



COMMONWEALTH of VIRGINIA

Office of the Governor

P.O. Box 1475
Richmond, Virginia 23218

Pierce R. Homer
Secretary of Transportation

(804) 786-8032
Fax: (804) 786-6683
TTY: (800) 828-1120

February 16, 2009

Mr. David S. Ekern
Commissioner
Virginia Department of Transportation
1401 East Broad Street
Richmond, Virginia 23219

Dear Commissioner Ekern:

Thank you for your October 29 memorandum regarding improvements to the Midtown and Downtown Tunnels and the extension of the Martin Luther King Freeway. These projects are a significant part of our efforts to relieve urban congestion, enhance hurricane evacuation capabilities, and promote economic development in the Cities of Portsmouth and Norfolk and the entire Hampton Roads region.

The purpose of this letter is to advance the Elizabeth River Crossing conceptual proposal to the Independent Review Panel, consistent with the adopted Public-Private Transportation Act (PPTA) guidelines. I also am approving your request to procure this project through the competitive negotiation process, as certified in the attached form. The Independent Review Panel shall consist of the following:

Mr. E. Dana Dickens, Chair and CTB Member
Mr. Alan S. Witt, CTB Member
Mr. Gerald P. McCarthy, CTB Member
Mr. Cord Sterling, CTB Member
Mr. Ken Chandler, Portsmouth City Manager
Ms. Regina Williams, Norfolk City Manager

Mr. Michael Townes, Hampton Roads Transit CEO
Mr. Dwight Farmer, Hampton Roads Planning District Director
Ms. Ann Wright, Esquire
Mr. Jeff Florin, Virginia Port Authority Deputy Director
Mr. Mal Kerley, VDOT Chief Engineer
Ms. Reta Busher, VDOT Chief Financial Officer
Mr. Dennis Heuer, VDOT Hampton Roads District Administrator
Ms. Amy Probsdorfer, Navy Community Liaison
Mr. Mike Robinson, Virginia Modeling and Simulation Center

The scope of this project has been largely determined and approved through the federal environmental review process. The Panel is charged with evaluating the responsiveness of the proposal to the criteria established in the current PPTA guidelines.

In addition, I am asking the Panel to analyze, debate and make recommendations to the Commissioner, the Commonwealth Transportation Board, and the Office of the Secretary on the following:

- Funding this project will require the retroactive tolling of three existing corridors—the I-264 Downtown Tunnel, the Rt. 59 Midtown Tunnel, and the Martin Luther King Freeway connection to Rt. 164. Unlike the Dulles Greenway, the Pocahontas Parkway, and the 95/395/495 HOT lane projects, the project, as defined in the solicitation, does not provide for any free travel alternatives.
- While the proposal allows for many different tolling regimes, the suggested two to three dollar toll rate, with escalation, will be a significant expense to many of the families and businesses that will use the project on a daily basis. The success of the proposal cannot come at the expense of struggling families and businesses.
- The Cities of Norfolk and Portsmouth have made various commitments and investments in order to avoid tolling of these corridors within their respective boundaries. If the proposal is accepted, and tolls are imposed within the two cities, some of those previous commitments and investments should to be revisited.

- Despite the above challenges, it is clear that there is no possibility of improving these three corridors unless there is a significant tolling component. The only alternative to tolling is continued and severe traffic congestion and diminished opportunities for economic development.

Virginia's PPTA process is the oldest and most successful in the country because of our commitment to transparency and public participation. Panelists should not meet privately with proposers, advocates, opponents or any of their respective representatives. Proposers also agree to limit their advocacy communications. I have asked Chairman Dickens to provide a mechanism to ensure that panelists and proposers publicly disclose any advocacy or informational meetings, communications, or reporting.

Thank you for your commitment to this critical project and our transparent and accountable PPTA process.

Sincerely,

Original with signature on file in the Innovative Project
Delivery Division.

Pierce R. Homer

Attachment

Cc: Independent Review Panel Appointees
Mr. Robert Fonseca-Martinez, FHWA
Mr. Charles Badger, DRPT
Mr. Mal Kerley, VDOT
Ms. Reta Busher, VDOT
Mr. Chris Guthkelch, Elizabeth River Crossing

PROCUREMENT APPROVAL FORM

Under § 56-573.1.2 of the PPTA, responsible public entities must follow the provisions of § 56-573.1.1 unless they determine that there is mutual advantage to the entity and the public based on (i) the probable scope, complexity, or urgency of a project or (ii) risk sharing, including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed by the private entity or (iii) an increase in funding, dedicated revenue sources or other economic benefit that would not otherwise be available. This determination must be made in writing, and, if the responsible public entity is a state agency, the Secretary of Transportation must approve the decision before the comprehensive agreement is signed. In most cases, this approval should be secured before significant public and private investment occurs in the development of a detailed proposal.

State Agency: Virginia Department of Transportation

Project: Downtown Tunnel/Midtown Tunnel/MLK Extension Project

Location: Route 58 Corridor in the Cities of Norfolk and Portsmouth - Hampton Roads District

Proposer: Elizabeth River Crossings, LLC (ERC)
ERC is comprised of Skanska Infrastructure Development Inc. and Macquarie Financial Holding Limited. ERC's team includes Skanska USA Civil Southeast, Inc.; Kiewit Construction Co. and Weeks Marine, Inc

Description of Proposal: The Conceptual Proposal assumes a 50 year concession to finance, develop, construct, operate, maintain, and collect tolls on the both Downtown and Midtown Tunnels and MLK Extension. Project improvements include constructing a new two-lane tunnel under the Elizabeth River parallel to the existing Midtown Tunnel; rehabilitation of the existing Downtown and Midtown Tunnels; minor modifications to the interchange at Brambleton/Hampton Boulevard in Norfolk; and extending the MLK from London Boulevard to Interstate 264, with an interchange at High Street.. The Proposal accepts traffic forecasting and revenue collection risk; provides for private sector funding and equity investments.

Reasons for Departing from Provisions of § 56-573.1(1): VDOT believes procurement utilizing competitive negotiations is in the best interest of the citizens of the Commonwealth and is in accordance with several of the subsections of § 56-573.1.2 because Offeror(s) have proposed to provide a new or rehabilitated transportation facility that would increase capacity, reduce congestion and conduct safe and efficient operations; integrating the facility into the regional network while serving as an evacuation route; reducing and mitigating environmental impacts; and by coordinating with adjacent land uses and supporting anticipated growth. The Proposal would add value by providing the necessary capital improvements under a contract that would include cost and completion guarantees; acceptance of traffic forecasting and revenue collection risk; equity investments and private sector funding, with no use of public funds.

Secretary's Review:

I have reviewed the appropriate documentation related to this proposal, and I do do not approve the state agency's decision to proceed with the procurement as competitive sealed bids or competitive negotiations under §56-573.1 of the Code of Virginia and as outlined above.

Original with Signature on file in the Innovative Project Delivery Division.

Pierce Homer
Secretary of Transportation

February 16, 2009
Date