



I-64 Hampton Roads Bridge Tunnel Expansion Project Procurement Updates

**Commonwealth Transportation Board
March 20, 2019**

Agenda

1. **Procurement progress updates**
2. **PPTA Independent Audit results**
3. **Commissioner's Certification to the Governor and General Assembly**
4. **Project Agreement for Funding and Administration**

Procurement Progress

- From January to February 2019, VDOT received and evaluated Proposals from Hampton Roads Capacity Constructors (HRCC) and the Hampton Roads Connector Partners (HRCP).
- On February 21, 2019, VDOT notified the CTB on:
 - Identification of the Apparent Best Value Proposer and intention to execute an agreement with Hampton Roads Connector Partners
 - The Term Sheet drafted for Project Agreement for Funding and Administration (PAFA) with HRTAC
- Following the February 2019 CTB meeting, VDOT has finalized:
 - the independent audit required by the Public-Private Transportation ACT (PPTA)
 - the reevaluation of Finding of Public Interest (FOPI) issued by Commissioner of Highways in 2018
 - the PAFA in coordination with Hampton Roads Transportation Accountability Commission (HRTAC)

Project Cost Update

Sources of Funds

AVAILABLE FUNDS	AMOUNT
HRTAC (Debt and Cash)*	\$3,208,469,673
Toll-Backed Bond Proceeds	\$345,000,000
SMART SCALE (Value Reserved)	\$200,000,000
<i>Subtotal</i>	\$3,753,469,673
VDOT – Bridge and SGR (South Island Trestle Bridge)	\$108,527,554
TOTAL	\$3,861,997,227

Uses of Funds

PROJECT COSTS	AMOUNT
Administration Costs (PE & CEI)	\$122,000,000
Right-of-Way	\$15,000,000
Design-Build Contract (Not to Exceed)	\$3,299,997,227
No Excuses Incentive	\$90,000,000
Contingency (Includes \$4M Stipend)	\$335,000,000
TOTAL	\$3,861,997,227

* Maximum Commission Financial Commitment set out as \$3.217 billion in the PAFA

2. INDEPENDENT AUDIT REQUIRED UNDER PPTA

Statutory Basis

Va. Code § Section 33.2-1803(F)

“....an independent audit of any and all traffic and cost estimates associated with the private entity's 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 proposal, failure by the private entity to reimburse the responsible public entity for services provided, and potential risk and liability in the event the private entity defaults on the comprehensive agreement or on bonds issued for the project)....”



Independent Auditors & Scope of Audit

- **H. W. Lochner, Inc. (Consulting Engineers)** was engaged as independent auditors on February 15, 2019
- The Scope of Work for this Audit included three specific reviews:
 1. Comprehensive Agreement Review
 2. Design-Build and Public Cost Estimate Reviews
 3. FHWA Cost Estimate Review and Risk

Audit Results – CA Review

- Reviewed Project's Comprehensive Agreement (CA) to identify, and, where possible, quantify the potential risks and liabilities to which the State of Virginia could be exposed
- After reviewing the risk allocation between VDOT and the Apparent Best Value Proposer, the Audit Team concluded that risks have been properly identified and have been appropriately allocated to the party best suited to accept them
- Specifically identified multiple LNTPs as a step-by-step process that limits public's exposure to excessive costs in event of default

Audit Results – DB/Public Costs Review

- Reviewed the (a) Apparent Best Value Proposer's final design-build cost estimates and (b) VDOT'S project costs
- Used a top-down methodology of cost per square foot and/or cost per lane mile. Analysis confirmed that costs and cost distribution are reasonable and within range of industry norms
- Specifically found that number of management personnel in Apparent Best Value Proposal is reasonable for a project of this size, complexity, and duration
- Specifically found that VDOT's general administrative costs are reasonable and adequate to perform contract administration and oversight

Audit Results - FHWA Cost Estimate Review and Risk Register

- Reviewed and compared the information contained the VDOT Risk Register (December 2018) and the VDOT-FHWA Major Project Cost Estimate Review (CER)
- Concluded that standard FHWA CER procedures were followed
- Concluded that VDOT Risk Register is well-developed and comprehensive
- Concluded the process followed the VDOT P3 Risk Management Guidelines, as appropriate for a Design-Build delivery model

3. COMMISSIONER'S CERTIFICATION TO GOVERNOR AND THE GENERAL ASSEMBLY

FOPI – January/May 2018

- In January 2018, the Commissioner issued a Finding of Public Interest (FOPI) for the Project
- This FOPI was re-affirmed in May 2018 to the Transportation Public-Private Partnership Steering Committee and procurement documents were prepared based on the benefits described in the FOPI
- The FOPI covers (Va. Code § Section 33.2-1803.1):
 - Expected Project benefits
 - Maximum public contribution
 - Benefits of PPTA delivery
 - Risks, liabilities and responsibilities
 - Level of Project delivery risk
 - Use of competitive negotiation

Certification – March 2019

	FOPI (January and May 2018)	CERTIFICATION (March 2019)
Expected benefits of Project Development	Increased person throughput, congestion mitigation, safety, economic development, environmental quality, land use based on the Final Supplemental Environmental Impact Statement (FSEIS) dated April 2017.	Same benefits based on the Environmental Assessment of the Re-evaluation of the FSEIS dated June 2018.
Maximum public contribution	Public Sector Analysis & Competition (PSAC) concluded that this does not apply because there is no private financing	Updated PSAC concluded that there has been no material changes.
Benefits of PPTA Delivery	Flexibility in contracting terms	Benefit realized through RFP development process
Risks, Liabilities, and Responsibilities	Design and construction risk – private sector O&M and revenue risks – public sector	Same
Level of Project Delivery Risk	Medium due to VDOT's experience with similar projects, close engagement with stakeholders) based on internal risk workshop done in May 2017, January and February 2018	Same based on FHWA Risk Workshops on September (Pre-CER) and November (CER) 2018. Risk assessment will continue through the construction phase.
Use of competitive negotiation	Procurement to follow 2017 PPTA Implementation Manual and Guidelines	Complied
Comprehensive Agreement	Per Major Business Terms issued on December 2017	Major Business Terms presented to the CTB on June 2018 has not altered materially.

Certification to the Governor and General Assembly

- Pursuant to Va. Code § 33.2-1803(D), the FOPI was updated and the Commissioner requests the CTB's endorsement of his certification, indicating support for the execution of the Comprehensive Agreement with the Apparent Best Value Proposer:
 1. The FOPI, re-affirmed in May 2018, is still valid.
 2. The risk transfer profile set out in the draft Comprehensive Agreement has not materially changed since the original FOPI was issued.
 3. The concept of maximum public contribution required by Virginia Code § 33.2-1803.1:1 does not apply because there is no element of private financing.

4. PROJECT AGREEMENT ON FUNDING AND ADMINISTRATION (PAFA)



Project Agreement for Funding and Administration

- **VDOT and HRTAC have worked collaboratively to develop a draft Project Agreement for Funding and Administration (PAFA)**
 - Broad terms agreed to on February 8, 2019 and the Term Sheet was presented to CTB and HRTAC HRBT Funding Agreement Advisory Committee in their respective meetings in February 2019
 - PAFA has been drafted in accordance to the Term Sheet and in coordination with HRTAC
- **PAFA can be executed by the HRTAC Chairman and Commissioner of Highways after CTB and HRTAC Board take actions to authorize execution of PAFA**

Summary of Major Terms of PAFA

ARTICLE 1. DEFINITIONS, INTERPRETATION, AND PRECEDENCE

ARTICLE 2. PROCUREMENT OF THE PROJECT

ARTICLE 3. PROJECT FUNDING

- Outlines the rights and obligations of the parties
- Sets out HRTAC's Maximum Financial Commitment – \$3.217 Billion
- How the Maximum Financial Commitment will be adjusted for SMART SCALE and/or toll-backed bond proceeds if issued by HRTAC
- Defines the anticipated project Administration Costs included in the project budget
- Availability of Contingency Reserves through project allocations
- How risk of Additional Costs will be managed
- Provides for the limitation of funding for Early Work and HRTAC's related protection
 - Limited to \$250M
 - Can be increased by \$75M if defined conditions are met
 - Department will reimburse the increased amount project terminated prior to issuance of NTP

Summary of Major Terms of PAFA

ARTICLE 4. DELIVERY OF THE PROJECT

- Provides the General Obligations of the Department
- Outlines the process for Work Orders, including approval requirements
- Defines the Optional Work item for the I-564 Direct Connections and the Bridge Repair Option Work

ARTICLE 5. ADMINISTRATION OF THE AGREEMENT

- Outlines the Payment of Requisitions process
- Provides for right to Periodic Compliance Reviews

ARTICLE 6. DISPUTE RESOLUTION

ARTICLE 7. MISCELLANEOUS

- Includes general information about the term and termination of the PAFA
- Reaffirms Department's commitments made in the January 22, 2019 Letter to work in good faith with the Commission to finalize the Master Tolling Agreement after operational analysis and traffic and revenue study are completed.

Next Project Milestones

ACTIVITY	DATE
CTB actions: 1. Endorsement of Certification to Governor and General Assembly 2. Authorization for Commissioner to execute PAFA	March 21, 2019
Anticipate HRTAC action to authorize PAFA execution	March 28, 2019
PAFA Execution	Prior to CA Execution
Comprehensive Agreement Execution	NLT April 15, 2019
PPTA Steering Committee Briefing	NLT 60 days after CA execution
Issue LNTP 1	April 2019
Final Completion	November 1, 2025