means the appointed chief executive officer of the Department or any successor in function.

Concept of Operations means the document or documents prepared by an Offeror which outlines the characteristics of the ETTM System with regard to its intended capability.

Conceptual Proposal means the conceptual proposal submitted by an Offeror in response to the SFP.

Concessionaire means the entity formed by the Successful Offeror for purposes of entering into the Comprehensive Agreement, and its permitted successors and assigns.

Concessionaire Debt means (without duplication) any bona fide indebtedness (including, but not limited to, PABs, State or TIFIA loans, guaranties and credit support, subordinated indebtedness and all such obligations arising under such indebtedness) incurred by the Concessionaire that is not Committed Investment.

Concessionaire Management Plan means the plan developed by the Concessionaire that describes the Concessionaire’s managerial approach, strategy, and quality procedures to design, build, operate and maintain the Project and achieve all requirements of the Agreement, as described in more detail in the Technical Requirements.

Concessionaire Project Enhancement means any extensions of, additions to, or major modifications to the Project undertaken by the Concessionaire pursuant to Section 12.01 of the Agreement.

Construction Period means the period commencing on the Agreement Date through the Final Acceptance Date.

Construction Quality Management means the quality management processes, policies and procedures with respect to the construction of the Project.

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

Contingent Equity means a Committed Investment in the Concessionaire by an Equity Member or affiliate of any Equity Member, if the obligation to make the investment is contingent upon occurrence of specified events as stated in the agreement obligating such entity to make the investment.

Contract means any contract, subcontract, or other form of agreement 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 or any other Person with whom any Contractor has further subcontracted any part of the Work, at all tiers.

Contractor means any Person with whom the Offeror, through the Concessionaire or otherwise, proposes to 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. The term “Contractor” includes the Design-Build Contractor and the O&M Contractor.

CPI means the “Consumer Price Index – U.S. City Averages for all Urban Consumers, All Items” (not seasonally adjusted), as published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor; *provided*, that if the CPI is changed so that the base year of the CPI changes, the CPI will be converted in accordance with the conversion factor published by the U.S. Department of Labor, Bureau of Labor Statistics, or its successor. If the CPI is discontinued or substantially altered, the applicable substitute index will be that chosen by the Secretary of the Treasury for the Department of Treasury’s Inflation-Linked Treasuries as described at 62 Federal Register 846-847 (January 6, 1997), or if no such securities are outstanding, will be determined by the parties in accordance with general market practice at that time.

Critical Infrastructure Information/Sensitive Security Information (CI/SSI) means information that is not appropriate for public release without a need-to-know or information related to maritime critical infrastructure that is not appropriate for public release without a need-to-know and as further defined in 49 CFR PART 1520.

DBE/SWaM Plan means the plan required to be developed by the Concessionaire that defines the Concessionaire's approach to meet the DBE/SWaM participation goal for the Construction Period and Operating Period, as described in more detail in the Technical Requirements.

Debt Service Coverage Ratio (DSCR) will have the meaning given to it in Section C8.9.1.d of Attachment C.

Department means the Virginia Department of Transportation.

Department Default is defined in Section 19.03 of the Agreement.

Department Project Enhancements means any extensions of, additions to, or major modifications of the Project undertaken by the Department pursuant to Section 12.02 of the Agreement, except as part of maintenance, repair, reconstruction, rehabilitation, restoration or replacement of any improvements and assets.

Design-Build Contract means the Design-Build Contract to be entered into between the Concessionaire and the Design-Build Contractor for the Work, as it may be amended or supplemented.

Design-Build Contractor means the entity selected by the Offeror to act as the Design-Build Contractor pursuant to the Design-Build Contract.

Design-Build Quality Management Plan means the Quality Management System Plan with respect to the Design-Build Work.

Design-Build Quality Management means the quality management processes, policies and procedures with respect to designing the Project.

Design-Build Work means the services provided by the Design-Build Contractor for the construction of the Project.

Detailed Proposal Security is defined in Section 4.12 of the Instructions.

Detailed Proposal means the proposal submitted by an Offeror in response to the RFDP.

Development Contract means any agreement that is entered into by the Department and the Concessionaire from time to time that sets forth the parties' rights and obligations with respect to the design and construction of a Project Enhancement, which will include such terms as may be mutually agreed by the Concessionaire and the Department.

Discount Rate means the discount rate set forth in Section 3.5.7 of the Instructions.

Distributions means:

- a. any distribution, dividend or other payment, monetary or in-kind, made by the Concessionaire to any Equity Members, including from the proceeds of any Refinancing, on account of equity investment in the Concessionaire;
- b. any payment by the Concessionaire to an Affiliate other than pursuant to an Affiliate Contract to which the Department has consented in accordance with Section 24.02 (i) of the Agreement; or
- c. the early release of any contingent funding liabilities to any Equity Member.

Electronic Toll Collection Agreement means the agreement to be entered into between the Concessionaire and the Department with respect to electronic toll collection in substantially the form attached as Exhibit H to the Agreement.

Environmental Management Plan means the plan developed by the Concessionaire that sets forth the Concessionaire’s approach to environmental management, as described in more detail in the Technical Requirements.

Equity Internal Rate of Return (Equity IRR) means the nominal rate of return at the Concessionaire level to the Committed Investment projected in the Base Case Financial Model over the full Term.

Equity Member means any Person with a direct equity interest in Concessionaire.

Escrow Agent means the entity identified as the Escrow Agent in the Escrow Agreement.

Escrow Agreement means the agreement to be entered into among the Concessionaire, the Department and the Escrow Agent with respect to the storage of certain escrow pricing documents, in substantially the form attached as Exhibit E to the Agreement.

Escrow Documents means the documents required to be placed into escrow in accordance with the Comprehensive Agreement and the Escrow Agreement.

ETC Services means services in respect of electronic toll collection, as more particularly set forth in the Electronic Toll Collection Agreement.

E-ZPass means an electronic toll collection system used in the State and as part of the “E-ZPass Interagency Group”.

Executive Summary is described in Section B1 of Attachment B and Section C1 of Attachment C.

Federal means of or relating to the central government of the United States of America.

Federal Requirements means the provisions required to be part of Federal-aid construction contracts, including the provisions set forth in Exhibit Q to the Comprehensive Agreement.

Final Acceptance means the occurrence of all the events and satisfaction of all the conditions with respect to the Work as set forth in Section 8.09(b) of the Agreement.

Final Acceptance Certificate means the certificate issued by the Department pursuant to Section 8.09(c) of the Agreement.

Final Acceptance Date means the date on which Final Acceptance is achieved, as indicated on the Final Acceptance Certificate.

Final Environmental Impact Study means the Final Environmental Impact Study approved by FHWA on June 6, 2008.

Financial Close Deadline Date means the date which is 60 days after the Agreement Date. For the purposes of their Financial Proposals, Offerors will assume that the Financial Close Deadline Date will be May 25, 2012.

Financial Model Audit Letter means an audit letter from an independent, nationally recognized auditor acceptable to the Department that confirms the logic and integrity of the Base Case Financial Model (including the model reference number) and that this logic is materially consistent with the Comprehensive Agreement.

Financial Plan means the proposed financial plan for the Project as set forth in the memorandum described in Section C8.9 of Attachment C.

Financial Proposal means the portion of a Detailed Proposal described in Attachment C.

Financial Proposal Due Date means the date for submission of the Financial Proposals as set forth in Section 2.3 of the Instructions.

Financing Assignment means a pledge, hypothecation, assignment, or other security instrument, including the Initial Project Financing Agreements, pursuant to which the Concessionaire's Interest is pledged, hypothecated or assigned as security for any Concessionaire Debt in accordance with Section 7.03(a) of the Agreement.

Fiscal Year means a period of 12 months that commences on July 1 of each calendar year and ends on the next ensuing June 30.

General Assembly means the General Assembly of the State.

Good Industry Practice means the exercise of the degree of skill, diligence, prudence and foresight which would reasonably and ordinarily be expected from a prudent, skilled and experienced concessionaire, contractor or Consultant engaging in the same kind of undertaking as the Project under the same circumstances and conditions as the Project, seeking in good faith to comply with its contractual obligations, complying with all Laws and Governmental Approvals; *provided*, that neither the compliance with a minimum requirement set forth in any specific standard set forth in the Agreement, nor achievement of a lowest cost solution, will be deemed to either excuse compliance with any more stringent standard set forth in the Agreement or comply with the general standards set forth in the Agreement.

Governmental 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 the Agreement or a Development Contract.

Governmental Authority means any court, Federal, State, or local government, department, commission, board, bureau, agency or other regulatory or governmental authority.

Gross Revenues means the gross revenues of the Project, as more particularly described in the Comprehensive Agreement.

Guaranteed Substantial Completion Date is defined in Section 3.4.2 of the Instructions, as may be extended in accordance with the terms of the Agreement.

Handback Requirements mean the terms, conditions, requirements and procedures governing the condition in which the Concessionaire is to deliver the Project to the Department upon expiration or termination of the Agreement, as set forth in the Technical Requirements.

Health, Safety and Security Plan means the plan developed by the Concessionaire that defines the health, safety and security activities required during the design and construction of the Project, as described in more detail in the Technical Requirements.

Independent Engineer means the independent engineering consultant retained by the Concessionaire in accordance with an Independent Engineer Agreement.

Independent Engineer Agreement means the Project Agreement by that name to be entered into between the Department, the Concessionaire, the Collateral Agent and the Independent Engineer with respect to the Project, together with any amendments and supplements thereto, which will be in substantially the form attached as Exhibit D of the Agreement.

Initial Equity IRR means the Equity IRR as of the Financial Proposal Due Date.

Initial Project Financing Agreements means the agreements entered into by the Concessionaire on or about the Financial Close Date that evidence Concessionaire Debt, in each case in the form agreed between the parties on or before the Agreement Date.

Initial Toll Rates means the toll rates set forth in the schedule provided by the Offeror and set forth in the Initial Toll Rates Form (Form 8-B, Attachment E).

Instructions means the Instructions to Offerors, RFDP Part 1.

Law means all laws, treaties, ordinances, judgments, Federal Requirements, decrees, injunctions, writs and orders of any Governmental Authority, and all rules, regulations, orders, formal interpretations of any Governmental Authority having jurisdiction over construction of the Project on the Project Right of Way, performance of the Work, or operation of the Project, or the health, safety or environmental condition of the Project or the Project Right of Way, as the same may be in effect from time to time. Laws include the Code of Virginia and the Uniform Act

Lenders means any provider of senior debt finance to the Concessionaire.

Life Cycle Maintenance Plan means the plan produced annually by the Concessionaire identifying Major Maintenance and Handback Requirements needs on a rolling 5-year basis, the estimated costs and timing of those needs and such other information as may be reasonably requested by the Department, as described in Section 9.03(c) of the Agreement and the Technical Requirements.

Loan Life Coverage Ratio (LLCR) is defined in Section C8.9.1.f of Attachment C.

Maintenance Quality Management means the quality management processes, policies and procedures with respect to maintaining the Project.

Major Maintenance means maintenance, repair, renewal, reconstruction or replacement of any portion or component of the Project, as applicable, of a type which is not normally included as Ordinary Maintenance.

Major Participants means (a) the Equity Members and (b) the Offeror's proposed Design-Build Contractor, proposed O&M Contractor, and team members proposed to have primary responsibility for performance of design, construction and project management services.

Major Rating Agencies means Standard & Poor's Rating Services, a division of The McGraw-Hill Companies, Inc., Moody's Investors Service, Inc., and Fitch Investors Service, Inc.

Modified Candidate Build Alternative 1 (Modified CBA 1) means the preferred alignment for the Project as determined by the NEPA process and approved by the CTB.

Monthly Progress Reports means those reports to be prepared by the Concessionaire or its contractors that are required pursuant to the Agreement for monthly delivery to the Department Representative that reflect the status of and information related to the development and operation of the Project.

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.

Net Present Value (NPV) means the sum of the present value of a stream of future cash flows.

O&M Expenditure means projected costs of the Project during the Operating Period, as identified in the Base Case Financial Model.

O&M Quality Management Plan means the Quality Management System Plan with respect to the O&M Work.

O&M Work means any and all operation, management, administration, maintenance, repair, preservation, modification, reconstruction, rehabilitation, restoration, renewal and replacement of the Project during the Operating Period, including Major Maintenance and potential Project Enhancements.

Offerors is defined in Section 1.3 of the Instructions.

Offeror's Alternative Conceptual Design means the drawings depicting the layout of the western terminus of the U.S. Route 460 Corridor Improvements Project which provides an alternative design concept prepared by the Offeror as set forth in Section B6 of Attachment B.

Offeror's Schematic Design means the drawings depicting the layout of the U.S. Route 460 Corridor Improvements Project which are consistent with the Base Case and prepared by the Offeror as set forth in Section B5 of Attachment B and which are submitted with the Detailed Proposal.

Operating Period means the period commencing on the Service Commencement Date through the end of the Term.

Operations Quality Management means the quality management processes, policies and procedures with respect to operating the Project.

Ordinary Maintenance means maintenance actions taken place to preserve the current condition of assets that are routine in nature and may be performed and funded annually. The actions may include pot hole repair, mowing, shoulder repair, guardrail repair, removal of roadside hazards, etc.

Outline Project Development Plans means the outline project development plans submitted by the Concessionaire as part of its Detailed Proposal.

PABs means private activity bonds allocated and issued pursuant to Section 11143 of Title XI of SAFETEA-LU, which amended Section 142 of the Internal Revenue Code to add highway and freight transfer facilities to the types of privately developed and operated projects for which private activity bonds may be issued.

PABs Issuer is defined in Section 3.5.10 of the Instructions.

Performance Requirement means a performance requirement with respect to the O&M Work, as set forth in the Performance Requirements Baseline Table for each Asset.

Performance Requirements Baseline Table means the table included in the Technical Requirements, as may be updated pursuant to the Agreement, which sets forth the Performance Requirements for each Asset.

Performance Security means the letter(s) of credit securing the Concessionaire's performance of the Work during the Construction Period, as more particularly set forth in Section 17.08 of the Agreement.

Person means any individual (including, the heirs, beneficiaries, executors, legal representatives or administrators thereof), corporation, partnership, joint venture, trust, limited liability company, limited partnership, joint stock company, unincorporated association or other entity or a Governmental Authority.

Planned Refinancing means a Refinancing which is planned by the Concessionaire and included in the Base Case Financial Model.

Point of Contact (POC) is defined in Section 2.4.1 of the Instructions.

Preliminary Reference Design means the drawings included in the Project Reference Documents entitled “preliminary alignment study” sheets 1-15 dated September, 2008.

Project means the new PPTA transportation facility to be delivered by the Concessionaire under the Comprehensive Agreement and all associated work products and activities necessary for its design, construction, finance, maintenance and operation. The Project will extend over the 55 miles from the existing U.S. Route 460 and I-295 interchange in Prince George County to a new interchange with U.S. Route 58 along the Suffolk Bypass. The Project is to be based on the Successful Offeror's Schematic Design as included in Exhibit C-1 to the Comprehensive Agreement.

Project Agreements means the Comprehensive Agreement, including all exhibits of the Agreement, and all other agreements identified in Section 3.02 of the Agreement, as those agreements may be amended, superseded or replaced during the Term.

Project Development Plans means the project development plans developed by the Concessionaire pursuant to the Technical Requirements

Project Enhancements means, collectively, Concessionaire Project Enhancements and Department Project Enhancements.

Project Financing Agreements means the Initial Project Financing Agreements, as amended, supplemented or replaced from time to time, but only to the extent that such amendments, supplements or replacements have been approved by the Department in accordance with the terms of this Agreement.

Project Internal Rate of Return (Project IRR) means the discount rate that, when applied to Project cash flows to and from Concessionaire Debt and Committed Investment (including any fees related thereto), results in a zero net present value.

Project Life Coverage Ratio (PLCR) is defined in Section C8.9.1.e of Attachment C.

Project Reference Documents means the collection of information, data, documents and other materials that the Department has provided to the Offeror in the data room for general or reference information only.

Project Right of Way means any real property (which term is inclusive of all estates and interests in real property, including slope easements), which is:

- a. necessary for performance of the Work, including temporary and permanent easements, and ownership and operation of the Ultimate Configuration;
- b. shown on the approved ROW Acquisition and Relocation Plan; and

- c. within the lines established by the NEPA Documents to establish the outside limits of the Ultimate Configuration, as such limits may be adjusted pursuant to the Agreement.

Project Schedule means the Proposed Initial Baseline Schedule, Baseline Schedule, Project Schedule Updates or the As-Built Schedule, as applicable.

Project Schedule Update means the schedule attached to the Monthly Progress Report submitted to the Department, as described in more detail in the Technical Requirements.

Proposal Payment means a payment from the Department to an unsuccessful Offeror in accordance with Section 4.6 of the Instructions and the Proposal Payment Form (Form 9, Attachment E).

Proposed Initial Baseline Schedule means the schedule prepared by the Offeror and included in the Detailed Proposal in accordance with Section B4 of Attachment B.

Public Funds Amount means the payments the Department will make to the Concessionaire, subject to the terms of the Comprehensive Agreement.

Public Information and Communications Plan means the plan developed by the Concessionaire setting forth the Concessionaire's approach to communicating with road users and other stakeholders affected by the development and operation of the Project, as described in more detail in the Technical Requirements.

Quality Management System Plan (QMSP) means the plan developed by the Concessionaire that defines the quality management systems during the design, construction and operations and maintenance phases of the Project, as described in more detail in the Technical Requirements.

QA/QC means quality assurance/quality control in accordance with the Standard Documents, including VDOT's Minimum Quality Control & Quality Assurance Requirements for Design-Build & Public-Private Transportation Act Projects August 2008.

Refinancing means:

- a. any amendment, variation, novation or supplement of any Concessionaire Debt, Project Financing Agreement or Financing Assignment;
- b. the issuance by the Concessionaire of any Concessionaire Debt other than the Concessionaire Debt incurred pursuant to the Project Financing Agreements, secured or unsecured, including issuance of any reimbursement agreement respecting a letter of credit;
- c. the disposition of any rights or interests in, or the creation of any rights of participation in respect of, any Concessionaire Debt, Project Financing Agreement or Financing Assignment or the creation or granting of any other form of benefit or interest in any Concessionaire Debt, Project Financing Agreement or

Financing Assignment, or the revenues, assets or other contracts of the Concessionaire whether by way of security or otherwise; or

- d. any other arrangement put in place by Concessionaire or another person which has an effect similar to clause (a), (b) or (c) above;

excluding, however, any Planned Refinancing, capitalization of interest or accretion of principal or other committed increases on any Concessionaire Debt incurred or committed on or prior to the Agreement Date.

Refinancing Gain means the calculation as set forth in Article 3 of Exhibit G to the Comprehensive Agreement.

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, under Law, responsible or other representative of such Person and any professional advisor, consultant or engineer designated by such Person as its “Representative.”

Request for Detailed Proposals (RFDP) means the Department’s request for Detailed Proposals for the Project, issued under Phase Four of the PPTA procurement process.

Residual Life means the calculated duration that any Asset of the Project, subject to the type of routine maintenance of the Asset which is normally included as an annually recurring cost in highway maintenance and repair budgets, will continue to comply with any applicable Performance Requirement or standard after the end of the Term, before Major Maintenance is required, determined through the application of the Residual Life Methodology and Residual Life inspections.

Residual Life Methodology means the evaluation methodology by which the Residual Life of any Asset of the Project will be calculated. It contains the method by which any necessary Major Maintenance will be identified to ensure that Residual Life Requirements will be met at the end of the Term.

Residual Life Requirements means the requirements set forth in the Technical Requirements with respect to the condition of an Asset at the end of the Term.

RFDP Documents is defined in Section 2.5.1 of the Instructions.

Right of Way Acquisition and Relocation Plan means the plan developed by the Concessionaire that defines the approach to acquisition of the Project ROW, as described in more detail in the Technical Requirements.

ROW Acquisition Costs means all costs required for the acquisition of the Project ROW sufficient for the Ultimate Configuration, including closing costs and relocation expenses, but excluding any and all expenses incurred in connection with the following (all of which will be included within the fixed price of the Design-Build Contract): (a) the remediation of Hazardous Substances or Geotechnical Conditions found on property acquired by the Design-Build

Contractor or the Concessionaire, (b) the acquisition of right of way or other property interests outside of the Project ROW; (c) acquisition and property management services; (d) environmental and other site assessments or (e) Concessionaire Allocable Costs.

ROW Baseline Cost means the baseline estimate of ROW Acquisition Costs as set forth in Section 3.5.13 of the Instructions.

Schedule of Values means the schedule of values included in each Detailed Proposal, in Schedule of Values (Form 8-E, Attachment E).

Service Commencement means the opening of the Project for normal and continuous operations and use by the traveling public, after occurrence of all the events and satisfaction of all the conditions therefor set forth in Section 9.01(a) of the Agreement.

Service Commencement Date means the date on which Service Commencement is achieved.

Standard Documents means the set of standard documents and specifications set forth in the Technical Requirements.

State means the Commonwealth of Virginia.

Submittal Letter or Financial Proposal Submittal Letter means the form of letter set forth in Form 1-A, Attachment E (Financial Proposal Submittal Letter) of the Request for Detailed Proposals.

Substantial Completion means the satisfaction of the criteria for completion of construction of the Project set forth in Section 8.08 of the Agreement, as and when confirmed by the Department's issuance of the Substantial Completion Certificate.

Substantial Completion Date means the date on which Substantial Completion is achieved, as indicated in the Substantial Completion Certificate.

Substantial Completion Certificate means a letter or certificate issued by the Department in accordance with Section 8.08(e) of the Agreement evidencing the Department's determination that Substantial Completion has occurred.

Successful Offeror means the individual, company, firm, partnership, corporation, association or joint venture that submitted the apparent Best Value Proposal, as determined in accordance with Section 6 of the Instructions and as may be replaced in accordance with Section 6.6.4 of the Instructions.

Technical Proposal means the portion of the Detailed Proposal described in Attachment B.

Technical Proposal Cover Letter means the form of letter set forth in Form 1-B, Attachment E (Technical Proposal Cover Letter) of the Request for Detailed Proposals.

Technical Proposal Due Date means the date for submission of the Technical Proposals as set forth in Section 2.3 of the Instructions.

Technical Requirements is defined in Section 2.5.1 of the Instructions.

Term means the period commencing on the Agreement Date through the first to occur of (a) the 99th anniversary of the Agreement Date and (b) the effective date of termination of the Agreement pursuant to Article 20 of the Agreement.

TIFIA means the Transportation Infrastructure Finance and Innovation Act, 23 U.S.C. §§ 601 *et seq.*, as amended and as it may be amended from time to time.

Toll Segment means each portion of the Project identified on the Initial Toll Rates Form as a Toll Segment.

Toll Revenues means the toll revenues generated by the Project.

Transportation Management Plan (TMP) means a plan setting forth a program for traffic management and related activities to be implemented by the Concessionaire in connection with the construction of the Project or any Project Enhancement, or any work undertaken pursuant to any Department Change or approved Concessionaire requests for Deviations.

Traffic Management System (TMS) means any application of computer, electronics and/or telecommunications equipment and software and supporting fixtures and equipment whose function is to provide information, data and/or services to the traveling public or the Department or to manage and control traffic, and any future systems or services conceived or developed for the same or similar purposes.

Traffic Forecast means the traffic and revenue forecast and model described in Section C10.3 of Attachment C.

Truck Classification Schedule means the truck classification schedule described in Initial Toll Rates Form (Form 8-B, Attachment E).

Ultimate Configuration means a configuration of the Project, including a six-lane divided limited access highway and all of the diamond interchanges, described in the “Preferred Alternative” in Section 2.9 of the Final Environmental Impact Statement.

Uniform Act means the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970.

Utilities Plan means the plan developed by the Concessionaire that defines the Utility coordination activities during the design and construction of the Project, as described in more detail in the Technical Requirements.

Utility means a public, private, cooperative, municipal and/or government line, facility or system used for the carriage, transmission and/or distribution of cable television, electric power, telephone, data or other telecommunications, telegraph, water, gas, oil, petroleum products, steam, chemicals, sewage, storm water not connected with the highway drainage and similar systems that directly or indirectly serve the public. The term “Utility” specifically excludes (a)

storm water lines connected with the highway drainage, and (b) traffic signals, street lights, and electrical systems for Project roadways.

Utility Relocation means the removal, relocation and/or protection in place (including provision of temporary services as necessary) of any and all Utility facilities that have to be removed, relocated and/or protected in place in order to permit construction of the Ultimate Configuration.

Work means collectively, the finance, development, planning, design, construction, rehabilitation, operations, repair and maintenance and any other services identified in the Agreement to be performed by the Concessionaire during the Term.

Work Product means all the data, information, documentation and other work product produced, prepared, obtained or deliverable by or on behalf of the Concessionaire or the Department, as applicable, for the Project or the Project Right of Way, including but not limited to drawings, plans and specifications, record and as-built plans and specifications, engineering documents, geotechnical soils and soil boring data, analyses, reports and records, property acquisition files, agreements and documents (including records of payment and related correspondence, title policies, parcel diaries and all construction documents relating to the Work or Project Enhancements), engineers' and inspectors' diaries and reports, Utility Relocation plans and agreements, right of way record maps and surveys, traffic and revenue studies, and other feasibility data, analyses, studies and reports, correspondence and memoranda relevant to design or construction decisions, contracting plans, air quality monitoring data, environmental reviews, studies and reports, mitigation studies and reports, data, assessments, studies and reports regarding Hazardous Substance investigations, testings, borings, monitoring and analyses, manifests regarding handling, storage or transportation of Hazardous Substances, correspondence and agreements relating to Governmental Approvals, change orders, final quantities, pile driving records, records of accidents and traffic management, field test records and reports, concrete pour records, surfacing depth check records, grade and alignment books, cross-section notes, drainage notes, photographs, false work and form plans, records of construction materials, ETTM Equipment and ETTM Facilities records and reports, and any other documents which can be reasonably described as technical or engineering documents. Work Product expressly excludes, however, documents and information which the Concessionaire and the Department mutually agree in writing, or which a court determines, to be exempted or protected from public disclosure under Section 18.02 of the Agreement and which is not conceived or first reduced to practice for the Project Purposes, such as proprietary financial and pricing information of the Concessionaire.

Table A.1 Base Case Requirements

Description	Base Case
Length of roadway	Approximately 55 centerline miles
Class of roadway	Four-lane divided, limited access highway Rural Principal Arterial freeway standards (GS-1)
Eastern terminus with U.S. Route 58 along the Suffolk Bypass	Refer to Part 2 Section 3.7.1.B
Western terminus with the existing U.S. Route 460	Refer to Part 2 Sections 3.7.1.C
Interchanges	
1. Route 156 in Prince George County	Refer to Part 2 Section 3.7.1.E
2. Route 625 south of Disputanta	Refer to Part 2 Section 3.7.1.E
3. Route 602 in Sussex County	Refer to Part 2 Section 3.7.1.E
4. Route 40 south of Waverly	Refer to Part 2 Section 3.7.1.E
5. Route 620 south of Wakefield	Refer to Part 2 Section 3.7.1.E
6. Route 616 south of Ivor	Refer to Part 2 Section 3.7.1.E
7. Route 258 in Windsor	Refer to Part 2 Section 3.7.1.E
Design Speed	70 mph main line
Design vehicle for turning movements	WB-65
Limitations on alignment horizontal deviation	To be entirely within Modified CBA-1 and further delineated by the lines marked “NEPA Boundary” on the Preliminary Reference Design
Provision in design for Ultimate Configuration	To be designed to accommodate upgrade to an Ultimate Configuration of three lanes in each direction without undue disruption to users or excessive re-work of existing build
Project Right of Way Acquisition for Ultimate Configuration	Sufficient Project Right of Way to be acquired to accommodate the Ultimate Configuration
Compliance with Technical Requirements	All in Compliance with Technical Requirements

**VIRGINIA DEPARTMENT OF TRANSPORTATION
U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT B

TECHNICAL PROPOSAL SUBMITTAL REQUIREMENTS

B1 EXECUTIVE SUMMARY

The Offeror will provide an Executive Summary, not exceeding five pages, which will briefly describe all significant aspects of the Technical Proposal and the benefits of the Offeror's proposal relative to the Project.

Information included in the Executive Summary will not be part of the evaluation.

B2 COVER LETTER

The Offeror will provide a Technical Proposal Cover Letter (Form 1-B, Attachment E) on the Offeror's letterhead signed by an authorized representative of the Offeror's team.

B3 OUTLINE PROJECT DEVELOPMENT PLANS

The Offeror will submit Outline Project Development Plans as described below, in form suitable for incorporation into the Comprehensive Agreement as an exhibit. Each Outline Project Development Plan will include the Offeror's approach to address the information defined in the Technical Requirements in accordance with Attachment 1.3 of the Technical Requirements, in addition to and with emphasis on the information specified herein. Attachment 1.3 of the Technical Requirements includes a submittal schedule which identifies the expectations for review and approval and submission of final Project Development Plans. These outline plans should provide information to demonstrate how the Offeror provides value to the Department. The outline plans should not restate the Department's standards and specifications.

B3.1 Outline Concessionaire Management Plan

The Offeror will submit an outline Concessionaire Management Plan that:

- a. includes an organizational chart showing the structure of Offeror's Project management organization, including design, construction, operations, maintenance, and quality elements; and sub-organizations to include key personnel;
- b. describes how team members will work together to achieve a successful outcome;

- c. describes (a) the allocation of roles, responsibilities and inter-relationships, the work by each member of the Offeror's management team and the work by each sub-organization including subcontractors and suppliers; (b) interfaces with the Department, the Independent Engineer, third parties and other Governmental Authorities; and (c) the Offeror's plan to coordinate Project activities with other agencies, localities, and the public;
- d. describes the methodology by which the Offeror will plan and control Project development, construction, and operations activities to meet the contractual completion date(s), including any methodologies that could accelerate construction completion;
- e. identifies the team decision making process including inter-entity dispute resolution;
- f. describes the approach to preparation, control and update of the Project Schedule to include the approach for integrating subcontract activities into the schedule and the reporting system; describes the approach to schedule management, highlighting major milestones and who is responsible for reporting on the schedule and to whom; and describes the approach to identifying and correcting delays to the Baseline Schedule;
- g. describes the cost control measures taking into account a work breakdown structure that includes cost control and schedule management systems and coordination between schedule and payment obligations;
- h. identifies and describes the approach to assess, manage and mitigate all Project risks (regardless of their allocation under the Comprehensive Agreement); identifies significant risk categories with descriptions of potential consequences; and describes the procedures and tools for risk sensitivity analysis;
- i. provides a brief overview of document management procedures, describing efficient and effective management of documents including collaborative features that enable and assist the Department's retrieval, review and audit processes; and
- j. describes the procedures by which the Concessionaire will integrate and manage all other aspects of the Project and Project Development Plans.

B3.2 Outline Quality Management System Plans

The Offeror will submit outline Quality Management System Plans that describe:

- a. the management procedures to ensure independence of quality processes and line management from design, construction, operation and maintenance production processes; and

- b. the system, policies, and procedures to deliver quality performance for all aspects of the Project throughout the Construction Period and the Operating Period resulting in a final product that meets the goals for the Project.

B3.2.1 Outline Design-Build Quality Management Plan

The Offeror will submit an outline Design-Build Quality Management Plan containing the following:

- a. Offeror's approach to Design-Build Quality Management, to include its:
 - i. internal process of design reviews;
 - ii. quality assurance and quality control functions;
 - iii. approach to reporting relationships and responsibilities;
 - iv. understanding of and compliance with the Department and Federal oversight procedures;
 - v. plan for documentation of quality management; and
 - vi. proposed process to address and obtain approval of design deficiencies or exceptions; and
- b. Offeror's approach to Construction Quality Management, to include its:
 - i. approach to acceptance testing and inspection;
 - ii. approach to interfacing with the Independent Engineer;
 - iii. proposed process for identification and correction of construction deficiencies and non-compliances;
 - iv. understanding of and compliance with the Department and Federal design standards and oversight procedures;
 - v. integration of Construction Quality Management with Design-Build Quality Management; and
 - vi. approach to quality assurance and quality control functions in general, and how these functions will be managed independently of one another.

B3.2.2 Outline O&M Quality Management Plan

The Offeror will submit an outline O&M Quality Management Plan containing the following:

- a. Offeror's approach to Operations Quality Management to include its:

- i. internal processes for incident reports, noncompliance reports, and traffic reports;
 - ii. methods for documenting and correcting noncompliance; and
 - iii. proposed approach to auditing and demonstrating continuous improvement in meeting the Performance Requirements; and
- b. Offeror's approach to Maintenance Quality Management to include its:
- i. description of quality assurance/quality control functions and non-compliance reports;
 - ii. integration of quality process into maintenance inspections.

B3.3 Outline Environmental Management Plan

The Offeror will submit an outline Environmental Management Plan that:

- a. identifies the environmental requirements, anticipated Governmental Approvals and mitigation;
- b. describes the methodology and Offeror's approach to implementing environmental commitments, obtaining Governmental Approvals, and compensatory mitigation; and
- c. identifies and describes Offeror's approach to managing key environmental risks.

B3.4 Outline Right of Way Acquisition and Relocation Plan

The Offeror will submit an outline Right of Way Acquisition and Relocation Plan that:

- a. describes Offeror's organizational structure and process for the acquisition of Project Right of Way and any relocation assistance program in accordance with state and Federal requirements;
- b. describes the process to be adopted to minimize the impacts of the Project to residences, businesses, and private property during Project development; and
- c. describes the approach for phasing Project Right of Way acquisition with design and construction and how the Offeror will mitigate risks if parcels are not timely acquired.

B3.5 Outline Utilities Plan

The Offeror will submit an outline Utilities Plan that:

- a. Identifies any significant issues contemplated including plans for advanced Utility Relocations and Project-specific protocols.

- b. Describes the process that will be adopted to minimize the impacts of the Project to residences, businesses, and private property during Project development.

B3.6 Outline Transportation Management Plan

The Offeror will submit an outline Transportation Management Plan containing a narrative description of the Offeror's approach to traffic impact analysis, crash analysis and temporary traffic control concepts for the Construction Period, with particular emphasis on how access will be maintained to local businesses and residential areas and any anticipated detours that may be required.

B3.7 Outline Public Information and Communications Plan

The Offeror will submit an outline Public Information and Communications Plan containing a narrative describing:

- a. how the Offeror will address public involvement and relations during the Project, including what it envisions as potential challenges in this area and what approach the Offeror recommends to be taken to solve these challenges, including how the Offeror will coordinate and work through the Department to address these challenges;
- b. how the Offeror utilizes previous experience on similar projects to address challenges for this Project;
- c. the proposed approach to communication, coordination and involvement with the public, localities, and other stakeholders over the life of the Project development and concession Term. While the Department will lead the public involvement process, the Public Information and Communications Plan should include the approach to public involvement to include public hearings and meetings, public participation and information for each phase of the Project, including emergency evacuations and how the Concessionaire will coordinate and work with the Department on these key issues; and
- d. the proposed approach to coordination of activities with Federal, state and local agencies, including the Virginia State Police, local emergency response providers, utility owners, the Department and local municipal and county governments.

B3.8 Outline DBE/SWaM Plan

The Offeror will submit an outline DBE/SWaM Plan that:

- a. describes the concepts to utilize and train DBEs and SWaMs including (a) standard subcontracting methods to manage subcontractor performance; (b) areas of work where DBEs and SWaMs may be utilized; and (c) training program to be used to educate and train employees;

- b. describes the approach to mentor and train DBEs and SWaMs including (a) eligibility criteria for entry to program; (b) program goals for mentoring on public private partnerships, design, construction, operations and maintenance; and (c) mentoring program for educational workshops;
- c. identifies criteria to be used for evaluating effectiveness of meeting DBE/SWaM goals;
- d. describes the individual job training program to assist with developing minorities in trades; and
- e. describes the methodologies to meet DBE/SWaM goals for the Construction Period and the Operating Period and approach to coordinating with the Department.

B3.9 Outline Health, Safety and Security Plan

The Offeror will submit an outline Health, Safety and Security Plan discussing the proposed approach to issues potentially affecting the health, safety and security of workers, the public and property during the Construction Period and the Operating Period including, but not limited to the following:

- a. Identification of worksite hazards and selection and use of appropriate protective or mitigation measures.
- b. Worker safety and health training programs.
- c. Construction worksite inspections.
- d. Management oversight.

B3.10 Outline Operations & Maintenance (O&M) Plan

The Offeror will submit an outline O&M Plan describing its proposed approach to:

- a. O&M of the facility during the Operating Period. This information should include the number, type and locations of capital asset facilities (non-roadway) and the organizational structure for operations to include the type and number of positions to be used, and specific responsibilities.
- b. O&M in the transition period after the Service Commencement Date.
- c. Detection and responses to emergencies, emergency services, weather conditions, accidents and incidents.
- d. Commitment to, and strategy for, change management and continuous improvement for the Project during the Operating Period to include traffic management systems, safety and incident management, addressing community

- expectations, technology improvements and upgrades, and other transportation infrastructure.
- e. Based on its proposed schematic design, the proposed approach to provide services to users of the facility during normal operations, as well as during incidents, emergencies, or mass evacuations.
 - f. Controlling access to the Project during a declared evacuation condition and the planned coordination of communication and traveler information as part of the state evacuation planning efforts.
 - g. Proposed responsibilities of the Concessionaire and the Department related to the tolling operations including marketing, toll violation enforcement, litigation and delinquent account collections, security, daily toll collection operations, data collection and management performance reporting.
 - h. Integrating the Project into the existing public highway system to include tolling, TMS, evacuation and emergency services, maintenance activities, and other functions as appropriate.
 - i. Strategy for maintenance and coordination with Project operations, including performing Ordinary Maintenance and Major Maintenance activities and meeting all performance measures, and coordination with the Department and other stakeholders. This includes all roadways, bridges, structures, capital assets and tolling facilities as included Offeror's Schematic Design.
 - j. Any variable tolling and/or other innovative tolling approaches proposed, along with the assumptions and methodology the Offeror's plan to implement; subject to the principles of toll escalation limitations described in the Offeror's Detailed Proposal and the Comprehensive Agreement.
 - k. A description of any intended program(s) to encourage increased ETC/E-ZPass participation.
 - l. Any policies the Offeror intends to employ in relation to permanent or temporary tolling discounts that may be offered.

B3.11 Outline Life Cycle Maintenance Plan

The Offeror will submit an outline Life Cycle Maintenance Plan to include the following:

- a. the Offeror's life cycle cost approach, including approach to material durability and maximizing service life of each Asset;
- b. the Offeror's strategy for replacement cycle and Residual Life management including rationale for Major Maintenance activities; and
- c. the Offeror's approach to Handback Requirements including inspections.

B4 PROPOSED INITIAL BASELINE SCHEDULE

The Offeror will submit the Proposed Initial Baseline Schedule in Primavera P3 format, and will provide an accompanying narrative that depicts the Offeror's overall plan to complete the Project. The Proposed Initial Baseline Schedule will be the basis for the Initial Baseline Schedule to be incorporated into the Comprehensive Agreement as an Exhibit (Initial Baseline Schedule) if the Offeror is the Successful Offeror.

- a. The Proposed Initial Baseline Schedule will show sequence and timing of summary level activities to represent the major phases of work that comprise the Project (e.g., administrative, financial, design, right of way, utility relocation, construction, etc.). The schedule will show work to be performed by all involved entities including, but not limited to, the following information:
 - i. for the Project:
 - A. any required legislative activities;
 - B. project development and public involvement;
 - C. financial activities;
 - D. environmental compliance activities;
 - E. preliminary engineering activities;
 - F. Project Right of Way acquisition activities;
 - G. utility relocation activities;
 - H. construction activities by phase or roadway segment to include major features;
 - I. Guaranteed Substantial Completion Date; and
 - J. Final Acceptance Date; and
 - ii. Operating Period
 - A. Service Commencement Date;
 - B. Major Maintenance events;
 - C. major handback-related events; and
 - D. end of Operating Period.
- b. The schedule will include dates where actions by the Department will be expected. In addition to the full logic based critical path schedule containing all

of the components referred to above, the Offeror will submit a summary schedule limited to 30-50 lines. The Proposed Initial Baseline Schedule will be submitted in 11x17 size printouts and a CD containing the electronic schedule file.

- c. The Proposed Initial Baseline Schedule narrative report will describe the Concessionaire's overall plan to complete the Project. It will include, at a minimum, the following information:
 - i. explanation of the overall plan to complete each major phase of the Project;
 - ii. key milestone dates to indicate progress of the work;
 - iii. identification of the controlling items of work;
 - iv. Identification of work to be completed each construction season; and
 - v. A description of potential challenges (e.g., right of way, utility, permitting issues, hazardous material disposal, etc.) and a proposed plan to mitigate any potential impacts.
- d. The Proposed Initial Baseline Schedule will clearly set forth the date by which the Concessionaire has committed to reach Substantial Completion (which date will be no later than five years after execution of the Comprehensive Agreement) ("Guaranteed Substantial Completion Date"). This date will be binding on the Concessionaire and will be incorporated into the Comprehensive Agreement.

B5 OFFEROR'S SCHEMATIC DESIGN

The Offeror will submit the following information related to the Offeror's Schematic Design. This submission will be attached to the Comprehensive Agreement as an Exhibit (Schematic Design) if the Offeror is the Successful Offeror.

B5.1 General

- a. Narrative describing the advantages and risks of the Offeror's Schematic Design, including any required design exceptions or design waivers and any additional impacts.
- b. Offeror's Schematic Design at 1 inch = 300 feet.
- c. Identification of any components of the Offeror's Schematic Design that impact areas outside of the Modified CBA 1 as delineated by the lines marked "NEPA boundary" on the Preliminary Reference Design, and if so, how this would affect Project risk and schedule.
- d. Identification of any horizontal and vertical design constraints (e.g., 100-year flood plain elevations) that were used in the development of the Offeror's Schematic Design.

- e. The Offeror's Schematic Design will (a) comply with the Comprehensive Agreement and the Technical Requirements; (b) comply with the environmental approval contained in the Record of Decision dated September 12, 2008; and (c) be entirely within the Modified CBA-1 as delineated by the lines marked "NEPA boundary" on the Preliminary Reference Design.

B5.2 Roadway Geometric Design

The Offeror's Schematic Design will include:

- a. general roadway data, functional classifications, and cut/fill limits;
- b. horizontal alignments including curve data, super-elevation and transitions;
- c. directional arrows with number of lanes;
- d. proposed Project Right of Way limits;
- e. vertical alignment, including existing ground, proposed grade line, vertical curve data, proposed grade line and existing ground elevations, superelevation data, and approximate vertical clearances at bridges;
- f. typical section with lanes, shoulder widths, ditch widths, fill and cut slope standards, lane directional arrows, station ranges, and pavement design insets;
- g. crossings for all pipes (no sizes), major structures (box culverts, large pipe culverts), major ditches, storm sewer layouts, potential location for stormwater basins;
- h. all outfalls and required improvements, existing FEMA flood plains (with zones), and any areas where the design could cause problems (potential flooding, potential wetlands, safety issues, etc.); and
- i. title block, legend, scale bar, north arrow, roadway labels, referenced aerial photography, Geographic Information System ("GIS") converted to microstation, and property owner information in plan schematics.

B5.3 Extent of Operations and Maintenance

The Offeror will delineate on the Offeror's Schematic Design the physical limits of its responsibility for operations and maintenance during the Operating Period, subject to the Department's obligations set forth in Section 9.07 of the Comprehensive Agreement.

B5.4 Bridges and Surface Structures

The Offeror will provide the following information with respect to bridges, overhead sign structures (including all clear-span, butterfly and cantilever structures) and surface structure

features (including sound walls, cast-in-place retaining walls, mechanically stabilized earth walls and structurally supported embankments) included in the Offeror's Schematic Design:

- a. Provide the location and size (length and width) of each bridge and structure planned for the Project.
- b. Discuss Offeror's approach to the design of each bridge and overhead sign structure and how the design will seek to minimize impacts to surrounding properties.
- c. Identify how the bridge and overhead sign structure designs will meet the requirements for future expansion as set forth in Section 3.9.3 of the Technical Requirements and meet the hydraulic requirements outlined in the Technical Requirements.
- d. Outline conceptual solutions for any complex challenges that are identified. Discuss any significant design or construction issues envisioned for any of these structures and bridges.

B5.5 Bicycle and Pedestrian Accommodations

The Offeror will provide a narrative describing the approach for incorporating the CTB Policy for Integrating Bicycle and Pedestrian Accommodations (included in the Project information) into its design. The approach must be consistent with local and/or regional bicycle plans. If deemed necessary, the Offeror will identify bicycle and pedestrian accommodations on its schematic design.

B5.6 Strategic Compliance Evaluation

The Offeror will identify any revisions to the *Hampton Roads Hurricane Traffic Control Plan*, 2006, that would be required if its proposed Project design is used.

B5.7 Construction Sequencing and Traffic Management

The Offeror will submit the following information concerning construction sequencing and traffic management associated with the Offeror's Schematic Design:

- a. Overall traffic management controls and sequencing approach.
- b. Plan/approach to develop and maintain local connectivity throughout the corridor in accordance with the Technical Requirements. The Offeror will identify how it will coordinate and work with the localities, communities as a whole, and property owners throughout the corridor to implement this approach.

B5.8 Drainage and Utilities Relocations

The Offeror will describe the approach to hydrologic and hydraulic design of the main drainage features that will be needed for the Project, including large culverts and stormwater basins, including assumptions used in its floodplain elevations and design storm elevations.

The Offeror will describe its understanding of which utilities (including, but not limited to, electric, water, gas, cable and railroad facilities) are believed to be in conflict with proposed design features of the Offeror's Schematic Design and will need to be relocated and/or otherwise addressed in the Offeror's design. The Offeror will identify and list all known utilities and railroad facilities and describe Offeror's coordination and relocation plan.

B5.9 Pavement and Subsurface Elements

The Offeror will describe its approach to pavement design, pavement design method, traffic loading and design life including pavement subdrains. If the Offeror intends to exceed the geotechnical investigation requirements outline in Chapter 3 of the Department Manual of Instruction for Materials Division, it will explain the basis and benefits/value of doing so.

B5.10 Tolling System and Traffic Management System (TMS)

The Offeror will submit a toll collection methodology that includes:

- a. a schematic plan showing tolling points and other pertinent information, which will clearly identify the beginning and end of each Toll Segment and be consistent with the Toll Segments identified on the Offeror's Initial Toll Rates Form (Form 8-B, Attachment E);
- b. a description of the plan regarding the electronic tolling collection system. The description will include hardware and software specifications to describe key aspects of the system and its functionality;
- c. a narrative describing the general philosophy for gantry placement and tolling of the facility; and
- d. a description of the TMS for the Project. The information will include:
 - i. a schematic plan and layout showing the locations of TMS equipment, including cameras and traffic monitoring stations and identifying barriers, segments, miles, and ramps; and
 - ii. a description of how the system will be monitored and connected to the Department's area traffic management centers to maintain interoperability for monitoring and control.

B5.11 Capital Asset Facilities

The Offeror will submit a description of buildings and enclosed facilities for the Project. The information will include identification of all proposed buildings, enclosed facilities and associated items, along with a general description of the function of each of the facilities and a description of the proposed approach to minimize the impact that each of the buildings, enclosed facilities and associated items may have on the environment or the surrounding community. This information will also identify any planned safety rest areas and the approximate locations of such facilities. The approximate location of such facilities will be included on the Offeror's Schematic Design.

B6 ALTERNATIVE CONCEPTUAL DESIGN

The Offeror will submit an alternative conceptual design for the western terminus of the Project. The limits of the alternative concept are from Interstate 295 on the west to the proposed interchange at State Route 156 on the east. The Offeror will submit the following information related to the Offeror's Alternative Conceptual Design.

B6.1 General

- a. Narrative describing the advantages and risks of the Offeror's Alternative Conceptual Design including any required design exceptions or design waivers and any additional impacts.
- b. Offeror's Alternative Conceptual Design at 1 inch = 300 feet (see Section B5).
- c. Identification of any components of the Offeror's Alternative Conceptual Design that impact areas outside of the Modified CBA 1 as delineated by the lines marked "NEPA boundary" on the Preliminary Reference Design, and if so, how this would affect Project risk and schedule, including but not limited to the Guaranteed Substantial Completion Date.
- d. Identification of any horizontal and vertical design constraints (e.g., 100 year flood plain elevations) that were used in the development of the Offeror's Alternative Conceptual Design.
- e. The Offeror's Alternative Conceptual Design will comply with the Comprehensive Agreement and the Technical Requirements.
- f. Documentation and narrative explanation describing how the Offeror's Alternative Conceptual Design will accommodate local comprehensive and land use plans, effectively integrate current and projected traffic movements and capacities, and meet the requirements set forth in Section 3 of the Technical Requirements (except for Section 3.7.1, paragraph C, subparagraphs c, g, h and i). Explanation of any proposed modifications to other roadway crossings or interchanges if the Offeror's Alternative Conceptual Design differs from the requirements of Section 3.7.1 of the Technical Requirements.

- g. Provides direct access to Interstate 295 and avoids the area of New Bohemia.

**VIRGINIA DEPARTMENT OF TRANSPORTATION
U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT C

FINANCIAL PROPOSAL SUBMITTAL REQUIREMENTS

C1 EXECUTIVE SUMMARY

The Offeror will provide an Executive Summary, not exceeding five pages, which will briefly describe all significant aspects of the Financial Proposal and the benefits of the Offeror's proposal relative to the Project.

Information included in the Executive Summary will not be part of the evaluation.

**C2 FINANCIAL PROPOSAL SUBMITTAL LETTER; CERTIFICATIONS; AND
CHANGES FROM CONCEPTUAL PROPOSAL**

C2.1 Financial Proposal Submittal Letter

The Offeror will provide a Financial Proposal Submittal Letter (Form 1-A, Attachment E) on the Offeror's letterhead signed by an authorized representative of the Offeror's team, which individual will be the point of contact for all communications from the Department related to the RFDP or the Project during the period prior to execution and delivery of the Comprehensive Agreement. The letter will be co-signed by an authorized representative of the proposed Concessionaire if it has already been formed, and otherwise will be co-signed by an authorized representative of each proposed Equity Member.

C2.2 Certifications

The Offeror will:

- a. provide a completed Non-Collusion Affidavit (Form 2, Attachment E), executed by the Offeror, certifying that the Detailed Proposal is not the result of and has not been influenced by collusion;
- b. provide a completed Conflict of Interest Disclosure Statement (Form 3, Attachment E), executed by the Offeror, describing potential organizational conflicts of interest for the Offeror's team, including disclosure of all relevant facts concerning any past, present, or currently planned interest that may present an organizational conflict of interest;
- c. provide completed copies of the Equal Employment Opportunity Certification (Form 4, Attachment E), executed by the Offeror, each Major Participant and each other proposed Contractors, regarding compliance with Federal equal employment opportunity requirements;

- d. provide completed copies of the Use of Contract Funds for Lobbying Certification (Form 5, Attachment E), executed by the Offeror, each Major Participant and each other proposed Contractors to be paid in excess of \$100,000 for the Project, regarding use of contract funds for lobbying; and
- e. provide a completed Debarment and Suspension Certification (Form 6, Attachment E), executed by the Offeror, regarding debarment and suspension.

C2.3 Changes from Conceptual Proposal

The Offeror will identify any changes in the information contained in the Conceptual Proposal submittal. This will include identification of any changes in legal structure of team members and organizational changes, as well as updated information regarding experience and past performance of the team members. The Detailed Proposal will include a statement confirming that it submitted all changes in Equity Members and Major Participants to the Department to the extent required by the RFDP, providing the date of each such submittal, and stating that the change was approved by the Department in writing.

C3 GENERAL INSTRUCTIONS

This Attachment C describes the submission format for Financial Proposals and outlines the required information that will comprise a Financial Proposal for the Comprehensive Agreement.

The Offeror will submit the information required by this Attachment C in the organization and format specified herein. The Financial Proposal will be organized in the order listed in the Detailed Proposal Checklist and Contents, Volume II (Attachment D), and will be clearly indexed.

All financial information provided in the Financial Proposal will be in U.S. Dollar currency only and all amounts will be clearly identified as real or nominal dollars.

If there are any discrepancies between the hard copy and electronic copy of any quantitative information provided in the Financial Proposal, the hard copy version will prevail. If there are any differences between the sum of the individual line amounts and totals, the individual line amounts will prevail.

C4 PROPOSAL PAYMENT AND DETAILED PROPOSAL SECURITY

C4.1 Proposal Payment

The Offeror will provide either a completed Proposal Payment Form (Form 9, Attachment E) executed by the Offeror, or a completed Waiver of Proposal Payment Form (Form 10, Attachment E) executed by the Offeror, in each case in respect of the Proposal Payment.

C4.2 Detailed Proposal Security

On the Financial Proposal Due Date, each Offeror will submit its Detailed Proposal Security with its Financial Proposal. In accordance with Section 4.12 of the Instructions, such Detailed

Proposal Security will take the form of a letter of credit, initially in the amount of \$20,000,000 U.S. Dollars (and providing for an increase to \$50,000,000 U.S. Dollars if the Offeror is designated as the Successful Offeror hereunder), substantially in the form of Form 7, Attachment E or in such other form as the Department may approve in writing prior to the Financial Proposal Due Date.

The Department may draw on the Detailed Proposal Security solely in accordance with Section 4.12 of the Instructions.

C5 FINANCIAL INFORMATION SUBMITTAL

C5.1 Financial Information Table

Each Offeror will provide a completed Financial Statements Summary Table (Form 8-C, Attachment E) summarizing the financial information included in the submittal.

C5.2 Financial Statements

Each Offeror will provide hard copies and an electronic link or electronic copy to any and all audited financial statements issued subsequently to the Offeror's Conceptual Proposal submission for the proposed Concessionaire (if already formed), Equity Members, Design-Build Contractor and Guarantors (if any), including all information required by this Section C5. For any members of the Offeror team who will be providing equity and/or the Performance Security for the initial construction of the Project (to include any parent or related companies from whom financial guarantees will be provided) and whose financial statements were not included at the time of the Conceptual Proposal submission, audited financial statements should be submitted according to the guidelines in Section 10.4.1 of the SFP Addendum # 2 issued September 2, 2010. If any entity for which financial statements are required is a joint venture, financial statements will be provided for each joint venture member.

C5.2.1 Financial statements will be audited by a certified public accountant in accordance with U. S. generally accepted accounting principles (U.S. GAAP) or accompanied by a letter in the form specified in Section C5.2.2(f). Financial statements must be provided in U.S. dollars. If audited financial statements are not available for an entity, the Offeror will provide unaudited financials for such entity, certified as true, correct and complete by the chief financial officer or treasurer of the entity, and accompanied by an explanation of the reason why audited financials are not available. If any entity is newly formed and does not have financial statements, the submittal will include a statement signed by an authorized representative of the entity, explaining why financial statements are not available.

C5.2.2 Required financial statements will include, with respect to each entity:

- a. An opinion letter (auditor's report);
- b. such entity's most recent balance sheet;
- c. such entity's most recent income statement;

- d. such entity's most recent cash flow statement;
- e. such entity's most recent notes to the financial statements;
- f. if financial statements are prepared in accordance with principles other than U.S. GAAP, the Offeror will provide a letter from the certified public accountant or equivalent of such entity, addressing the areas of the financial statements that would be affected by a conversion to U.S. GAAP, and the financial impact thereof; and
- g. if such entity files reports with the Securities and Exchange Commission, then electronic links to its latest 10-K and 10-Q will be provided.

C5.2.3 Each Major Participant will include a letter signed by the chief financial officer of the company disclosing all off-balance sheet liabilities and provide a summary of their financial statements in a completed Financial Statements Summary Table (Form 8-C, Attachment E).

C5.2.4 Each Major Participant will provide a completed Declaration of No Material Change Form (Form 8-G, Attachment E) executed by the chief financial officer of the company. If there has been a material change to any entity's financial position since the date of the last audited financial statements, all relevant information will be disclosed within the Declaration of No Material Change Form (Form 8-G, Attachment E).

C5.3 Credit Rating Information

Each Offeror will document the up-to-date available credit rating issued by each of the Major Rating Agencies for itself, the proposed Concessionaire, Equity Members, Design-Build Contractor and Guarantors. If any such entity is a joint venture, credit rating information will be provided for each joint venture member. Each Offeror will also provide all publicly announced rating and monitoring actions undertaken by the Major Rating Agencies since January 1, 2008. In addition, throughout the RFDP process the Offeror will provide to the Department any updates on the credit ratings and any monitoring actions undertaken by the Major Rating Agencies within 15 Business Days of any such actions.

C6 PUBLIC FUNDS AMOUNT

The Financial Proposal will include a completed Public Funds Amount Form (Form 8-A, Attachment E) setting forth the Offeror's desired Public Funds Amount. The Public Funds Amount Form (Form 8-A, Attachment E) also requires the Offeror to identify the Department's pro-rata share of the costs of the Design-Build Contract consistent with the proposed Base Case Financial Model.

C7 INITIAL TOLL RATE SCHEDULE

The Financial Proposal will include a completed Initial Toll Rates Form (Form 8-B, Attachment E), showing (a) the Initial Toll Rates that will be charged beginning upon the Service Commencement Date (stated nominal U.S. dollars January 1, 2012), organized by Tolling

Segments that are consistent with those identified in the Technical Proposal in accordance with Section B5.10 of Attachment B, and (b) other information as specified in the form.

C8 GENERAL REQUIREMENTS

C8.1 The Financial Proposal will include financial projections in the form of a detailed Base Case Financial Model. Each copy of the Financial Proposal must include a print out of the Base Case Financial Model and electronic copies in both .pdf and Microsoft Excel 2007 (United States English)-compatible formats. The electronic copies may be provided on CD-ROM, DVD or another universally acceptable storage medium readily accessible by a standard PC. The printed and electronic versions of the Base Case Financial Model must be identical and consistent with any financial tables submitted with the Financial Proposal.

C8.2 Financial information submitted by Offerors must be as consistent and transparent as possible, in order to facilitate its evaluation. Offerors must follow U.S. GAAP in the preparation of the Financial Plan and in the construction of the Base Case Financial Model.

C8.3 The information in the Base Case Financial Model and the Financial Plan must be displayed on at least a monthly basis during the Construction Period and on an annual, calendar-year basis during the Operating Period.

C8.4 The Financial Proposal will include a detailed explanatory memorandum providing key financial assumptions, the sources which constitute the basis of these assumptions and/or arguments about the adopted options for the construction of the Base Case Financial Model.

C8.5 The Financial Plan must assume at all times a level of Committed Investment and equity shares held by the Equity Members meeting the requirements of the Comprehensive Agreement.

C8.6 The Financial Plan will take into account the fact that the Department will be responsible for paying 50% of the costs of the Independent Engineer. The Concessionaire is responsible for determining the amount to be included in the plan. The Department has estimated that the total cost of the baseline services to be provided by the Independent Engineer relating to design and construction of the Project is approximately \$3.5 million U.S. dollars.

C8.7 The Base Case Financial Model must be developed on the assumption that TIFIA financing is not available; *provided*, that the alternative Base Case Financial Model required by Section 3.5.9 will include the assumption of TIFIA financing as described therein.

C8.8 The Offeror will state the advantages of its proposed financing structure compared to alternative capital markets, bank loans or hybrid structures, and provide a description of its ability and readiness to switch to and implement a back-up structure, together with available supporting materials for back-up structures (plan of finance, draft debt term sheets, indicative rating letters, due diligence reports, financial model, etc.).

C8.9 Financial Plan Memorandum

The Financial Proposal will include a Financial Plan memorandum that contains the following items:

C8.9.1 A narrative that explains the assumptions used to generate the cash flow forecasts provided in response to this Attachment C, including but not limited to:

- a. assumptions regarding State and Federal tax rates and revenue and expense recognition policies;
- b. in relation to its equity financing:
 - i. a description of its approach to investing equity during construction and, if applicable, reducing it upon completion;
 - ii. a list of entities affiliated with Equity Members who will ultimately inject the funds in accordance with Sections C8.5 and C9.3 of this Attachment C, and a brief description of the status of their funding commitment and their creditworthiness (*i.e.*, ability to actually provide the equity funding when due), taking into account any commitments by Guarantors;
 - iii. a summary of its net profit distribution policy, including Distributions arising from re-financing of debt or tax-related lease transactions;
 - iv. information regarding any assumed dividend restrictions based on lender requirements, corporate law, U.S. GAAP, etc.; and
 - v. If the Financial Plan includes Contingent Equity, a description of any proposed Contingent Equity instrument or shareholder's guaranty;
- c. in relation to senior and/or mezzanine debt:
 - i. a list of the financing sources intended for use in Table 1.b.1 – 1.b.2 provided in Financial Plan Tables (Form 8-D, Attachment E) and a brief description of how they interact regarding inter-creditor issues;
 - ii. a list identifying the proposed Lenders that are expected to inject the funds, and a brief description of the status of their funding commitment and their creditworthiness (*i.e.*, ability to actually provide the debt when due) and the creditworthiness of any providers of credit enhancement (if applicable);
 - iii. the maximum financial leverage (debt-to-equity) ratio allowed by Lenders as well as the leverage ratio that applies to the Base Case Financial Model (defined as the ratio of long-term debt to total long-term capital) using Table 1.c provided in Financial Plan Tables (Form 8-D, Attachment E);

- iv. the assumed cost of debt (including details of credit spread assumptions and all other related fees) and, if used, credit enhancements and hedging instruments that will be applied;
 - v. information regarding the mezzanine financing that the Offeror anticipates using and its terms;
 - vi. explanation regarding the amount, terms and conditions of any bridge loan financing anticipated;
 - vii. average life of debt;
 - viii. a description of the reserve accounts the Offeror will create as a lender requirement, or to ensure compliance with Major Maintenance and Handback Requirements, and an annual cash flow forecast on a calendar year basis using Table 2 provided in Financial Plan Tables (Form 8-D, Attachment E), with specific information regarding any letters of credit or financial instruments proposed as a substitute to cash-funded reserves, and detail associated cash-flows to/from Concessionaire, Equity Members, security providers, etc.; and
 - ix. information regarding all anticipated issuance/ancillary cost and expenses associated with the proposed debt (legal, financial advisory, trustee and investment banker services and underwriting and/or arranging fees, rating agency fees, credit enhancement fees, bid development fees and continuing disclosure expenses).
- d. estimate of the annual and average Debt Service Coverage Ratio (“DSCR”), using Table 4.2 provided in Financial Plan Tables (Form 8-D, Attachment E), which will be annually calculated. Provide details on how DSCR is defined and calculated. Such definition and calculation must match the lender’s requirement for the metric;
 - e. estimate of the annual and average Project Life Coverage Ratio (“PLCR”), using Table 4.2 provided in Financial Plan Tables (Form 8-D, Attachment E), which will be annually calculated. Provide details on how PLCR is defined and calculated. Such definition and calculation must match the lender’s requirement for the metric;
 - f. estimate of the annual and average Loan Life Coverage Ratio (“LLCR”), using Table 4.2 provided in Financial Plan Tables (Form 8-D, Attachment E), which will be annually calculated. Provide details on how LLCR is defined and calculated. Such definition and calculation must match the lender’s requirement for the metric; and
 - g. estimate of the pre-tax and post-tax project internal rate of return and the pre-tax and post-tax equity internal rate of return.

C8.10 Base Case Financial Model Data Book and User Guide

C8.10.1 The Offeror will provide sufficient information and instruction regarding the operation of the Base Case Financial Model (a model operations user guide) to ensure that the Department will be able to read, use and modify the data contained therein and to allow the Department to update inputs and/or run alternate scenarios. Detailed step-by-step instructions will be provided to allow the Department to replicate the Offeror's detailed sensitivity analysis. The user guide should serve as a detailed and comprehensive Base Case Financial Model user manual, including, at a minimum, instructions for using the Base Case Financial Model, including:

- a. how changes to input variables should be entered;
- b. how to run the model following changes to inputs;
- c. how to run sensitivities;
- d. details of all macros, if any, contained in the model;
- e. how to print key reports and the entire model;
- f. details of the optimisation procedures; and
- g. construction of the model, including:
 - i. contents list of sheets and data contained within; and
 - ii. details of complex or unusual formulae.

C8.10.2 Offerors must submit a data book containing a full description of assumptions underlying the financial projections within the Base Case Financial Model and at a minimum, must include the items listed below:

- a. dates as required by the Instructions;
- b. annual toll rates and yearly growth: traffic and revenue projections, including the predicted level of service for each Toll Segment based on the methodology contained in Transportation Research Board's Highway Capacity Manual 2000, with all assumptions used in that methodology clearly documented;
- c. all relevant assumptions regarding revenue from sources other than U.S. Route 460 toll revenue, subject to Section 3.5.2;
- d. macroeconomic assumptions, including CPI inflation, State GDP growth rates and interest rate projections;
- e. financial assumptions, including benchmark rate and credit spread assumptions for applicable maturities within each debt structure;

- f. description of the type of debt (*i.e.*, bank loans, capital market securities, PABS, credit enhancements, use of swaps or synthetic structures, etc.);
- g. insurance-related payments, to include deductible levels, premiums (the premium paid for each insurance policy will be separately identified) and expected tax payments for each coverage;
- h. legal and tax procedures and data;
- i. Capital Expenditures and Major Maintenance expenditures, including allowances for Handback Requirements;
- j. other O&M Expenditures;
- k. costs incurred in developing the Detailed Proposal and Major Participants' fees;
- l. Committed Investment recovery policy; and
- m. revenue sharing with the Department.

C8.11 Requirements for Constructing the Base Case Financial Model

C8.11.1 The format of the Base Case Financial Model is at the discretion of the Offerors but at a minimum it must comply with the following:

- a. compatibility with Microsoft Excel 2007;
- b. provide financial projections on a quarterly basis in line with Fiscal Years from Financial Close until 2 years after the end of the Term;
- c. express financial projections in U.S. dollars;
- d. be capable of being presented in real and nominal terms;
- e. include a print option macro for the inputs and outputs of the Base Case Financial Model;
- f. there must be no password protection in the model;
- g. there must be no password protected macros, or hidden sheets, rows, columns or sheets; and
- h. there must be no circular references or balancing numbers and no inputs numbers on the calculation worksheets.

C8.11.2 The Financial Proposal will include an audit of the Base Case Financial Model conducted by an independent auditor (at the Offeror's sole expense). The audit of the Base Case Financial Model for this purpose may be the same as the audit required by the Offeror's lenders. The Offeror will ensure that the audit reports are addressed or co-addressed to the Department.

Any amendment to the Base Case Financial Model required by the independent audit will be implemented without any change to the Public Funds Amount in the event the effect of such amendment would be to increase the Public Funds Amount. If Financial Close occurs after the Agreement Date, then the Base Case Financial Model Audit required by the lenders must also be provided to the Department as a co-addressee.

C8.11.3 The main outputs of the Base Case Financial Model will include:

- a. the present value of revenues for each calendar year, discounted back to January 1, 2012 at the Discount Rate;
- b. pre-tax and post-tax Project Internal Rate of Return;
- c. Equity IRR and post-tax equity internal rate of return;
- d. Committed Investment;
- e. Distributions;
- f. financial leverage;
- g. annual and average Debt Service Coverage Ratio (DSCR);
- h. annual and average Project Life Coverage Ratio (PLCR);
- i. annual and average Loan Life Coverage Ratio (LLCR);
- j. year of first equity recovery;
- k. debt service schedule, clearly indicating debt outstanding, principal and interest payments; and
- l. amount and timing of any revenue to be shared with the State.

C8.11.4 The present value of Gross Revenues and Refinancing Gains net of debt service relating to Concessionaire Debt for each calendar year will be calculated using the following method:

- a. Microsoft Excel XNPV function to be used;
- b. cashflows are assumed to occur on the last day of the respective period;
- c. the base date should be the Financial Close Deadline Date; and
- d. the discount rate will be the Initial Equity IRR.

C8.11.5 The Base Case Financial Model and the Financial Plan will include the following worksheets:

- a. balance sheet;

- b. profit and loss statement;
- c. cash flow statement;
- d. financing terms and conditions chart;
- e. Capital Expenditures and Major Maintenance;
- f. sources and uses of funds during the Construction Period;
- g. operating cash flow forecast;
- h. present value of revenues;
- i. sensitivity analysis as described in Section C8.12 of this Attachment C; and
- j. Financial Plan Tables (Form 8-D, Attachment E).

C8.11.6 Uses of funds during construction and Major Maintenance expenditures during the entire Term will be clearly identified. The Offeror will also indicate the forecasted reserve accounts for maintenance (Ordinary Maintenance, Major Maintenance and Handback Requirements) using Table 4.3 provided in Financial Plan Tables (Form 8-D, Attachment E). For purposes of this Section C8.11, the term “uses of funds” will mean the cost of a capital nature incurred by the Concessionaire prior to the Service Commencement Date and including all amounts payable by the Concessionaire under the Design-Build Contract and any development costs or fees, including fees associated with the placement of equity or debt, credit enhancements, interest during construction, legal, accounting, and other professional advisory fees and any other costs incurred by the Concessionaire up to the Service Commencement Date.

C8.11.7 The Base Case Financial Model will include the sources and uses of funds in the reserve accounts established for performance of Major Maintenance and to meet the Handback Requirements. Sources of funds may include shareholders’ Committed Investment, capital market debt, private lenders’ senior and/or mezzanine debt, bridge loans or other finance sources considered.

C8.11.8 Projections in accounting statements (balance sheet and profit and loss statement) must be stated in accordance with existing State and Federal tax regulations.

C8.11.9 The Base Case Financial Model will clearly reflect, at a minimum, the following concepts:

- a. The Public Funds Amount, according to the schedule of installments set forth on the Offeror’s Public Funds Amount Form (Form 8-A, Attachment E);
- b. The risk-sharing arrangement in respect of ROW Acquisition Costs, which will be presented together with payments from the Department only to the extent contemplated by the arrangement described in Section 3.5.13 and the Comprehensive Agreement;

- c. “Project cash flows,” which will be calculated as expected toll and ancillary revenues, minus uses of funds during the Construction Period excluding financing costs and fees, minus operations and routine maintenance costs, minus insurance costs, minus general and administration costs, minus Major Maintenance costs, plus net draws on cash-funded reserves and/or letters of credit, minus cash taxes; and
- d. The Base Case Financial Model will be able to separately accommodate interest rates and credit spread inputs for each and every benchmark(s) and term(s) used in the Financial Plan (differentiating inputs for each debt instrument, if applicable). The Base Case Financial Model must be able to be solved with multiple term structures.

C8.11.10 To the extent multiple financing structures are contemplated, the Base Case Financial Model will be able to accommodate alternative financing structures described in the Financial Plan as directed in Section C8.8 of this Attachment C.

C8.12 Sensitivity Analysis

Offerors will include a sensitivity analysis that tests the strength of the proposed Financial Plan. The analysis will address each of the variables listed below, presenting the effect of these variations on the concession end date, the expected Project IRR, the expected Equity IRR and the minimum and average DSCR. Except where otherwise noted, the Offeror is to solve the Base Case Financial Model to achieve the highest Equity IRR while the toll revenue projections contemplated in the Base Case Financial Model are maintained and the debt covenants established in the Project Financing Agreements are not violated:

- a. Ordinary Maintenance expenditures: $\pm 10\%$ and $\pm 20\%$ of Ordinary Maintenance expenditure (in every year when the Offeror projects Ordinary Maintenance expenses);
- b. Major Maintenance: $\pm 20\%$ of Major Maintenance expenditure (in every year when the Offeror projects Major Maintenance);
- c. Toll Revenue: $\pm 10\%$ and $\pm 20\%$ permanent variation in Toll Revenues (in every year when the Offeror projects Toll Revenues) compared to the Offeror’s baseline forecasts;
- d. traffic demand: $\pm 0.25\%$ and $\pm 0.5\%$, permanent percentage point change in the annual growth rate assumptions for the unconstrained traffic demand for the facility, compared to the Offeror’s baseline forecasts;
- e. willingness to pay: $\pm 10\%$ and $\pm 20\%$ permanent percentage point change in the willingness to pay for the facility (in every year when the Offeror projects Toll Revenues) compared to the Offeror’s baseline forecasts;
- f. Benchmark Interest Rate fluctuations (at Financial Close): $\pm 0.25\%$ and $\pm 0.50\%$ change in the benchmark interest rate at Financial Close;

- g. interest rate fluctuations (after Financial Close): $\pm 0.25\%$ and $\pm 0.50\%$ permanent percentage point change in the all-in interest rate after Financial Close;
- h. CPI fluctuation (after the Agreement Date): $\pm 0.25\%$ and $\pm 0.50\%$ permanent percentage point change in the CPI assumption; and
- i. all other sensitivities analysis required by lenders and not identified above.

C8.13 Financial Plan Tables

C8.13.1 Offerors will submit Financial Plan Tables (Form 8-D, Attachment E). All data stated in the Financial Plan Tables must be generated by the Base Case Financial Model (and displayed in a specific worksheet thereof), except for the financial terms and conditions in Table 4.1 provided in Financial Plan Tables (Form 8-D, Attachment E), the data for which will come from the lenders' terms and conditions sheets. The tables will include a monthly and annual cash flow forecast on a calendar year basis of the sources and uses of funds during the Construction Period (including an overview of the committed investment and financial leverage) using Table 1.a – 1.c provided in Financial Plan Tables (Form 8-D, Attachment E).

C8.13.2 A waterfall cash flow forecast during the Operating Period on a calendar-year basis using Table 2 provided in Financial Plan Tables (Form 8-D, Attachment E) and including the following line items (if applicable):

- a. expected Toll Revenues, costs including Concessionaire administrative costs, operations and maintenance costs, insurance premiums paid during the Term, cash taxes, etc.;
- b. Major Maintenance expenditures incurred by the Concessionaire after the Service Commencement Date, including those incurred during the last six years of the Term related to the Handback Requirements;
- c. draws on and deposits to cash-funded reserves and/or draws on letters of credit related to O&M Work, Major Maintenance, and the Handback Requirements;
- d. interest income;
- e. draws on a cash-funded debt service reserve fund or letter of credit (if applicable);
- f. interest expense;
- g. principal repayment;
- h. net cash flow from swaps or other derivatives;
- i. finance-related fees, including hedging expenses, letter of credit fees, monoline fees, administrative agent and paying agent fees, commitment fees, conduit issue fees, and other financing costs and fees;

- j. deposits to a cash-funded debt service reserve fund, interest on letters of credit, and credit payback on letters of credit;
- k. Equity Member debt service payments, dividends, and equity repayments;
- l. revenue shared with the Department; and
- m. cash flow not distributed.

C8.13.3 A quarterly and annual description of the CPI inflation and interest rate assumptions, gross revenue projections and a corresponding tally of the present value of revenues (in January 1, 2012, U.S. dollars) earned for each such period.

C8.13.4 Financing information including key financing data, a description of financing sources as stated in the lenders' term and condition sheets, coverage ratios, cash-funded reserves and a debt financing plan.

C9 FINANCIAL COMMITMENTS SUPPORT INFORMATION

C9.1 Debt Commitment Letters

To the extent applicable, the Financial Proposal will include one or more support letters as applicable from its proposed underwriter(s), monoline insurer(s) and/or letter of credit provider(s), and/or its bank lenders confirming their willingness to provide the debt facilities, underwriting and/or credit enhancement as described in the Offeror's financing plan as set forth in the proposed Financial Plan memorandum and assumed in the Base Case Financial Model. Such support letters must include evidence of authorization from the lender's senior management or credit committee as appropriate, must state clearly which Project documents the respective lender has reviewed, which due diligence activities are still ongoing, and must confirm that they are not aware of any reason that would prevent the Financial Close Date occurring within 60 days of signature of the Comprehensive Agreement. Final, conditional or draft term sheets (and/or agreements) will also be provided. Where capital market debt is anticipated, the Offeror must provide an indicative credit rating from every rating agency that has provided such a rating, including at least one of the Major Rating Agencies. The underwriter(s), monoline insurer(s) and/or letter of credit provider(s), and/or bank lenders will also provide a list of their own infrastructure financing commitments issued in the past 18 months, and indicate the status of each (for example, whether cancelled, ongoing or successfully executed and closed).

C9.2 Underwriting Commitments

If the Financial Proposal is fully or partially underwritten, the Financial Proposal will include documentation describing the nature and extent of the applicable funding commitments, including all contingencies, reserves or conditions precedent to the availability of funds.

C9.3 Evidence of Equity Financial Commitments

The Financial Proposal will include written documentation of action taken by each Equity Member's board to commit its share of Committed Investment, evidenced by corporate board

resolutions and other appropriate actions. Where equity bridge loans or Concessionaire Debt is to be provided, the Financial Proposal will include equivalent lender commitments.

C10 MISCELLANEOUS

C10.1 Schedule of Values

The Financial Proposal will include a completed Schedule of Values Form (Form 8-E, Attachment E) prepared by the Offeror. The Schedule of Values will be consistent with corresponding amounts included in the Base Case Financial Model.

C10.2 Alternative Conceptual Design Valuation Form

The Financial Proposal will include a completed Alternative Conceptual Design Valuation Form (Form 8-F, Attachment E) prepared by the Offeror. The Alternative Conceptual Design Valuation Form will be consistent with corresponding amounts in the Base Case Financial Model.

C10.3 Traffic Forecast

The Offeror will provide the completed versions of the Traffic Forecast report(s). These will be the same versions provided to Lenders and forming the basis for Lender financing commitments, and the same versions provided to any Major Rating Agency and forming the basis for credit rating(s), if any. The report will include, at a minimum, detailed analyses regarding:

- a. general tolling strategy, including toll rate increases and toll marketing strategy;
- b. macroeconomic assumptions;
- c. population and employment growth assumptions;
- d. changes over time in motorists' value of time and willingness to pay tolls;
- e. origin/destination patterns, nature of traffic;
- f. vehicle classification;
- g. competing facilities;
- h. capacity, level of service and potential expansion requirements; including but not limited to the predicted level of service for each Toll Segment based on the methodology contained in Transportation Research Board's Highway Capacity Manual 2000, with all assumptions used in that methodology clearly documented;
- i. ramp-up, seasonality and annualization assumptions, as well as traffic demand growth rates;
- j. yearly projections for AADT, number of transactions, toll revenues and ancillary revenues;

- k. sensitivity and projections robustness review that would include at least the following two scenarios:
 - i. traffic demand: $\pm 0.25\%$ and $\pm 0.50\%$ permanent percentage point change in the annual growth rate assumptions for the unconstrained traffic demand for the facility, compared to the Offeror's baseline forecasts; and
 - ii. willingness to pay: $\pm 0.10\%$ and $\pm 0.20\%$ permanent percentage point change in the willingness to pay for the facility (in every year when the Offeror projects Toll Revenues) compared to the Offeror's baseline forecast; and
- l. any other traffic and revenue-related information provided to lenders and rating agencies.

C10.4 Development Costs and Fees Description. Offerors will provide (a) a breakdown of the costs incurred in connection with the development of the Conceptual and Detailed Proposals for the Project, as well as (b) a description of all fees that are anticipated as being earned by Major Participants and their affiliates on the Agreement Date, upon Financial Close and during the Term.

**VIRGINIA DEPARTMENT OF TRANSPORTATION
 U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT D

DETAILED PROPOSAL CHECKLIST AND CONTENTS

Volume I Technical Proposal

The Technical Proposal will be organized in the order specified below. Folder divider tabs will be provided to identify the contents as below. Certain components, such as drawings, charts, calculations and standard forms, are not included in the page limit and should be included in appendices within a separate three-ring binder to the Project Technical Proposal. These components are identified below in the Tab column with the prefix “App.” A copy of this Attachment D, with the page references added, will be submitted as Tab A of the Technical Proposal. Cross-references are to Attachments to the Instructions unless otherwise specified.

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Included within 150 page limit?	Technical Proposal Page Reference
A.	Technical Proposal Checklist and Contents	<u>Attachment D</u>		No	
B.	Executive Summary	None	Section B1	No, limited to 5 pages	
C.1	Technical Proposal Cover Letter	Form 1-B	Section B2	No	
D.	Project Development Plans		Section B3		
D.1	Outline Concessionaire Management Plan	None	Section B3.1	Yes	
D.2	Outline Environmental Management Plan	None	Section B3.3	Yes	

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Included within 150 page limit?	Technical Proposal Page Reference
D.3	Outline Right of Way Acquisition and Relocation Plan	None	Section B3.4	Yes	
D.4	Outline Utilities Plan	None	Section B3.5	Yes	
D.5	Outline Transportation Management Plan	None	Section B3.6	Yes	
D.6	Outline Public Information and Communications Plan	None	Section B3.7	Yes	
D.7	Outline DBE/SWaM Plan	None	Section B3.8	Yes	
D.8	Outline Health, Safety and Security Plan	None	Section B3.9	Yes	
D.9	Outline Operations and Maintenance Plan	None	Section B3.10	Yes	
D.10	Outline Life Cycle Maintenance Plan	None	Section B3.11	Yes	
E. Quality Management System Plans					
E.1	Outline Design-Build Quality Management Plan	None	Section B3.2.1	Yes	
E.2	Outline O&M Quality Management Plan	None	Section B3.2.2	Yes	
F. Proposed Initial Baseline Schedule					
F.1	Narrative Report on Project Schedule	None	Section B4	Yes	
F.2	Proposal Schedule (30-50 lines)	None	Section B4	No	
App. F.2	Logic-based critical path schedule	None	Section B4	No	
G. Schematic Design Submittal					
G.1	Offeror's Schematic Design (narrative)	None	Section B5.1	Yes	
App. G.1	Offeror's Schematic Design (drawings)	None	Section B5.1	No	
G.2	Operational Analysis of termini (narrative)	None	Section B5.1	Yes	

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Included within 150 page limit?	Technical Proposal Page Reference
App. G.2	Operational Analysis of termini (calculations etc.)	None	Section B5.1	No	
G.3	Bridges and Surface Structures (narrative)	None	Section B5.4	Yes	
App. G.3	Bridges and Surface Structures (drawings)	None	Section B5.4	No	
G.4	Bicycle and Pedestrian Accommodations (narrative)	None	Section B5.5	Yes	
G.5	Strategic Compliance Evaluation (narrative)	None	Section B5.6	Yes	
G.6	Construction Sequencing and Maintenance of Traffic (narrative)	None	Section B5.7	Yes	
App. G.6	Construction Sequencing and Maintenance of Traffic (drawings)	None	Section B5.7	No	
G.7	Drainage and Utilities Relocations (narrative)	None	Section B5.8	Yes	
G.8	Pavement and Subsurface Elements (narrative)	None	Section B5.9	Yes	
G.9	Tolling System and Traffic Management System (narrative)	None	Section B5.10	Yes	
App. G.9	Tolling System and Traffic Management System (drawings)	None	Section B5.10		
G.10	Capital Asset Facilities (narrative)	None	Section B5.11	Yes	
G.11	Offeror's Alternative Conceptual Design (narrative)	None	Section B6	Yes	
App. G11	Offeror's Alternative Conceptual Design (drawings)	None	Section B6	No	

Volume II Financial Proposal

The Financial Proposal will be organized in the order specified below. Folder divider tabs will be provided to identify the contents as below. A copy of this Attachment D, with the page references added, will be submitted as Tab A of the Financial Proposal. The financial statements should be included in a separate binder or other container labeled “App. C.1.” Cross-references are to Attachments to the Instructions unless otherwise specified.

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Financial Proposal Page Reference
A.	Financial Proposal Checklist and Contents	Attachment D		
B.	Executive Summary	None	C1	
C.1	Financial Proposal Submittal Letter	Form 1-A	C2.1	
	Attachment A to Financial Proposal Submittal Letter (Identification of Offeror and Major Participants)	None	Form 1-A (<u>Attachment E</u>)	
C.2	Offeror Organizational and Authorization Documents	None	Instructions to Attachment A, Section A (Form 1-A, <u>Attachment E</u>)	
C.3	Entity Authorization Documents	None	Instructions to <u>Attachment A, Section B</u> (Form 1-A, <u>Attachment E</u>)	
C.4	Proposal Payment Form	Form 9	Section C4.1	No
	Waiver of Proposal Payment Form	Form 10	Section C4.1	No
C.5	Detailed Proposal Security	Form 7	Section C4.2	No
C.6	Forms and Certifications			
	Non-Collusion Affidavit	Form 2	Section C2.2	No

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Financial Proposal Page Reference
	Conflict of Interest Disclosure Statement	Form 3	Section C2.2	No
	Equal Employment Opportunity Certification	Form 4	Section C2.2	No
	Use of Contract Funds for Lobbying Certification	Form 5	Section C2.2	No
	Debarment and Suspension Certification	Form 6	Section C2.2	No
C.7	Changes from Conceptual Proposal	None	Section C2.3	No
D. Financial Proposal Forms				
D.1	Public Funds Amount Form	Form 8-A (Attachment E)	Section C6	
D.2	Initial Toll Rates Form	Form 8-B (Attachment E)	Section C7	
E. Update to Offeror Financial Capacity Information				
App. E.1	Financial Statements	None	Section C5.2	
E.1	Financial Statements Summary Table	Form 8-C (Attachment E)	Section C5.2.3	
E.2	Chief Financial Officer Certification/Material Change Disclosure	None	Section C5.2.4	
E.3	Credit Rating Information	None	Section C5.3	
F. Financial Plan				
F.1	Financial Plan Tables	Form 8-D (Attachment E)	Section C8.13	
F.2	Financial Plan Memorandum	None	Section C8.9	
F.3	Base Case Financial Model	None	Section C8.10 and C8.11	
F.4	Sensitivity Analysis	None	Section C8.12	

Tab	Detailed Proposal Component	Form (if any)	Cross reference	Financial Proposal Page Reference
G. Financial Commitments Support Information				
G.1	Debt Commitment Letters or Underwriting Commitments (as applicable)	None	Section C9.1 and C9.2	
G.2	Evidence of Equity Financial Commitments	None	Section C9.3	
H. Miscellaneous				
H.1	Schedule of Values Form	Form 8-E (Attachment E)	Section C10.1	
H.2	Alternative Conceptual Design Valuation Form	Form 8-F (Attachment E)	Section C10.2	
H.3	Declaration of No Material Change Form	Form 8-G (Attachment E)	Section C5.2.4	
H.4	Traffic Forecast (and lender due diligence of traffic and revenue forecast, if available)	None	Section C10.3	
H.5	Development Costs and Fees Description	None	Section C10.4	
H.6	Electronic Copy of Base Case Financial Model	None	Section C8.11.1	
H.7	Base Case Financial Model Operations Instructions Booklet	None	Section C8.10.1	
H.8	Base Case Financial Model Assumptions Book	None	Section C8.10.2	
H.9	Base Case Financial Model Audit Report	None	Section C8.11.2	
H.10	Electronic Copy of the alternative Base Case Financial Model	None	Section C8.7	

**VIRGINIA DEPARTMENT OF TRANSPORTATION
U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT E

DETAILED PROPOSAL FORMS

- Form 1 Proposal Submission Letters
 - Form 1-A Financial Proposal Submittal Letter
 - Form 1-B Technical Proposal Cover Letter
- Form 2 Non-Collusion Affidavit
- Form 3 Conflict of Interest Disclosure Statement
- Form 4 Equal Employment Opportunity Certification
- Form 5 Use of Contract Funds for Lobbying Certification
- Form 6 Debarment and Suspension Certification
- Form 7 Detailed Proposal Security – Irrevocable Standby Letter of Credit
- Form 8 Financial Proposal Forms
 - Form 8-A Public Funds Amount Form
 - Form 8-B Initial Toll Rates Form
 - Form 8-C Financial Statements Summary Table
 - Form 8-D Financial Plan Tables
 - Form 8-E Schedule of Values Form
 - Form 8-F Alternative Conceptual Design Valuation Form Declaration
 - Form 8-G Declaration of No Material Change Form
- Form 9 Proposal Payment Form
- Form 10 Proposal Payment Waiver Form

FORM 1-A

FINANCIAL PROPOSAL SUBMITTAL LETTER

Offeror: _____

Detailed Proposal Date: _____, 2011

Office of Transportation Public-Private Partnerships
600 East Main Street, Suite 2120
Richmond, VA 23219
Attn: Margie Ray

The undersigned (“Offeror”) submits this detailed proposal (the “Detailed Proposal”) in response to the Request for Detailed Proposals issued by the Virginia Department of Transportation (the “Department”), a department of the Commonwealth of Virginia, dated July 28, 2011, as amended (the “RFDP”), to finance, develop and operate the U.S. Route 460 Corridor Improvements Project (the “Project”), as more specifically described herein and in the documents provided with the RFDP.

Initially capitalized terms not otherwise defined in this Detailed Proposal will have the meanings set forth in the RFDP, including the Instructions to Offerors (the “Instructions”) and Attachment A to the Instructions.

Offeror hereby acknowledges delivery by Offeror to the Department of that certain Technical Proposal Cover Letter, dated [insert date], together with Offeror’s Technical Proposal in accordance with Section 5.3 of the Instructions. The Technical Proposal attached to such Technical Proposal Cover Letter is hereby incorporated by reference into this Detailed Proposal without amendment, modification or variation of any kind or nature whatsoever and Offeror represents that all statements made and information contained in such Technical Proposal are true, correct and accurate as of the date hereof.

In consideration for the Department supplying us, at our request, with the RFDP and agreeing to examine and consider this Detailed Proposal, the Offeror undertakes:

(a) to keep this Detailed Proposal open for acceptance for 180 days after the Financial Proposal Due Date as established by Section 2.3 of the Instructions, without unilaterally varying or amending its terms and without any change being made in the composition of the Offeror or Major Participants, except as permitted by the RFDP; and

(b) if this Detailed Proposal is accepted by the Department, to enter into the Comprehensive Agreement without varying or amending its terms (except for modifications agreed to by the Department in its sole discretion), and to satisfy all other conditions to the

award of the Comprehensive Agreement, including compliance with all commitments contained in this Detailed Proposal.

The timely and complete performance of the foregoing obligations by the Offeror is secured by the Detailed Proposal Security, an original copy of which is enclosed with this Detailed Proposal. In submitting its Detailed Proposal, Offeror understands and agrees that the disposition of, and the parties' respective rights with respect to, such Detailed Proposal Security will be subject to the terms of Section 4.12 of the Instructions. Offeror further acknowledges that the forfeit of Detailed Proposal Security constitutes liquidated damages and not a penalty.

Additional information pertaining to the Offeror and the other Major Participants is enclosed with this Detailed Proposal as Attachment A to this Financial Proposal Submittal Letter. Offeror understands and agrees that if the Offeror is a joint venture or association other than a corporation, limited liability company or partnership, all members of the Offeror will be jointly and severally liable for all obligations and representations of the Offeror under this Detailed Proposal, and each of the members will execute and deliver this Financial Proposal Submittal Letter.

The following individual(s) is/are authorized to represent the Offeror and to enter into negotiations with the Department on behalf of the Offeror in connection with this Detailed Proposal and all other matters pertaining to the RFDP, the Project and the Comprehensive Agreement:

[List by name, title, address and phone and fax numbers, e-mail address]

Enclosed and, by this reference, incorporated in and made a part of this Detailed Proposal are the following:

1. Executive Summary
2. Financial Proposal, including Offeror Information, Certifications and Documents, Detailed Proposal Security
3. *[List additional attachments]*

Offeror acknowledges receipt of the following Addenda to the RFDP and sets of questions and responses:

[List all addenda and sets of questions and responses]

Offeror certifies the following:

1. the Detailed Proposal is submitted without reservation, qualification, assumptions or conditions;
2. the Design-Build Contractor and all other Contractors identified in the Detailed Proposal that will be responsible for the performance of construction work on the Project have been prequalified for such work by the Department;
3. the Schedule of Values, O&M Work and Major Maintenance Work estimates shown in the Base Case Financial Model, the traffic and revenue forecast, and the base cases thereof (a) are consistent with the Technical Proposal, (b) were used to generate the Public Funds Amount and (c) form the basis for all loan commitments and credit ratings letters included in the Detailed Proposal;
4. Offeror has carefully examined and is fully familiar with all of the provisions of all of the RFDP Documents, including all materials posted on the Project website, the Addenda and the Department's responses to questions, and is satisfied that the RFDP Documents provide sufficient detail regarding the obligations to be performed by the Offeror and do not contain internal inconsistencies;
5. Offeror has carefully checked all the words, figures and statements in this Detailed Proposal;
6. Offeror has conducted such other field investigations and additional design development as is prudent and reasonable in preparing this Detailed Proposal; and
7. prior to the date of this Financial Proposal Submittal Letter, Offeror has notified the Department of any deficiencies in or omissions from any RFDP documents or other documents provided by the Department and of any unusual site conditions observed.

Offeror acknowledges that it has carefully examined and is familiar with all of the provisions of all of the RFDP Documents with respect to DBE/SWaM contract goals, that if selected as the Successful Offeror it will have an obligation to make a good faith effort to meet such goals and that the outline plans submitted as part of its Detailed Proposal with respect to such goals are consistent with such obligation.

Offeror represents that all statements made and information contained in the Conceptual Proposal and Preliminary Information submittal previously delivered to the Department are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Detailed Proposal. Offeror agrees that such Conceptual Proposal, except as modified by the enclosed Detailed Proposal, is incorporated as if fully set forth in this Detailed Proposal.

Offeror understands that the Department will be under no obligation to select the Offeror submitting the Detailed Proposal with the lowest nominal Public Funds Amount or to make a selection at all. Should an initially selected Successful Offeror fail to execute a Comprehensive

Agreement in accordance with the requirements of the RFDP, the Department reserves the right, in the Department's sole discretion, to select an alternative Successful Offeror to execute a Comprehensive Agreement to finance, develop and operate the Project.

Offeror further understands that all costs and expenses incurred by it in preparing this Detailed Proposal and participating in the RFDP process will be borne solely by the Offeror.

Offeror consents to the Department's disclosure of its Detailed Proposal in accordance with Section 56-573.1:1 and Section 2.2-3700 *et seq.* of the Code of Virginia, to any Person, with the exception of those portions of the Detailed Proposal that the Department has determined to be exempt as trade secrets or proprietary information pursuant to Section 2.2-3705.6(11) of the Code of Virginia.

Offeror agrees that the Department will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Detailed Proposal.

This Detailed Proposal will be governed by and construed in all respects according to the laws of the Commonwealth of Virginia.

The business address of Offeror is as follows:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[Insert appropriate signature blocks for the Offeror and the proposed Concessionaire (if formed) or Equity Members (if the Concessionaire is not yet formed) from the following pages:]

1. Sample signature block for corporation or limited liability company:

[Insert the entity's name]

By: _____

Print Name: _____

Title: _____

2. Sample signature block for partnership or joint venture:

[Insert the entity's name]

By: *[Insert general partner's or member's name]*

By: _____

Print Name: _____

Title: _____

[Add separate signature block for each joint venture member if the Offeror is a joint venture]

3. Sample signature block for attorney in fact:

[Insert the entity's name]

By: _____

Print Name: _____

Attorney-in-Fact

**ATTACHMENT A TO FINANCIAL PROPOSAL SUBMITTAL LETTER
IDENTIFICATION OF OFFEROR AND MAJOR PARTICIPANTS**

1. NAME OF ENTITIES AND CONTACT INFORMATION:

[Provide the name, title, address, phone number, fax numbers and e-mail address for the Offeror, the proposed Concessionaire and each Major Participant]

<u>Entity Name</u>	<u>Name of Contact</u>	<u>Address</u>	<u>Phone/Fax Numbers</u>	<u>E-mail Address</u>
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2. ROLE IN ORGANIZATION:

[Provide the following information for each Major Participant]

Description of Work/Services To Be Performed by Entity (if applicable):

Virginia Contractor License and License Limit (if applicable): _____

3. ADDITIONAL REQUIREMENTS:

[Provide the following information]

- A. Describe the legal structure of the Offeror and provide a list of attached organizational and authorization documents.

[See Instructions to Attachment A, Section A]

- B. Describe the legal structure of the proposed Concessionaire and provide a list of attached organizational documents.

[See Instructions to Attachment A, Section B]

- C. Describe the location of the required provisions.

[See Instructions to Attachment A, Section C]

INSTRUCTIONS TO ATTACHMENT A

ADDITIONAL REQUIREMENTS

- A. Describe the legal structure of the Offeror and provide organizational documents for the Offeror and evidence of authorization of execution and delivery of the Detailed Proposal and validity thereof. If the Offeror is a corporation, it will provide evidence in the form of a resolution of its governing body certified by an appropriate officer of the corporation. If the Offeror is a partnership, such evidence will be in the form of a partnership resolution and a general partner resolution (as to each general partner) providing such authorization, in each case, certified by an appropriate officer of the general partner. If the Offeror is a limited liability company, such evidence will be in the form of a limited liability company resolution and a managing member(s) resolution providing such authorization, certified by an appropriate officer of the managing member(s). If there is no managing member, each member will provide the foregoing information. If the Offeror is a joint venture, such evidence will be in the form of a resolution of each joint venture member, certified by an appropriate officer of such joint venture member. If the Offeror is a joint venture, the Detailed Proposal must be executed by all joint venture members.
- B. Describe the legal structure of the proposed Concessionaire, provide an organizational chart showing the Persons that will own direct or indirect equity interests in the proposed Concessionaire, and provide organizational documents for the proposed Concessionaire and such Persons, as follows:
1. If any such entity is a corporation or includes a corporation as a joint venture member, partner or member, provide articles of incorporation and bylaws for each such entity, certified by an appropriate individual. If any entity is not yet formed or if a modification to existing articles of incorporation and/or bylaws is contemplated prior to award, state accordingly, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.
 2. If any such entity is a partnership or includes a partnership as a joint venture member, partner or member, (a) attach full names and addresses of all partners and the equity ownership interest of each entity, and (b) provide the incorporation, formation and organizational documents for the entity (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organizational documents is contemplated prior to award, state accordingly, indicate that these documents will be provided for such entity prior to award and provide applicable draft documents for each such entity.

3. If any such entity is a joint venture or includes a joint venture as a joint venture member, partner or member, attach full names and addresses of all joint venture members and the equity ownership interest of each entity and provide the incorporation, formation and organizational documentation for the Offeror/Contractor/Equity Member (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture agreement for a joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, state accordingly, indicate that these documents will be provided prior to award and provide applicable draft documents for each such entity.
4. If the Offeror or proposed Concessionaire is a limited liability company or includes a limited liability company as a joint venture member, partner or member, attach full names and addresses of all members and the equity ownership interest of each entity, provide the incorporation, formation and organizational documentation for the Offeror or proposed Concessionaire (partnership agreement and certificate of partnership for a partnership, articles of incorporation and bylaws for a corporation, operating agreement for a limited liability company and joint venture) certified by an appropriate individual. If any entity is not yet formed or if a modification to the organization documents is contemplated prior to award, state accordingly, and indicate that this information will be provided prior to award. Attach evidence to the Detailed Proposal and to each letter that the person signing has authority to do so and provide applicable draft documents for each such entity.

If any entity is not yet formed or if a modification is contemplated prior to award, state accordingly and provide a brief description of the proposed legal structure of each such entity.

- C. The partnership agreement, limited liability company operating agreement or joint venture agreement, as applicable, of the proposed Concessionaire must include an express provision satisfactory to the Department, in its sole discretion, stating that, in the event of a dispute between or among joint venture members, partners or members, as applicable, no joint venture member, partner or member, as applicable, will be entitled to stop, hinder or delay work on the Project. Offeror will submit the applicable agreement to the Department and identify on a cover page where in the agreement the provision can be found. If the proposed Concessionaire is not yet formed, provide draft organizational documents and indicate where the provision is found.

FORM 1-B

TECHNICAL PROPOSAL COVER LETTER

Offeror: _____

Technical Proposal Date: _____, 2011

Office of Transportation Public-Private Partnerships
600 East Main Street, Suite 2120
Richmond, VA 23219
Attn: Margie Ray

The undersigned (“Offeror”) submits this Technical Proposal (the “Technical Proposal”) in response to the Request for Detailed Proposals issued by the Virginia Department of Transportation (the “Department”), a department of the Commonwealth of Virginia, dated July 28, 2011, as amended (the “RFDP”), to finance, develop and operate the U.S. Route 460 Corridor Improvements Project (the “Project”), as more specifically described herein and in the documents provided with the RFDP.

Initially capitalized terms not otherwise defined in this Technical Proposal will have the meanings set forth in the RFDP, including the Instructions to Offerors (the “Instructions”) and Attachment A to the Instructions.

In consideration for the Department supplying us, at our request, with the RFDP and agreeing to examine and consider this Technical Proposal, the Offeror undertakes:

(a) to incorporate this Technical Proposal into the Offeror’s final Detailed Proposal, which will be submitted on or before the Financial Proposal Due Date as established by Section 2.3 of the Instructions, without variation, amendment or modification of any kind whatsoever;

(b) if the Offeror’s Detailed Proposal is accepted by the Department, to enter into the Comprehensive Agreement without varying or amending the terms of this Technical Proposal (except for modifications agreed to by the Department in its sole discretion), and to satisfy all other conditions to the award of the Comprehensive Agreement, including compliance with all commitments contained in this Technical Proposal; and

(c) to develop the Offeror’s Financial Proposal on the basis of this Technical Proposal, without variation, amendment or modification of any kind whatsoever.

Enclosed and, by this reference, incorporated in and made a part of this Detailed Proposal are the following:

1. Executive Summary
2. Technical Proposal, including Certifications and Documents

3. *[List additional attachments]*

Offeror acknowledges receipt of the following Addenda to the RFDP and sets of questions and responses:

[List all addenda and sets of questions and responses]

Offeror certifies the following:

1. the Technical Proposal is submitted without reservation, qualification, assumptions or conditions;
2. the Design-Build Contractor and all other Contractors identified in the Technical Proposal that will be responsible for the performance of construction work on the Project have been prequalified for such work by the Department;
3. Offeror has carefully examined and is fully familiar with all of the provisions of all of the RFDP Documents, including all materials posted on the Project website, the Addenda and the Department's responses to questions, and is satisfied that the RFDP Documents provide sufficient detail regarding the obligations to be performed by the Offeror and do not contain internal inconsistencies;
4. Offeror has carefully checked all the words, figures and statements in this Technical Proposal;
5. Offeror has conducted such other field investigations and additional design development as is prudent and reasonable in preparing this Technical Proposal; and
6. prior to the date of this Technical Proposal Cover Letter, Offeror has notified the Department of any deficiencies in or omissions from any RFDP documents or other documents provided by the Department and of any unusual site conditions observed.

Offeror represents that all statements made and information contained in the Conceptual Proposal and Preliminary Information submittal previously delivered to the Department are true, correct and accurate as of the date hereof, except as otherwise specified in the enclosed Technical Proposal. Offeror agrees that such Conceptual Proposal, except as modified by the enclosed Technical Proposal, is incorporated as if fully set forth in this Technical Proposal.

Offeror understands that the Department's selection of a Successful Offeror, if any, is contingent upon the satisfaction of all of the requirements of Section 6 of the Instructions, including in respect of the Financial Proposal, and that the Department will be under no obligation to select the Offeror submitting the Detailed Proposal with the lowest nominal Public Funds Amount or to make a selection at all. Offeror further acknowledges that if Offeror fails to timely submit a Financial Proposal in accordance with the Instructions, the Department may

immediately cease review of this Technical Proposal and reject the Offeror’s Detailed Proposal in accordance with Section 5.1.5 of the Instructions.

Offeror further understands that all costs and expenses incurred by it in preparing this Detailed Proposal and participating in the RFDP process will be borne solely by the Offeror.

Offeror consents to the Department’s disclosure of its Technical Proposal in accordance with Section 56-573.1:1 and Section 2.2-3700 *et seq.* of the Code of Virginia, to any Person, with the exception of those portions of the Technical Proposal that the Department has determined to be exempt as trade secrets or proprietary information pursuant to Section 2.2-3705.6(11) of the Code of Virginia.

Offeror agrees that the Department will not be responsible for any errors, omissions, inaccuracies or incomplete statements in this Technical Proposal.

This Technical Proposal will be governed by and construed in all respects according to the laws of the Commonwealth of Virginia.

The business address of Offeror is as follows:

(No.) (Street) (Floor or Suite)

(City) (State or Province) (ZIP or Postal Code) (Country)

State or Country of Incorporation/Formation/Organization: _____

[Insert the entity’s name]

By: _____

Print Name: _____

Title: _____

FORM 2

NON-COLLUSION AFFIDAVIT

Each of the undersigned, being first duly sworn, deposes and says that:

- A. _____ is the _____ of _____ and _____ is the _____ of _____, which entity(ies) are the _____ of _____, the entity making the foregoing Detailed Proposal.
- B. I, the firm, corporation or officers, agents or employees thereof have neither directly nor indirectly entered into any combination or arrangement with any person, firm or corporation or entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with such contract, the effect of which is to prevent competition or increase the cost of construction or maintenance of the Project.

Signed at _____, this ____ day of _____, 2011
County (City), State

(Name of Firm) By: _____ Title (print)
(Signature)

STATE of _____ COUNTY (CITY) of _____

I _____, a Notary Public in and for the State and
County(City) aforesaid, hereby certify that this
day _____

personally appeared before me and made oath that he/she is duly authorized to make the above
statements and that such statements are true and correct.

Subscribed and sworn to before me this _____ day of _____, 2011

Notary Public My Commission expires: _____

[Duplicate or modify this form as necessary so that it accurately describes the entity submitting the Detailed Proposal and so that it is signed on behalf of the Offeror by an authorized representative thereof, or, if Offeror is a joint venture or other association other than a corporation, limited liability company or partnership, so that it is signed by an authorized representative of each member of the Offeror.]

FORM 3

CONFLICT OF INTEREST DISCLOSURE STATEMENT

Offeror's Name: _____ (“Offeror”)

Offeror's attention is directed to Section 10.1 of the Instructions and 23 CFR Part 636 Subpart A regarding organizational conflicts of interest and the restrictions applicable to such conflicts. Offerors are advised that certain firms will not be allowed to participate on any Offeror's team for the Project because of their work with the Department in connection with the Project procurement. Refer to Attachment A to the Instructions for the meaning of various capitalized terms and acronyms used but not defined herein, and refer to Exhibit A to the Comprehensive Agreement for the meaning of capitalized terms and acronyms used but not defined herein or in said Attachment A.

1. Required Disclosure of Conflicts

In the space provided below, and on supplemental sheets as necessary, identify all relevant facts relating to past, present or planned interest(s) of the Offeror's team (including the Offeror and Major Participants, proposed consultants and proposed Contractors, and their respective chief executives, directors, and other key personnel for the project) that may result, or could be viewed as, an organizational conflict of interest in connection with this RFDP.

Offeror should disclose (a) any current contractual relationships with the Department, (b) any past, present or planned contractual or employment relationships with any officer or employee of the Department, and (c) any other circumstances that might be considered to create a financial interest in the contract by any CTB member or any the Department officer or employee if Offeror is awarded the Agreement. Offeror should also disclose matters such as ownership of 10% or more of the stock of, or having directors in common with, any of the individuals or entities involved in preparing the RFDP. Offeror should also disclose contractual relationships (*i.e.*, joint ventures) with any of the individuals or entities involved in preparing the RFDP, as well as relationships wherein such individual or entity is a contractor or consultant (or subcontractor or subconsultant) to Offeror or a member of Offeror's team. The foregoing is provided by way of example, and will not constitute a limitation on the disclosure obligations.

2. Explanation

In the space provided below, and on supplemental sheets as necessary, identify steps the Offeror or other entities have taken or will take to avoid, neutralize or mitigate any organizational conflicts of interest described herein.

3. Certification

The undersigned hereby certifies that, to the best of his or her knowledge and belief, no interest exists that is required to be disclosed in this Conflict of Interest Disclosure Statement, other than as disclosed above.

Signature

Name

Title

Name of Offeror

Date

FORM 4

EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION

[To be executed by the Offeror, Major Participants and proposed Contractors]

The undersigned certifies on behalf of _____, that:
(Name of entity making certification)

[check one of the following boxes]

- It has developed and has on file at each establishment affirmative action programs pursuant to 41 CFR Part 60-2 (Affirmative Action Programs for nonconstruction (supply and service) contractors).

- It is not subject to the requirements to develop an affirmative action program under 41 CFR Part 60-2 (Affirmative Action Programs for nonconstruction (supply and service) contractors).

[check one of the following boxes]

- It has not participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246.

- It has participated in a previous contract or subcontract subject to the equal opportunity clause described in Executive Orders 10925, 11114 or 11246 and, where required, it has filed with the Joint Reporting Committee, the Director of the Office of Federal Contract Compliance, a Federal Government contracting or administering agency, or the former President's Committee on Equal Employment Opportunity, all reports due under the applicable filing requirements.

Signature: _____

Name: _____

Title: _____

Date: _____

If not Offeror, relationship to Offeror: _____

Note: The above certification is required by the Equal Employment Opportunity Regulations of the Secretary of Labor (41 CFR 60-1.7(b)(1)) and must be submitted only in connection with contracts that are subject to the equal opportunity clause. Contracts that are exempt from the equal opportunity clause are set forth in 41 CFR 60-1.5. (Generally, only contracts of \$10,000 or under are exempt.)

Currently, Standard Form 100 (EEO-1) is the only report required by the Executive Orders or their implementing regulations.

Offeror, Major Participants or proposed Contractors who have participated in a previous contract subject to the Executive Orders and have not filed the required reports should note that 41 CFR 60-1.7(b)(1) prevents the award of contracts and subcontracts unless such contractor submits a report covering the delinquent period or such other period specified by the Federal Highway Administration or by the Director, Office of Federal Contract Compliance, U.S. Department of Labor.

FORM 5

USE OF CONTRACT FUNDS FOR LOBBYING CERTIFICATION

[To be executed by Offeror, Major Participants, and Contractors to be paid in excess of \$100,000]

1. The undersigned certifies that, to the best of its knowledge and belief:
 - a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 - b. If any funds other than federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with any federal contract, grant, loan, or cooperative agreement, the undersigned will complete and submit Standard Form-LLL, “Disclosure Form to Report Lobbying,” in accordance with its instructions, and will include a copy of said form in its proposal or bid, or submit it with the executed Agreement or Subcontract.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. §1352. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Offeror will require that the language of this certification be included in all lower-tier sub-contracts that exceed \$100,000 and that all such recipients will certify and disclose accordingly.
4. The undersigned certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the undersigned understands and agrees that the provisions of 31 U.S.C. §3801 *et seq.*, apply to this certification and disclosure, if any.

[Note: Pursuant to 31 U.S.C. §1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.]

Signature: _____

Name: _____

Title: _____

Entity Making Certification: _____

Date: _____

FORM 6

DEBARMENT AND SUSPENSION CERTIFICATION

The undersigned Offeror certifies on behalf of itself, all Major Participants and all proposed Contractors, to the best of its knowledge and belief, that each such entity and its principals:

- a. are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions pursuant to an established debarment procedure by any public body, agency of another state or agency of the federal government, including debarment due to contravention of legal or safety regulations;
- 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; violation 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 1b of this certification;
- 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; and
- e. have not within the past ten years been convicted of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article 6 (Section§ 2.2-4367 *et seq.*) of Chapter 43 (Virginia Public Procurement Act), (ii) the Virginia Governmental Frauds Act (Section§ 18.2-498.1 *et seq.*), (iii) Chapter 4.2 (Section§ 59.1-68.6 *et seq.*) of Title 59.1, or (iv) any substantially similar law of the United States or another state.

Where the Offeror is unable to certify to any of the statements in this certification, it will attach a certification to its proposal or bid stating that it is unable to provide the certification and explaining the reasons for such inability. For any explanation noted, indicate below to whom it applies, initiating agency, and dates of action. Providing false information may result in federal criminal prosecution or administration sanctions. The Offeror will provide immediate written notice to the Department if at any time the Offeror learns that its certification was erroneous when submitted or has become erroneous by reason of change circumstances.

The undersigned makes the foregoing statements to be filed with the Detailed Proposal submitted on behalf of the Offeror.

Signature: _____

Name: _____

Title: _____

Offeror: _____

Date: _____

FORM 7

DETAILED PROPOSAL SECURITY

IRREVOCABLE STANDBY LETTER OF CREDIT

ISSUER: [●] *[Name and address of banking institution with offices in the City of New York, New York or the City of Richmond, Virginia; must be Member of the New York Clearing House Association unless otherwise approved by the Department]*

PLACE FOR PRESENTATION OF DRAFT: *[Name and Address of Bank/Branch—MUST be in the City of New York, New York or the City of Richmond, Virginia unless otherwise approved by the Department]*

APPLICANT: [●]

BENEFICIARY: VIRGINIA DEPARTMENT OF TRANSPORTATION
1401 EAST BROAD STREET
RICHMOND, VA 23219

ATTN: [●]

LETTER OF CREDIT NUMBER: [●]

PLACE AND DATE OF ISSUE: [●]

AMOUNT: Initially Twenty Million U.S. Dollars (\$20,000,000), increasing to Fifty Million U.S. Dollars (\$50,000,000), as provided herein *[The amount of a single Detailed Proposal letter of credit may be less on the condition that the Offeror submits more than one Detailed Proposal letter of credit and the sum of such Detailed Proposal letters of credit together is initially \$20,000,000.]*

EXPIRATION DATE: [●] *[Insert date that is 180 days after the Financial Proposal Due Date]*

Issuer hereby issues this Irrevocable Standby Letter of Credit (this “Letter of Credit”) in favor of Beneficiary in the amount of [words] United States Dollars (US\$[numbers]), as adjusted

pursuant to this Letter of Credit (such amount, the “Stated Amount”). Funds under this Letter of Credit are available to Beneficiary upon Beneficiary’s presentation to Issuer of one or more sight drafts drawn on Issuer for a sum or sums in an aggregate amount not exceeding the Stated Amount. Any sight draft under this Letter of Credit will identify this Letter of Credit by the name of Issuer and the Letter of Credit number, amount, and place and date of issue. Such sight draft will be signed by [*an officer of Beneficiary*] or his designee and will contain a statement that Beneficiary is entitled to make such draw or will be accompanied by a signed statement of [*an officer of Beneficiary*] to the same effect. Partial drawings and multiple drawings under this Letter of Credit are permitted.

The Stated Amount will immediately increase to the amount of [*words*] United States Dollars (US\$[*numbers*]) upon designation by the Department of [*INSERT name of Offeror*] as the “Successful Offeror” in accordance with the Department’s *Request for Detailed Proposals, U.S. Route 460 Corridor Improvement Project through the Public-Private Transportation Act*, dated July 28, 2011, as amended.

This Letter of Credit will be honored by Issuer if presented at [*NEW YORK, NEW YORK or RICHMOND, VIRGINIA Bank/Branch—Name & Address*] on or before [●] [*Insert date that is 180 days after the Financial Proposal Due Date*] (the “Expiration Date”). If a drawing in compliance with the terms and conditions of this Letter of Credit is presented at or prior to [●] PM, Eastern time, on any Banking Day, Issuer will honor the drawing on the same day. If such drawing is presented after [●] PM, Eastern time, on such day, Issuer will honor the drawing before [●] PM, Eastern time, on the following Banking Day. Drawings under this Letter of Credit may be made between 9:00 AM and 5:00 PM, Eastern time, on any Banking Day. As used herein “Banking Day” means any day that is not a Saturday or Sunday or any other day on which commercial banks in [●] are authorized by law or executive order to close.

The obligations of Issuer hereunder are primary obligations to Beneficiary and will not be affected by the performance or non-performance by [*Name of Applicant*] under any agreement with Beneficiary or by any bankruptcy, insolvency or other similar proceeding initiated by or against [*Name of Applicant*]. [*Name of Applicant*] is not the beneficiary under this Letter of Credit and possesses no interest whatsoever in proceeds of any draw hereon. Issuer will pay to Beneficiary any amount drawn hereunder in immediately available funds free and clear of and without deduction for any taxes, duties, fees, liens, set-offs or other deductions of any kind and regardless of any objection by any third party. This Letter of Credit will terminate on the earlier of (i) the close of business on the Expiration Date and (ii) the date on which Issuer has honored one or more draws in the full amount of the Stated Amount. This Letter of Credit may not be transferred by Beneficiary to any other person. Drawings by facsimile to facsimile number [●] are acceptable (each such drawing, a “Fax Drawing”), *provided, however*, that a Fax Drawing will not be effectively presented until Beneficiary confirms, by telephone, Issuer’s receipt of such Fax Drawing by calling Issuer at telephone number [●]. Issuer will acknowledge Beneficiary’s presentment by electronic mail to the electronic mail address provided to Issuer in the Fax Drawing.

To the extent not inconsistent with the express provisions hereof, this Letter of Credit is subject to the rules of the *International Standby Practices ISP98* (“ISP98”), as interpreted under the

laws of the Commonwealth of Virginia, and will, as to matters not governed by ISP98, be governed and construed in accordance with the laws of the Commonwealth of Virginia, without regard to principles of conflicts of law.

With respect to any suit, action or proceedings relating to this Letter of Credit (“Proceedings”), Issuer irrevocably: (i) submits to the exclusive jurisdiction of the United States District Court for the Eastern District of Virginia and (ii) waives any objection which it may have at any time to the laying of venue of any Proceedings brought in such court, waives any claim that such Proceedings have been brought in an inconvenient forum and further waives the right to object, with respect to such Proceedings, that such court does not have any jurisdiction over Issuer.

Any failure by Beneficiary to draw upon this Letter of Credit as permitted hereunder will not cause this Letter of Credit to be unavailable for any future drawing, *provided that* this Letter of Credit has not expired prior to such future drawing and that all requirements of this Letter of Credit are independently satisfied with respect to any such future drawing.

[ISSUER]

By: _____

Name: _____

FORM 8
FINANCIAL PROPOSAL FORMS

- Form 8-A Public Funds Amount Form
- Form 8-B Initial Toll Rates Form
- Form 8-C Financial Statements Summary Table
- Form 8-D Financial Plan Tables
- Form 8-E Schedule of Values Form
- Form 8-F Alternative Conceptual Design Valuation Form
- Form 8-G Declaration of No Material Change Form

FORM 8-A
PUBLIC FUNDS AMOUNT FORM

Offeror's Name: _____

Based on the Base Case Financial Model (as described in Section C8 of Attachment C of the RFDP) the Public Funds Amount installments are to be submitted in the format provided below.

Fiscal Year No.	Fiscal Year End Date	[Month No.]	Month End Date	Public Funds Amount installment (in nominal dollars)*	Cumulative Public Funds Amount (in nominal dollars)
		n		CPn	
1		1			
2		2			
3		3			
4		4			
5		5			
6		6			
		...			
		...			
		...			
		...			
		[Max Months = 60]			
			TOTAL	[Sum of all Public Funds Amount installments]	[Sum of all Public Funds Amount installments]

* The Public Funds Amount installment for each month will be calculated as follows:

$$PFA = CE \times PRS$$

Where:

PFA means the Public Funds Amount installment for the relevant month

CE means the Capital Expenditure for such month according to Form 8-D and the Offeror's Base Case Financial Model

PRS means the Department's pro rata share, which will be calculated as follows:

$$\text{PRS} = \text{TPFA} / \text{TCE}$$

Where:

TPFA means the total Public Funds Amount requested by the Offeror set forth on this Form 8-A

TCE means the total Capital Expenditure set forth on the Offeror's Form 8-D

FORM 8-B
INITIAL TOLL RATES FORM

Offeror's Name: _____

Section 1. Initial Toll Rates

The Offeror will complete separate tables providing the Initial Toll Rates to be charged for passenger vehicles and for the "Base Truck" vehicle as described in Section 2 below during the first calendar year of operation. All amounts will be stated in January 1, 2012, U.S. dollars.

The Initial Toll Rates will be stated in dollars per mile for each Toll Segment as defined by the Offeror, which will be consistent with those identified in the Offeror's Technical Proposal in accordance with Section B5.10 of Attachment B. The rate per mile of any category of road may vary by Toll Segment, by charging time period and according to any discount program. The Offeror may propose up to four different charging time periods. Examples demonstrating the layout of the forms setting forth the Initial Toll Rates are presented below.

U.S. 460 Passenger Vehicle Initial Toll Rate Schedule*

	Toll Segments			
	Toll Segment 1	Toll Segment 2	Toll Segment n
From	W. Terminus			
To				E. Terminus
Length (miles)				
_____ to _____ (a.m peak)	(\$/mile)			
_____ to _____ (p.m peak)				
_____ to _____ mid-day				
_____ to _____ night				

* Offeror will define the time periods and Toll Segments consistent with the assumptions in its traffic and revenue forecast

Offeror should note that increases in the Toll Rates for each Toll Segment are capped in any calendar year at the higher of 3% and CPI.

U.S. 460 "Base Truck"* Initial Toll Rate Schedule**

	Toll Segments			
	Toll Segment 1	Toll Segment 2	Toll Segment n
From	W. Terminus			
To				E. Terminus
Length (miles)				
_____ to _____ (a.m. peak)	(\$/mile)			
_____ to _____ (p.m. peak)				
_____ to _____ (mid-day)				
_____ to _____ (night)				

- * "Base Truck" is the predominant truck type (*i.e.*, 5-axle truck) in Offeror's proposed truck classification schedule
- ** Offeror will define the time periods and Toll Segments consistent with the assumptions in its traffic and revenue forecast

Section 2. Truck Classification Methodology and Multiplier

The Offeror will select one and only one truck classification methodology from the three alternatives in the Truck Classification Schedule below (axle-, shape- or weight-based) and will insert the chosen methodology on the Truck Classification Schedule to be included with the Detailed Proposal.

The Offeror will also insert on the Truck Classification Schedule the predominant class to which the Base Truck Toll Rate Schedule will apply. The Initial Toll Rates for all other truck classes will be computed by applying a multiplier for each respective class. The Offeror will insert in the Truck Classification Schedule below the proposed multiplier and forecasted participation for each truck classification (for the selected truck classification methodology only).

Truck Classification Schedule

The classification methodology is: _____.
(indicate axle-, shape- or weigh- based above)

The Base Truck class is: _____.
(indicate base class for above selected classification methodology)

Axle Truck Classification	Multiplier***	Forecasted Percentage of total trucks
3 axles		
4 axles		
5 axles		
6 or more axles		
Weighted Average Multiplier based on number of axles		100%

Shape Truck Classification	Multiplier***	Forecasted Percentage of total trucks
Small trucks		
Large trucks		
Large trucks with one trailer		
Large trucks with more than one trailer		
Weighted Average Multiplier based on shape		100%

Gross Weight Truck Classification (1000 lbs.)	Multiplier***	Forecasted Percentage of total trucks
7-15		
15-19		
19-30		
30-45		
45-62		
62-80		
80-100		
Over 100		
Weighted Average Multiplier based on weight		100%

*** Offeror will use a multiplier of 1.0 for the base class.

Section 3. Toll Marketing Strategy

The Offeror will describe any discount or incentive programs that it will commit to offer and the duration thereof.

Section 4. Sample Trips

For purposes of clarity, Offeror will provide the opening year toll in January 1, 2012, U.S. dollars for each of the following trips:

Passenger Vehicles

	Toll Segments Utilized	East Bound Total Trip Toll	West Bound Total Trip Toll
Between I-295 and Rt. 58 in Suffolk in Peak period			
Between I-295 and Rt. 58 in Suffolk in Mid Day period			

Truck Vehicles

	Toll Segments Utilized	East Bound Total Trip Toll	West Bound Total Trip Toll
Between I-295 and Rt. 58 in Suffolk in Peak period			
Between I-295 and Rt. 58 in Suffolk in Mid Day period			

FORM 8-C

FINANCIAL STATEMENTS SUMMARY TABLE

Offeror’s Name: _____ Fiscal Year end: _____

SUMMARY OF FINANCIAL INFORMATION () FOR ALL EQUITY MEMBERS, DESIGN-BUILD CONTRACTOR AND GUARANTORS FOR THE LAST THREE FISCAL YEARS FOR WHICH AUDITED FINANCIAL STATEMENTS ARE AVAILABLE (1)**

COMPANY	ROLE/ RESPONSIBILITY WITHIN THE OFFEROR TEAM	TOTAL REVENUES	PRE- TAX PROFIT	RELEVANT REVENUES (2)	FIXED ASSETS	TOTAL ASSETS (3)	CONTINGENT LIABILITIES	LONG-TERM LIABILITIES	SHORT - TERM LIABILITIES	NET WORTH	GEARING (4)

(*) The Chief Financial Officer from the parent company for each reporting entity must certify the information on this form as complete, true and correct. Information should be derived from audited financial statements where possible. Audited financial statements will prevail over this table.

(**) Expressed in thousands (000s) of U.S. dollars. Where applicable, companies should indicate the conversion to U.S. dollars, using the exchange rate prevailing on the last day of each financial year. Please identify the benchmark on which the exchange rate is based.

Notes:

- (1) Complete separate forms for each calendar year.
- (2) Relevant revenue consists of revenue from design-build-finance-operate contracts on transportation projects.
- (3) Excludes goodwill and intangibles.
- (4) Long Term Liabilities/Net Worth.

FORM 8-D
FINANCIAL PLAN TABLES

Offeror's Name: _____

1. SOURCES & USES OF FUNDS DURING CONSTRUCTION PERIOD¹

1.a USES OF FUNDS - ANNUAL

	2012	2013	2014	2015	2016	2017 ⁴	Total
A. Capital Expenditures							
B. Cash taxes							
C. Insurance							
D. Interest							
E. Debt Principal Repayment							
F. Reserves accounts funding amounts							
G. Other investments ²							
H. TOTAL (H = A+B+C+D+E+F+G)³							

¹ All data stated in this summary must come from the Base Case Financial Model. All data should be in inflated dollars (base reference date: January 1, 2012). Tables 1.a and 1.b must be provided on an annual basis per Section C8.13 of Attachment C.

² Other investments such as legal, accounting and other advisory fees, Concessionaire operating cost and any other necessary costs incurred in developing the Project.

³ Total annual and accrued uses figures must equal total annual and accrued sources figures, respectively.

⁴ Update columns as necessary to reflect the entire Construction Period. Indicate end dates for each period. The uses of funds indicated in the first or last period may not cover a full year if the construction starts or ends on a day other than the first or last day of a fiscal year.

1.b.1 SOURCES OF FUNDS - ANNUAL

	2012	2013	2014	2015	2016	2017 ⁷	Total
I. Committed Investment (I=J+K)							
J. Equity contributions							
K. Equity Member debt contributions							
L. Equity over total committed investment (L=J/I)							
M. Committed Investment % (M=I/A)							
N. Senior debt							
O. Other subordinated debt							
P. Public Funds Amount							
Q. Interest income during construction ⁵							
R. Others ⁶							
R. TOTAL (S=I+N+O+P+Q+R=H)							

⁵ Interest income, including that earned on unutilized bond proceeds.

⁶ Additional sources/funds not stated in letters I, N, O, P or Q.

⁷ Update columns as necessary to reflect the entire Construction Period. Indicate start and end dates for each period. The uses of funds indicated in the first and last column may not cover a full year if the construction starts or ends on a day other than the first or last day of a fiscal year.

1.b.2. COMMITTED INVESTMENT ANALYSIS /DESCRIPTION

Firm/Consortium member	Equity investment		Equity Member Debt		Total Committed Investment	
	Q. Amount	% over Total Equity	R. Amount	% over Total Equity Member Debt	S. Amount (S=Q+R)	% over total Committed Investment
TOTAL		100%		100%		100%

1.c. MAXIMUM FINANCIAL LEVERAGE DURING CONSTRUCTION

	2012	2013	2014	2015	2016	2017 ¹
Long-Term Debt (Cumulated N + Cumulated O)						
Long-Term Debt and Capital (Cumulated I + Cumulated N + Cumulated O)						
FINANCIAL LEVERAGE (Cumulated N + Cumulated O)/ (Cumulated I + Cumulated N + Cumulated O)						

¹ Add/remove columns as necessary to cover the entire Construction Period. Indicate start and end dates for each period.

2. PROJECTED OPERATING CASH FLOW

Calendar Year (January 1 - December 31)	2017	2018	2019	2020	2021	2022
Toll Revenues						
Other Revenues (if any)						
Less: operations and routine maintenance						
Less: insurance costs						
Less: general and administration costs						
Less: major maintenance						
Plus: draws on/(less: deposits to) cash-funded reserves /letters of credit ¹						
Sub-total						
<i>Sub-total as % of expected total revenues</i>						
Less: cash taxes						
Project cash flow during operations						
Plus: interest income						
Plus: draws on cash-funded debt service reserve / letter of credit						
Less: interest expense						
Less: principal amortization						
Debt service						
Less/Plus: net cash flow from swaps or other derivatives						

2. PROJECTED OPERATING CASH FLOW

Calendar Year (January 1 - December 31)	2017	2018	2019	2020	2021	2022
Less: financing fees						
Net financial costs and fees						
Cash available after debt service						
Less: deposits to cash-funded debt service reserve						
Less: interest on letters of credit payback						
Less: credit payback of letters of credit						
Cash flow available for shareholders						
Less: Equity Member debt service payments						
Less: dividends						
Less: equity repayments						
Cash flow not distributed						

3. FINANCING DATA

Net Present Value of Public Funds Amount	
Pre-Tax Project Internal Rate of Return (IRR)	
Post-Tax Project Internal Rate of Return (IRR)	
Pre-Tax Equity Internal Rate of Return (IRR)	
Post-Tax Equity Internal Rate of Return (IRR)	
Minimum Debt Service Coverage Ratio (DSCR)	
Average DSCR	
Minimum Project Life Coverage Ratio (PLCR)	
Average PLCR	
Minimum Loan Life Coverage Ratio (LLCR)	
Average LLCR	

4.1. DESCRIPTION OF FINANCING SOURCES AS STATED IN LENDERS' TERM AND CONDITIONS SHEETS

Debt type¹	Amount	Base rate ²	Spread	Up front fees	Debt term	Grace Period

¹ Senior debt, Private Activity Bonds, mezzanine debt, etc.

² Include the reference base rate for the variable part of interest, if applicable (e.g., LIBOR, MMD, BMA) and fixed rate, if hedged (e.g., 5.2%).

4.2. COVERAGE RATIOS

Calendar Year	2012	2013	2014	2015	2016	2017	...
Cash Available for Debt Service							
Total Debt Service and Fees							
Debt Service Coverage Ratio (DSCR)							
<i>Minimum DSCR</i>							
<i>Average DSCR</i>							
Cash Flow Available for Debt Service							
Weighted Average Cost of Debt							
Net present value of cash flow available for debt service							
End of Period Outstanding Debt							
Loan Life Coverage Ratio (LLCR)							
<i>Minimum LLCR</i>							
<i>Average LLCR</i>							
Cash Flow Available for Debt Service							
Weighted Average Cost of Debt							
Net present value of cash flow available for debt service							
End of Period Outstanding Debt							
Project Life Coverage Ratio (PLCR)							
<i>Minimum PLCR</i>							
<i>Average PLCR</i>							

4.3. CASH-FUNDED RESERVES (IF APPLICABLE)

Calendar Year	2012	2013	2014	2015	2016	2017	...
OPERATIONS & MAINTENANCE							
Beginning Balance							
Deposits to Reserve							
Interest Earnings							
Draws on Reserve							
Ending Balance							
DEBT SERVICE							

5. BENCHMARK INTEREST RATES UTILIZED

No.	Index	Maturity	Rate
1.			
2.			
3.			
4.			
5.			
6.			
7.			
	[NTD: Complete as needed]		

FORM 8-E
SCHEDULE OF VALUES FORM

[See attached]

U.S. Route 460 Corridor Improvements Project - Schedule of Values

1 Schedule of Values for Work before Service Commencement

Heading	Work Item Description	Total Cost (nominal dollars)	Year 1	Year 2	Year 3	Year 4	Year 5
Pre-construction Items and Design	Pre-Execution Work						
	Engineering design development						
	Permits and approvals						
General Items and Overheads	Mobilization						
	General construction management						
	Insurances						
	Bonds						
	QA/QC, inspection and supervision						
	Traffic control						
	O&M during construction						
	Third party interfaces including railroads						
Right of Way	ROW acquisition price						
	ROW access control						
	ROW surveys, packages and procedures						
Utilities	Utility adjustment preparation and agreements						
	Utility work / payments to Utilities						
Earthwork	Clearing Right of Way						
	Excavation and embankments						
	Landscaping						
New roadway main lanes	Subgrade treatment, base and pavement						
New interchanges	Subgrade treatment, base and pavement						
New frontage roads and service roads	Subgrade treatment, base and pavement						
Drainage	Culverts and headwalls						
	Water treatment facilities						
	Pipes, drains, ditches						
Bridge substructure	Abutments, bents, piling						
	Approach slabs						
	Excavation and fill to structures						
Bridge superstructure	Beams and bearings						
	Deck slabs and panels						
	Fittings and equipment						

Heading	Work Item Description	Total Cost (nominal dollars)	Year 1	Year 2	Year 3	Year 4	Year 5
Retaining structures	All work in connection with retaining structures						
Roadway signing and pavement markings	All work in connection with signing and markings						
Illumination systems	Poles, foundations, conduits, electrical						
Tolling systems	Gantries and roadside equipment						
	Back office and control systems						
TMS systems	All work for TMS systems						
Environmental mitigations and commitments	All work for environmental mitigations and commitments						
Roadway incidentals	Safety items, barriers						
	Rest areas						
	Traffic signals						

Notes: 1 Work Item coverage is for Offeror guidance and is not intended to be a complete or comprehensive description of the Work

2 The value of any Work item identified by the Offeror but not listed in the table shall be allocated proportionally to the Work items listed in the table

2. Schedule of Values for Operations and Maintenance

Heading	Work Item Description	Average Annualized Total Cost (2012 dollars)
Maintenance Management	Staffing	
	Insurance	
	Professional fees	
	Bonds	
	Maintenance plans	
	Maintenance Management System	
	Records and reports	
	Maintenance Rating Program assessments	
Inspections	General inspections	
	Safety inspections	
	Environmental monitoring	
Ordinary Maintenance	Roadside Assets Maintenance	
	Drainage Maintenance	
	Traffic Assets Maintenance	
	Roadway & Shoulder Asset Maintenance	
	Bridge Asset Maintenance	
	Traffic Management System Maintenance	
	Rest Area Asset Maintenance	
	ETTM System Maintenance	
	Facilities Maintenance	
Life Cycle Maintenance	Major Maintenance – roadway	
	Major Maintenance – structures	
	Major Maintenance – roadside assets	
	Major Maintenance – ETTM System	
Operations	Operations management	
	Incident / Emergency response	
	Customer response	
	Repair damage by third parties	

Heading	Work Item Description	Average Annualized Total Cost (2012 dollars)
	Winter maintenance	
	Sweeping / debris removal	
	Graffiti Removal	
	Hazardous Substances clear up	
	Traffic management	
	Traffic data collection	
Tolling	Electronic Toll Collection	
	Operate ETM system and facilities	
	Transaction management and reporting	
	Enforcement	
	System back up and recovery	
	Coordination with tolling agencies	

Notes

1. Work Item coverage is for Offeror guidance and is not intended to be a complete or comprehensive description of the Work
2. The value of any Work item identified by the Offeror but not listed in the table shall be allocated proportionally to the Work items listed in the table

FORM 8-F

ALTERNATIVE CONCEPTUAL DESIGN VALUATION FORM

U.S. Route 460 Corridor Improvements Project

Alternative Conceptual Design Valuation Form

Heading	Work Item Description	Total Cost (nominal dollars)	Year 1	Year 2	Year 3	Year 4	Year 5
Pre-construction Items and Design	Pre-Execution Work						
	Engineering design development						
	Permits and approvals						
General Items and Overheads	Mobilization						
	General construction management						
	Insurances						
	Bonds						
	QA/QC, inspection and supervision						
	Traffic control						
	O&M during construction						
	Third party interfaces including railroads						
Right of Way	ROW acquisition price						
	ROW access control						
	ROW surveys, packages and procedures						
Utilities	Utility adjustment preparation and agreements						
	Utility work / payments to Utilities						
Earthwork	Clearing Right of Way						
	Excavation and embankments						
	Landscaping						
New roadway main lanes	Subgrade treatment, base and pavement						
New interchanges	Subgrade treatment, base and pavement						
New frontage roads and service roads	Subgrade treatment, base and pavement						
Drainage	Culverts and headwalls						
	Water treatment facilities						
	Pipes, drains, ditches						

Heading	Work Item Description	Total Cost (nominal dollars)	Year 1	Year 2	Year 3	Year 4	Year 5
Bridge substructure	Abutments, bents, piling						
	Approach slabs						
	Excavation and fill to structures						
Bridge superstructure	Beams and bearings						
	Deck slabs and panels						
	Fittings and equipment						
Retaining structures	All work in connection with retaining structures						
Roadway signing and pavement markings	All work in connection with signing and markings						
Illumination systems	Poles, foundations, conduits, electrical						
Tolling systems	Gantries and roadside equipment						
	Back office and control systems						
TMS systems	All work for TMS systems						
Environmental mitigations and commitments	All work for environmental mitigations and commitments						
Roadway incidentals	Safety items, barriers						
	Rest areas						
	Traffic signals						

Notes: 1 Work Item coverage is for Offeror guidance and is not intended to be a complete or comprehensive description of the Work

2 The value of any Work item identified by the Offeror but not listed in the table shall be allocated proportionally to the Work items listed in the table

FORM 8-G

DECLARATION OF NO MATERIAL CHANGE

(a) *[NTD: Form 8-G will be signed by the CFO or controller of the entity or by a director, officer, or employee of the entity authorised to sign audit opinions in the jurisdiction in which the entity’s head office is located.]*

The Major Participant identified below hereby declares that:

1. the Major Participant has not experienced any material change to its financial status since the most recent financial statement;

OR

the following is a list of situations, each of which may be a material change to the Major Participant’s financial status since the most recent financial statement:

[NTD: Delete one of the above limbs as appropriate]

2. except as described below, there are no recent (last three years), current or pending civil or criminal litigation or proceedings in which the Major Participant or any affiliate thereof was a party either as plaintiff, defendant or accused, which if adversely settled or determined, would likely result in a material change in the financial status of the Major Participant or affiliate thereof or the consolidated group of companies of which it is a member.

Name of Major Participant:

Address:

Telephone Number:

Email:

Authorized by:

(Signature)

Printed Name and Title:

Date:

FORM 9

PROPOSAL PAYMENT FORM

THIS PROPOSAL PAYMENT AGREEMENT (this “Agreement”) is made and entered into as of this ____ day of _____, 20__, by and between the Virginia Department of Transportation (the “Department”), and _____ (“Offeror”).

WITNESSETH:

WHEREAS, as a result of a Solicitation for Conceptual Proposals dated May 5, 2010, Offeror has been invited to submit a detailed proposal in response to a Request for Detailed Proposals (“RFDP”) for the U.S. Route 460 Corridor Improvements Project (“Project”) in accordance with the Public-Private Transportation Act of 1995 (“PPTA”), and if selected as the successful offeror in accordance therewith Offeror will enter into a Comprehensive Agreement (the “Comprehensive Agreement”) with the Department; and

WHEREAS, as part of the procurement process for the Project, Offeror has already provided and/or furnished to the Department, and may continue to provide and/or furnish to the Department, certain intellectual property, materials, information and ideas, including, but not limited to, such matters that are: (a) conveyed verbally and in writing during proprietary meetings or interviews; and (b) contained in, related to or associated with Offeror’s proposal, including, but not limited to, written correspondence, designs, drawings, plans, exhibits, photographs, reports, printed material, tapes, electronic disks, or other graphic and visual aids (collectively “Offeror’s Intellectual Property”); and

WHEREAS, the Department is willing to provide a payment to Offeror, subject to the express conditions stated in this Agreement, to obtain certain rights in Offeror’s Intellectual Property, provided that Offeror submits a proposal that the Department determines to be responsive to the RFDP in accordance with the terms set forth therein (“Offeror’s Proposal”), and either (a) Offeror is not awarded the Comprehensive Agreement; or (b) the Department cancels the procurement or decides not to award the Comprehensive Agreement to any Offeror; and

WHEREAS, Offeror wishes to receive the payment offered by the Department, in exchange for granting the Department the rights set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement and other good and valuable consideration, the receipt and adequacy of which are acknowledged by the parties, the parties agree as follows:

1. the Department’s Rights in Offeror’s Intellectual Property. Offeror hereby conveys to the Department all rights, title and interest, free and clear of all liens, claims and encumbrances, in Offeror’s Intellectual Property, which includes, without restriction or limitation, the right of THE DEPARTMENT, and anyone contracting with THE DEPARTMENT, to incorporate any ideas or information from Offeror’s Intellectual Property into: (a) the Design-Build Contract and

the Project; (b) any other contract awarded in reference to the Project; or (c) any subsequent procurement by THE DEPARTMENT. In receiving all rights, title and interest in Offeror's Intellectual Property, THE DEPARTMENT is deemed to own all intellectual property rights, copyrights, patents, trade secrets, trademarks, and service marks in Offeror's Intellectual Property, and Offeror agrees that it will, at the request of THE DEPARTMENT, execute all papers and perform all other acts that may be necessary to ensure that THE DEPARTMENT's rights, title and interest in Offeror's Intellectual Property are protected. The rights conferred herein to the Department include, without limitation, the Department's ability to use Offeror's Intellectual Property without the obligation to notify or seek permission from Offeror.

2. Exclusions from Offeror's Intellectual Property. Notwithstanding Section 1 above, it is understood and agreed that Offeror's Intellectual Property is not intended to include, and Offeror does not convey any rights to, the Escrow Proposal Documents submitted by Offeror in accordance with the RFDP.

3. Proposal Payment. the Department agrees to pay Offeror the lump sum amount of **One Million and 00/100 Dollars (\$1,000,000.00)** ("Proposal Payment"), which payment constitutes payment in full to Offeror for the conveyance of Offeror's Intellectual Property to the Department in accordance with this Agreement. Payment of the Proposal Payment is conditioned upon: (a) Offeror's Proposal being, in the sole discretion of the Department, responsive to the RFDP; (b) Offeror complying with all other terms and conditions of this Agreement; and (c) either (i) Offeror is not awarded the Comprehensive Agreement, or (ii) the Department cancels the procurement or decides not to award the Comprehensive Agreement to any Offeror.

4. Payment Due Date. Subject to the conditions set forth in this Agreement, the Department will make payment of the Proposal Payment to the Offeror within forty-five (45) days after the later of: (a) notice from the Department that it has awarded the Comprehensive Agreement to another Offeror; or (b) notice from the Department that the procurement for the Project has been cancelled and that the Department will not award the Comprehensive Agreement to any Offeror.

5. Effective Date of this Agreement. The rights and obligations of the Department and Offeror under this Agreement, including the Department's ownership rights in Offeror's Intellectual Property, vest upon the date that Offeror's Proposal is submitted to the Department. Notwithstanding the above, if Offeror's Proposal is determined by the Department, in its sole discretion, to be nonresponsive to the RFDP, then Offeror is deemed to have waived its right to obtain the Proposal Payment, and the Department will have no obligations under this Agreement.

6. Indemnity. Subject to the limitation contained below, Offeror will, at its own expense, indemnify, protect and hold harmless the Department and its agents, directors, officers, employees, representatives and contractors from all claims, costs, expenses, liabilities, demands, or suits at law or equity ("Claims") of, by or in favor of or awarded to any third party arising in whole or in part from: (a) the negligence or wilful misconduct of Offeror or any of its agents, officers, employees, representatives or subcontractors; or (b) breach of any of Offeror's obligations under this Agreement, including its representation and warranty under Section 8 hereof. This indemnity will not apply with respect to any Claims caused by or resulting from the sole negligence or wilful misconduct of the Department, or its agents, directors, officers, employees, representatives or contractors.

7. **Assignment.** Offeror will not assign this Agreement, without the Department's prior written consent, which consent may be given or withheld in the Department's sole discretion. Any assignment of this Agreement without such consent will be null and void.

8. **Authority to Enter into this Agreement.** By executing this Agreement, Offeror specifically represents and warrants that it has the authority to convey to the Department all rights, title, and interest in Offeror's Intellectual Property, including, but not limited to, those any rights that might have been vested in team members, subcontractors, consultants or anyone else who may have contributed to the development of Offeror's Intellectual Property, free and clear of all liens, claims and encumbrances.

9. **Miscellaneous.**

a. Offeror and the Department agree that Offeror, its team members, and their respective employees are not agents of the Department as a result of this Agreement.

b. Any capitalized term used herein but not otherwise defined will have the meanings set forth in the RFDP.

c. This Agreement, together with the RFDP, embodies the entire agreement of the parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein or in the RFDP, and this Agreement will supersede all previous communications, representations, or agreements, either verbal or written, between the parties hereto.

d. It is understood and agreed by the parties hereto that if any part, term, or provision of this Agreement is by the courts held to be illegal or in conflict with any law of the Commonwealth of Virginia, validity of the remaining portions or provisions will not be affected, and the rights and obligations of the parties will be construed and enforced as if the Agreement did not contain the particular part, term, or provisions to be invalid.

e. This Agreement will be governed by and construed in accordance with the laws of the Commonwealth of Virginia.

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the day and year first above written.

VIRGINIA DEPARTMENT OF TRANSPORTATION

By: _____

Name: _____

Title: _____

[Insert Offeror's Name]

By: _____

Name: _____

Title: _____

FORM 10

WAIVER OF PROPOSAL PAYMENT FORM

THIS WAIVER OF PROPOSAL PAYMENT (“Waiver”) is executed this ____ day of _____, 20__ by _____ (“Offeror”).

WITNESSETH:

WHEREAS, as a result of a Solicitation for Conceptual Proposals dated May 5, 2010, Offeror has been invited to submit a detailed proposal in response to a Request for Detailed Proposals (“RFDP”) for the U.S. Route 460 Corridor Improvements Project (“Project”) in accordance with the Public-Private Transportation Act of 1995 (“PPTA”), and if selected as the successful offeror in accordance therewith, Offeror will enter into a Comprehensive Agreement (the “Comprehensive Agreement”) with the Department; and;

WHEREAS, Offeror, as part of the procurement process for the Project, has already provided and/or furnished to the Department, and may continue to provide and/or furnish to the Department, certain intellectual property, materials, information and ideas, including, but not limited to, such that are: (a) conveyed verbally and in writing during proprietary meetings or interviews; and/or (b) contained in, related to or associated with Offeror’s proposal, including, but not limited to, written correspondence, designs, drawings, plans, exhibits, photographs, reports, printed material, tapes, electronic disks, or other graphic and visual aids (collectively “Offeror’s Intellectual Property”); and

WHEREAS, the Department offered to provide a payment to Offeror (“Proposal Payment”), in accordance with the Proposal Payment Agreement attached to the RFDP, to obtain certain rights in Offeror’s Intellectual Property; and

WHEREAS, Offeror has elected: (a) not to execute the Proposal Payment Agreement; and (b) to waive its rights to receive the Proposal Payment; and

WHEREAS, Offeror has expressed its election to waive its rights of receive the Proposal Payment by executing this Waiver and submitting this Waiver as part of Offeror’s Proposal.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the receipt and adequacy of which are acknowledged by Offeror, the undersigned, representing himself/herself as an authorized representative of Offeror, does hereby forever waive and release, on behalf of Offeror and any person or entity claiming by or through Offeror, any right to

Receive a Proposal Payment, and furthermore waives and releases any other right that it may have to recover the costs associated in the development of Offeror's Intellectual Property.

[Insert Offeror's Name]

By: _____

Name: _____

**VIRGINIA DEPARTMENT OF TRANSPORTATION
U.S. ROUTE 460 CORRIDOR IMPROVEMENTS PROJECT**

ATTACHMENT F

OTHER FORMS

- Form A Confidentiality Agreement
- Form B Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
Multi-Purpose Non-Disclosure Agreement
- Form C Opinion of Counsel

FORM A
CONFIDENTIALITY AGREEMENT

This CONFIDENTIALITY AGREEMENT (this "Agreement") is made and entered into as of _____, 2011 (the "Effective Date"), by and between the VIRGINIA DEPARTMENT OF TRANSPORTATION, an Agency of the Commonwealth of Virginia (the "Department"), whose address is 1401 East Broad Street, Richmond, Virginia 23219, and _____ [insert name of entity and form of entity and state of organization] ("Recipient"), whose address is _____.

Explanatory Statement

A. In the course of its solicitation and evaluation of proposals and the negotiation of contracts in connection with the U.S. Route 460 Corridor Improvements Project (the "Project"), pursuant to the Public-Private Transportation Act of 1995, as amended (the "Act" or the "PPTA"), the Department has prepared or will prepare or cause to be prepared certain studies, assessments, reports or other records, which are entitled to exemption from disclosure under the Freedom of Information Act (FOIA – Section 2.2-3700 *et seq.* of the Code of Virginia) (the "Records").

B. The Department may elect to disclose to Recipient certain of the Records that may be useful to Recipient's preparation of a response to the Department's Request for Detailed Proposals for the Project.

C. The purpose of this Agreement is to provide for the confidentiality of the Records disclosed by the Department to Recipient and to prevent the unauthorized disclosure of such Records by Recipient.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Records.

a. The Department may elect to disclose certain of its Records to Recipient. Nothing herein will require the Department to disclose Records or any of its information.

b. Records may include information disclosed or submitted orally, in writing or by any other media, to Recipient by the Department and/or its consultants. The Department will designate the Records as confidential and exempt from disclosure pursuant to FOIA by conspicuous notation on written or other tangible Records and by delivery to Recipient of written confirmation of oral Records. In the event of any uncertainty as to the status of a Record as confidential or exempt, the Recipient will promptly request clarification from the Department, but will otherwise hold the Record in confidence pursuant to this Agreement unless and until advised otherwise by the Department.

2. Recipient's Obligations.

a. Recipient agrees that the Records are to be considered confidential and proprietary to the Department and Recipient will hold the same in confidence, will not use the Records other than for the purposes of Recipient's response to the Department's Request for Detailed Proposals, and will disclose it to no one, except officers, employees or consultants of Recipient who have agreed to observe the terms of this Agreement and for whom Recipient will ensure compliance with the Agreement. Recipient will not disclose, publish or otherwise reveal any of the Records to any other party whatsoever, except with the specific prior written authorization of the Department.

b. All Records are and remain the property of the Department. Records furnished in tangible form will not be duplicated by Recipient without the prior written permission of the Department. Upon the earlier of the Department's written request or the termination or expiration of this Agreement, Recipient will return all Records received in written or tangible form, including copies or reproductions and any notes or memoranda of conversations relating to the Records, including any copies thereof or other media containing such Records, within ten calendar days of such request. At Recipient's option and the Department's approval, any documents or other media developed by Recipient containing Records may be destroyed by Recipient, in which case Recipient will provide the Department's authorized Point of Contact (POC) a notarized affidavit certifying destruction of such Records within ten calendar days thereafter.

3. Term of Agreement and Termination Requirements.

The obligations of Recipient under this Agreement will begin on the Effective Date of this Agreement and will remain in effect until terminated by a written instrument executed by both parties. Recipient's obligations will not be affected by bankruptcy, receivership, assignment, attachment or seizure procedures, whether initiated by or against Recipient, nor by the rejection of any agreement between the Department and Recipient, by a trustee of Recipient in bankruptcy, or by the Recipient as a debtor-in-possession or the equivalent of any of the foregoing under the Code of Virginia.

4. Governing Law and Equitable Relief.

This Agreement will be governed and construed in accordance with the laws of the Commonwealth of Virginia. All litigation between the parties arising out of or pertaining to this Agreement or its breach will be filed, heard and decided in the Circuit Court of the City of Richmond, Virginia, Division I, which will be the exclusive jurisdiction and venue for any such civil actions brought by either party against the other. Recipient consents to the exclusive jurisdiction of the Circuit Court of the City of Richmond and agrees that, in the event of any breach or threatened breach by Recipient, the Department may obtain, in addition to any other legal remedies that may be available, such equitable relief as may be necessary to protect the Department against any such breach or threatened breach.

5. Limitations on Confidentiality.

a. Nothing in this Agreement will be interpreted as placing any obligation of confidentiality or nonuse by Recipient with respect to any information that:

1. is or becomes publicly available to Recipient, without breach of this Agreement, or is rightfully received by Recipient without an obligation or breach of confidentiality;
2. can be demonstrated to have been in the public domain as of the Effective Date of this Agreement, or legitimately comes into the public domain thereafter through no fault of the Recipient;
3. can be demonstrated to have been known to the Recipient prior to execution of this Agreement and was not acquired, directly or indirectly, from the Department or from a third party under a continuing obligation of confidentiality;
4. is required to be disclosed pursuant to law or court order; provided that Recipient provides prior notice to the Department and provides sufficient time to the Department to assert any exclusions or privileges that may be available by law; or
5. is developed by Recipient without breach of this Agreement;

provided, however, such Records will not be disclosed until 30 days after written notice of intent to disclose is given to the Department's POC along with the asserted grounds for disclosure.

(b) The Recipient will forward all written or oral requests for disclosure of Records to the Department immediately upon receiving said request.

6. Entire Agreement.

This Agreement sets forth the parties' entire understanding as to its subject matter and terminates and supersedes all prior understandings or agreements, oral or written, between the Department and Recipient, relating to the subject matter of this Agreement, but will neither nullify nor otherwise affect any other existing or future confidentiality or nondisclosure agreements between the Recipient and either the Commonwealth of Virginia or the Department.

7. Amendments.

This Agreement may not be changed, modified, or discharged, released, abandoned, or otherwise terminated in whole or in part, except by an instrument in writing signed by duly authorized representatives of the Department and Recipient.

8. Assignment.

Recipient may not sell, assign, or transfer, either voluntarily or by operation of law, this Agreement or any interest herein without the Department's express prior written consent. This Agreement will inure to the benefit of and will be binding upon the Department and Recipient and the Department's and Recipient's respective successors and permitted assigns.

9. Severability.

If any term of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then this Agreement, including all of the remaining terms, will remain in full force and effect as if such invalid or unenforceable term had never been included.

10. Notices.

Any notice required by this Agreement, or given in connection with it, will be in writing and will be given to the Department by delivery to the designated Department POC named below and to Recipient to its designated representative named below, by personal delivery, by certified mail, postage prepaid, return receipt requested, or by recognized overnight delivery service.

The Department's Representative (POC):

Ms. Margie Ray
Program Manager
Office of Transportation Public-Private Partnerships
Virginia Department of Transportation
600 East Main Street, Suite 2120
Richmond, Virginia 23219

Recipient's Representative:

11. No Implied Waiver.

Either party's failure to insist in any one or more instances upon strict performance by the other party of any of the terms of this Agreement will not be construed as a waiver of any continuing or subsequent failure to perform or delay in performance of any term hereof.

IN WITNESS WHEREOF, the parties have executed this Confidentiality Agreement as of the Effective Date above written.

VIRGINIA DEPARTMENT OF TRANSPORTATION,
an agency of the Commonwealth of Virginia

Signature: _____

Name: _____

Title: _____

Date: _____

[RECIPIENT]

Signature: _____

Name: _____

Title: _____

Date: _____

FORM B



**Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
Multi-Purpose Non-Disclosure Agreement**

Retain a copy of both the front and back sides of this form for future reference

The Department requires CII/SSI be protected and not disclosed to unauthorized persons.

PART A: To Be Completed By Individual, the Department or Company Employee

I agree with the following as a condition of being granted access to CII/SSI:

CII/SSI, which is valuable and sensitive, is protected by law and by strict Department policies. The intent of these laws and policies is to assure that CII/SSI will remain confidential, that is, it will be used only as necessary to accomplish the Department's mission. Disclosure of CII/SSI in any manner that permits interception by unauthorized persons could compromise safety and security and is prohibited. CII/SSI may be released only to persons with a need to know.

I might have access to this information in various formats, including but not limited to documents and drawings, physical structures, and computer based systems. I have no right or ownership interest in any Department CII/SSI. The Department may at any time revoke my authorization allowing access to CII/SSI.

Willful violation of this agreement may subject me to discipline that might include, but is not limited to, removal from current Department projects;

exclusion from further Department-related work; and legal liability. My obligations with respect to the confidentiality and security of all CII/SSI disclosed to me shall survive the termination of any agreement or relationship with the Department. My execution of this agreement shall not nullify or affect in any manner any other agreement, non-disclosure or otherwise, that I have executed or may execute with the Department or the Commonwealth of Virginia.

I am obligated to protect this information from unauthorized disclosure in accordance with the terms of this agreement. I will only use CII/SSI that I obtain to perform my legitimate Department-related duties. I will conduct myself in a strict conformance to applicable laws and Department policies governing CII/SSI. I will safeguard the confidentiality of all CII/SSI at all times. I will be responsible for my misuse or my wrongful disclosure of CII/SSI.

Each provision of this agreement is severable. If any administrative or judicial tribunal should find any provision of this agreement to be unenforceable, all other provisions shall remain in full force and effect.

I make this agreement in good faith, without mental reservation or purpose of evasion.

_____	_____
Printed Name	Date
_____	_____
The Department District/Division OR Company Name	Phone Number
_____	_____
Company Address	
_____	_____
Signature	Signature of Authorized Agent (Not required for the Department employees)

PART B: To Be Completed By Company Agent Only:

In addition to the provisions above, I certify:

All employees of this company involved with this Department project, regardless of location, who will have access to CII/SSI, myself included, will complete Part A of the Critical Infrastructure Information/Sensitive Security Information Multi-Purpose Non-Disclosure Agreement. The Agreement will be signed by me and accepted by the Department prior to being granted access to CII/SSI. We will only access CII/SSI for which we have a need to know.

We will safeguard the confidentiality of all CII/SSI at all times. We will conduct ourselves in strict conformance to applicable laws and Department policies governing CII/SSI. Obligations with respect to the confidentiality and security of all CII/SSI disclosed to us shall survive the termination of any agreement or relationship with the Department.

Authorized Company Agent:

_____	_____
Signature of Authorized Agent	Date
_____	_____
Printed Name	Title
_____	_____
Company Name	Phone Number
_____	_____
Company Address	

Contract Name and Number	



**Critical Infrastructure Information/Sensitive Security Information (CII/SSI)
Multi-Purpose Non-Disclosure Agreement**

Retain a copy of both the front and back sides of this form for future reference.

Handling CII/SSI

You are responsible for safeguarding Critical Infrastructure Information/Sensitive Security Information (CII/SSI) in your custody or under your control.

The extent of protection afforded CII/SSI will be sufficient to reasonably foreclose the possibility of its loss or compromise.

The terms of this clause (*Handling CII/SSI*), including this paragraph, must be included in any dissemination of any document, in whole or in part, that contains CII/SSI.

Protection – CII/SSI will be protected at all times, either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with protected CII/SSI is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

Use and Storage – During working hours, reasonable steps will be taken to minimize the risks of access to CII/SSI by unauthorized personnel. After working hours, CII/SSI will be secured in a secure container, such as a locked desk, file cabinet or facility where contract security is provided.

Reproduction – Documents or material containing CII/SSI may be reproduced to the minimum extent necessary consistent with the need to carry out official duties; *provided*, that the reproduced material is marked and protected in the same manner as the original material.

Disposal – Material containing CII/SSI will be disposed of by any method that prevents unauthorized retrieval (*e.g.*, shredding, burning, returning to original source, etc.).

Transmission – CII/SSI will be transmitted only by the Department courier, United States first class, express, certified or registered mail, or through secure electronic means.

FORM C

OPINION OF COUNSEL

[LETTERHEAD OF INDEPENDENT LAW FIRM OR IN-HOUSE COUNSEL – SEE SECTION 6.7.3(H) OF THE INSTRUCTIONS FOR LEGAL COUNSEL REQUIREMENTS]

[Date of Comprehensive Agreement]

Virginia Department of Transportation
1401 East Broad Street
Richmond, VA 23219

Re: Comprehensive Agreement for the U.S. Route 460 Corridor Improvements Project dated as of [●], 2012, by and between Virginia Department of Transportation (the “Department”), and [●] (the “the Concessionaire”)

Ladies and Gentlemen:

[Insert description of relationship of counsel to the Concessionaire and its joint venture members, general partners, members, as applicable, and any other entities whose approval is required in order to authorize delivery of the Detailed Proposal and execution of the Comprehensive Agreement.] This opinion is being provided to you pursuant to Section 6.7.3(h) of the Instructions to Offerors (the “Instructions”) contained in that certain Request for Detailed Proposals issued by the Department on July 28, 2011, as amended. Capitalized terms used but not defined herein shall have their respective meanings set forth in the Instructions.

In giving this opinion, we have examined [●]. We have also considered such questions of law and we have examined such documents and instruments and certificates of public officials and individuals who participated in the procurement process as we have deemed necessary or advisable.

In giving this opinion, we have assumed that all items submitted to us or reviewed by us are genuine, accurate and complete, and if not originals, are true and correct copies of originals, and that all signatures on such items are genuine. *[Insert other assumptions.]*

Subject to the foregoing, we are of the opinion that:

1. [opinion regarding organization/formation and existence of the Concessionaire and that the Concessionaire has corporate power to own its properties and assets, carry on its business, enter into the Comprehensive Agreement and perform its obligations under each of the Comprehensive Agreement and the other Project Agreements to which the Concessionaire is a party (collectively, with the Comprehensive Agreement, the “Concessionaire Project Agreements”) [if the Concessionaire is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

2. [opinion regarding good standing and qualification to do business in Commonwealth of Virginia for the Concessionaire] [if the Concessionaire is a partnership/joint venture, these opinions are also required for each of its joint venture members and general partners]

3. [opinion that each of the Concessionaire Project Agreements have been duly authorized by all necessary corporate action on the part of the Concessionaire and each of the Concessionaire Project Agreements have been duly executed and delivered by the Concessionaire] [if the Concessionaire is a partnership/joint venture, add: and its joint venture members/general partners after the first and second “the Concessionaire”]

4. [opinion that each of the Concessionaire Project Agreements constitutes a legal, valid and binding obligation of the Concessionaire enforceable against the Concessionaire in accordance with its terms] [if the Concessionaire is a partnership/joint venture, add: and its joint venture members/general partners after the second “the Concessionaire”]

5. [opinion that all required approvals have been obtained with respect to execution, delivery and performance of each of the Concessionaire Project Agreements; and that none of the Concessionaire Project Agreements conflicts with any other agreements to which the Concessionaire is a party] [if the Concessionaire is a partnership/joint venture, add: and its joint venture members/general partners are a party] or with any orders, judgments or decrees by which the Concessionaire is bound [if the Concessionaire is a partnership/joint venture, add: and its joint venture members/general partners are bound]

6. [opinion that execution, delivery and performance of all obligations by the Concessionaire under each of the Concessionaire Project Agreements do not conflict with, and are authorized by, the articles of incorporation and bylaws of the Concessionaire] [if the Concessionaire is a partnership, replace articles of incorporation and bylaws with partnership agreement and (if applicable) certificate of limited partnership); if the Concessionaire is a joint venture, replace articles of incorporation and bylaws with joint venture agreement; if the Concessionaire is a limited liability company, replace articles of incorporation and bylaws with operating agreement and certificate of formation]

7. [opinion that execution, delivery and performance by the Concessionaire of each of the Concessionaire Project Agreements do not, and the Concessionaire’s performance of its obligations under each of the Concessionaire Project Agreements will not, violate any current statute, rule or regulation applicable to the Concessionaire or to transactions of the type contemplated by any of the Concessionaire Project Agreements]