



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item
Meeting of December 8, 2012

SUPPLEMENTAL REPORT-ADDITIONAL INFORMATION

DATE: December 6, 2012

SUBJECT: Adoption of Guidelines for the Use of the Public-Private Transportation Act of 1995 (PPTA), to Create Public-Private Partnerships for the Development of Transportation Facilities.

DISCUSSION: Board members have raised a number of questions and asked for staff recommendations regarding the implementation of PPTA to ensure that any PPTA process be competitive and transparent. Staff believes that the Guidelines indeed do provide competition and transparency and also allow the County necessary flexibility. In addition, a resolution is attached that the Board may wish to use to provide additional direction to the County Manager.

A recent report by the Southern Environmental Law Center (SELC) identified alleged flaws in the PPTA and made suggestions for changes or modifications to the process. However, the SELC Report ("Report") speaks primarily to the State's implementation of PPTA. The Report recommended that the governing body overseeing PPTA, the Commonwealth Transportation Board, be given a direct approval role of any Comprehensive Agreement that results from the PPTA rather than the Secretary of Transportation; that more information be made available to the public; and that a public hearing be held at least 30 days prior to signing a Comprehensive Agreement. These issues are adequately and preemptively addressed in the proposed Guidelines. First, the Guidelines provide that any Comprehensive Agreement must be approved by the County Board. Second, conceptual proposals, whether solicited or unsolicited, are made available to the public via the County's website. Third, the Guidelines provide that a Comprehensive Agreement be publicly posted and public comment be taken and a public hearing be held a minimum of 30 days prior to entering into the Comprehensive Agreement.

Staff was able to speak with James Regimbal, Jr., of Fiscal Analytics, Ltd, the author of the above referenced 2012 report titled, "An Examination of the Virginia Public-Private Transportation Act of 1995." In this discussion, he did offer that while PPTA can be a reasonable tool for delivering transportation projects, it is very important to promote genuine competition among private sector participants, ensure that project-related risks are understood and appropriately balanced between the public and private sector participants, and that the

County Manager:

County Attorney:

Staff: Richard Warren, DMF

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process for evaluation and decision-making is clear and communicated to the public. He also added that his report only focused on the State implementation of the PPTA, and not how PPTA has been used at the local level.

Staff also spoke with representatives of Prince William County regarding their use of PPTA. In the past seven years, they have received four unsolicited proposals in the \$30M-\$50M range for County bond-funded road projects included in their CIP. Each unsolicited proposal was put out for competing unsolicited proposals for 45 days and the County received 3-4 additional proposals for each project. Each unsolicited proposal resulted in a contract award; and the awardee was one of the competing proposals, not the original submitter; indicating the PPTA process did not circumvent competition. From this discussion with Prince William County staff and a survey of other jurisdictions using the PPTA, staff learned that the PPTA process has worked well for those jurisdictions and they were satisfied with the results.

While the Guidelines set forth the PPTA process according to the PPTA statute, there are few areas within the Guidelines that the County has some discretion in setting forth its own provisions:

1. **When County will provide estimated timeline to unsolicited proposers** (Section VI. F. 2). Under the recommended Guidelines, it is estimated that it will take 60 days from receipt of unsolicited proposals to provide timelines for consideration of a proposal. There is no exact requirement in the State PPTA statute. PPTA statute states that local guidelines should generally set forth a schedule which can be subject to change.
2. **Time specified for receipt of competing unsolicited proposals** (Section IV. A. 3, paragraph 1). The recommended Guidelines specify not less than 45 days. State statute specifies that this cannot be less than 45 days. These are minimum requirements. Certainly for larger and more complex projects, the time allowed for receipt of competing unsolicited proposals would be longer as is standard today with the County's current procurement processes. For example, the Virginia Public Procurement Act (VPPA) requires the County to advertise a Request For Proposal (RFP) for a minimum of ten days prior to proposal due date, but the County typically allows 30 days for standard procurements and longer for more complex procurements. If the Guidelines mandate a more significant minimum number of days for receipt of competing proposals, the County would be then requiring a lengthy period of time for even a small transportation project which could lengthen the decision making process unnecessarily. The proposed Guidelines are consistent with other local jurisdictions.
3. **Time specified for County response to questions from competing proposers** (Section IV. A. 3, paragraph 6). The recommended County Guidelines say that the County will endeavor to respond within 21 days. There is no corresponding State statute requirement.
4. **Unsolicited Proposal Review Fee** (Section IV. C 3a.). The recommended County Guidelines set 2.5% of anticipated project cost, with a minimum of \$5,000 and maximum of \$50,000, but allow imposition of additional fees if our actual costs are greater. The State statute allows for a jurisdiction to set its own fees to cover reasonable costs.

5. **Elements of Initial Proposal** (Section V. A). The recommended Guidelines contain basic and generic requirements for an initial proposal and are designed for the purpose of generally assessing a proposer's qualifications and a general overview of the proposed project. The State statute does not include what elements are required. We followed the general guidelines of the State and other local jurisdictions. The Guidelines do not set forth what the specific required elements will be for Detailed Proposals as those will be determined on a case-by-case basis depending on the project.

6. **Proposal Evaluation Criteria** (Section VI). The recommended County guidelines are basic and generic to allow for flexibility in evaluation proposals. The State statute does not include any requirements. We followed the general guidelines of the State and other local jurisdictions.

**ARLINGTON COUNTY BOARD
RESOLUTION**

**Adopting the PPTA Guidelines and Providing Direction to the County Manager
Concerning the PPTA Guidelines**

WHEREAS, the County Manager has recommended for adoption Arlington County Guidelines for Use of the Public-Private Transportation Act of 1995, as amended (“Guidelines”) providing the County with an additional procurement and project delivery tool as it implements that capital improvement program; and

WHEREAS, the Guidelines provide that the County Manager may consider unsolicited proposals for qualifying transportation facilities from private entities for rejection or acceptance, and further provide that if an unsolicited proposal is accepted then the County Manager shall give public notice that competing proposals will also be accepted, and the Guidelines further provide that the County Manager will determine whether to seek detailed proposals from those private entities submitting unsolicited and competing proposals, and further provide that the County Manager will determine whether to recommend that the County Board enter into an Interim or Comprehensive Agreement with a private entity for a transportation project, and the Guidelines further provide that a public hearing shall be held at least 30 days prior to entering into an Interim or Comprehensive Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the County Board hereby adopts the Guidelines effective April 1, 2013; and

BE IT FURTHER RESOLVED, that the County Board provides the following direction to the County Manager for the purposes of implementing the PPTA Guidelines:

1) The County Manager shall notify the County Board before deciding to accept an unsolicited proposal and advertise for competing proposals and shall use best efforts to promote adequate outreach and robust competition;

2) The County Manager shall ensure that, once they are accepted, conceptual proposals are posted on the County website in accordance with the Guidelines, and shall consult with the County Board prior to requesting detailed proposals from private entities who submit unsolicited proposals or competing proposals; and

3) After review of the detailed proposals, the County Manager shall either 1) report to the County Board that no contract is recommended for award, or 2) shall make a recommendation to the County Board to award an Interim or Comprehensive Agreement to a private entity for development or operation of a qualifying transportation facility. A

recommendation to award an agreement will be accompanied by a proposed public review process designed to inform the public about the proposed agreement and meet the requirements of the public review process contained in the Guidelines.