



# COMMONWEALTH of VIRGINIA

## *Commonwealth Transportation Board*

Shannon Valentine  
Chairperson

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*Agenda Item #10*

### RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

March 21, 2019

#### MOTION

**Made By: Mr. Malbon, Seconded By: Mr. Miller**  
**Action: Motion Carried, Unanimously**

**ENDORSEMENT OF THE COMMISSIONER'S CERTIFICATION TO THE  
GOVERNOR AND GENERAL ASSEMBLY FOR THE I-64 HAMPTON ROADS  
BRIDGE-TUNNEL EXPANSION PROJECT UNDER THE PUBLIC-PRIVATE  
TRANSPORTATION ACT, AS AMENDED ("PPTA")**

**WHEREAS**, on December 12, 2017, the Transportation Public-Private Partnership Steering Committee ("Steering Committee") concurred with the Department's Public Sector Analysis and Competition report ("PSAC") to procure the I-64 Hampton Roads Bridge-Tunnel Expansion Project ("Project") using the design-build delivery method under the PPTA, with the option to accept Proposals under either the immersed tube tunnel or bored tunnel construction method, pursuant to Va. Code § 33.2-1803.2(B); and

**WHEREAS**, on December 15, 2017, the Department initiated the procurement and issued a Request for Qualifications ("RFQ"); and

**WHEREAS**, on January 9, 2018, the Commissioner of Highways ("Commissioner") provided a Finding of Public Interest ("FOPI") for the Project pursuant to Va. Code § 33.2-1803.1; and

**WHEREAS**, on March 2, 2018, the Department received Statements of Qualifications from three Offerors in response to the RFP: (i) Hampton Roads Capacity Constructors ("HRCC"); (ii) Hampton Roads Connector Partners ("HRCP"); and (iii) the Skanska-Kiewit Joint Venture; and

**WHEREAS**, on April 26, 2018, the Department short-listed all three Offerors, with the Skanska-Kiewit Joint Venture subsequently withdrawing from the procurement; and

**WHEREAS**, on May 9, 2018, the Commissioner presented the Steering Committee with a recommendation that the FOPI remained valid, and the Steering Committee made an affirmative

determination that the Project serves the public interest pursuant to Va. Code § 33.2-1803.2(C);

**WHEREAS**, the Department issued an initial draft of the Request for Proposals on May 22, 2018 for public comment, and later drafts on June 29, 2018 and August 24, 2018 for feedback from the Offerors, also conducting individual, proprietary meetings with HRCC and HRCP from May to December 2018; and

**WHEREAS**, the Department provided the Commonwealth Transportation Board ("CTB") with a Project update on June 19, 2018, and briefed the CTB on major business terms on September 17, 2018; and

**WHEREAS**, the Department issued the RFP on September 27, 2018, which was amended and finalized in December, 2018, based on several of the proprietary meetings with HRCC and HRCP ; and

**WHEREAS**, in response to the final RFP, the Department received Technical Proposals and Price Proposals on January 14/15, 2019 and February 8, 2019, respectively, from HRCC and HRCP; and

**WHEREAS**, on February 15, 2019, the Department identified HRCP as having submitted the Apparent Best Value Proposal;

**WHEREAS**, during February and March 2019, an independent audit pursuant to § 33.2-1803 (F) was conducted; and

**WHEREAS**, pursuant to § 33.2-1803 (D), the Commissioner is prepared to submit his Certification to the Governor and General Assembly pursuant to § 33.2-1803 (D), (attached hereto as Attachment A), which provides for the continued validity of the FOPI, provides that there have been no material changes relating to the transfer, assignment and assumption of risks, liabilities, and permitting responsibilities by the private sector in the Comprehensive Agreement, and provides that, because the Project has no element of private financing, the concept of maximum public contribution to be established in accord with § 33.2-1803.1:1 does not apply and therefore, no maximum public contribution was established; and

**WHEREAS**, pursuant to section 4.10 of the 2017 PPTA Implementation Manual and Guidelines, the Commissioner is to seek the "CTB's endorsement of the Certification to Governor and General Assembly indicating support of the CEO's execution of a Comprehensive Agreement."

**NOW, THEREFORE, BE IT RESOLVED**, the CTB endorses the Commissioner's Certification to the Governor and the General Assembly and hereby supports the Commissioner's execution of a Comprehensive Agreement with Hampton Roads Connector Partners for the Hampton Roads Bridge-Tunnel Expansion Project.

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## CTB Decision Brief

### **ENDORSEMENT OF THE COMMISSIONER'S CERTIFICATION TO THE GOVERNOR AND THE GENERAL ASSEMBLY FOR THE I-64 HAMPTON ROADS BRIDGE-TUNNEL EXPANSION PROJECT UNDER THE PUBLIC- PRIVATE TRANSPORTATION ACT, AS AMENDED ("PPTA")**

**Issues:** Pursuant to § 33.2-1803 (D) of the *Code of Virginia*, in order for a responsible public entity such as the Virginia Department of Transportation (the "Department") to enter into a Comprehensive Agreement under the PPTA, among other things, the CEO of the responsible public entity must submit a written Certification to the Governor and General Assembly, that indicates (i) the finding of public interest issued pursuant to § 33.2-1803.1 is still valid; (ii) the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and the mitigation of revenue risk by the private sector have not materially changed since the finding of public interest was issued; and (iii) the public contribution requested by the private entity does not exceed the maximum public contribution determined in accord with subsection A of § 33.2-1803.1:1. In furtherance of the foregoing, Section 4.10 of the 2017 PPTA Implementation Manual and Guidelines provides that the CEO (Commissioner) will also seek the Commonwealth Transportation Board's ("CTB") endorsement of the Certification to the Governor and the General Assembly, indicating support of the CEO's execution of the Comprehensive Agreement. In accord with section 4.10 of the 2017 PPTA Implementation Manual and Guidelines, CTB endorsement of the Commissioner's Certification to the Governor and the General Assembly pursuant to § 33.2-1803 (D) of the *Code of Virginia* and support for execution of the Comprehensive Agreement for the Hampton Roads Bridge-Tunnel Expansion Project are sought.

#### **Facts:**

- On December 12, 2017, pursuant to § 33.2-1803.2(B), the Transportation Public-Private Partnership Steering Committee ("Steering Committee") concurred with the Department's Public Sector Analysis and Competition report ("PSAC") to procure the I-64 Hampton Roads Bridge-Tunnel Expansion Project ("Project") as a design build under the PPTA, with the option to accept Proposals under either the immersed tube tunnel or bored tunnel construction method.
- The Department then initiated a procurement, issuing on December 15, 2017, a Request for Qualifications.
- On January 9, 2018, the former Commissioner of Highways ("Commissioner") issued a Finding of Public Interest ("FOPI") for the Project pursuant to § 33.2-1803.1.
- On March 2, 2018, three Offerors submitted Statements of Qualifications: Hampton Roads Capacity Constructors ("HRCC"), Hampton Roads Connector Partners ("HRCP"), and the Skanska-Kiewit Joint Venture.
- The Department short-listed the three Offerors, HRCC, HRCP, and the Skanska-Kiewit Joint Venture. Subsequently, the Skanska-Kiewit Joint Venture withdrew from the competition.
- On May 9, 2018, the Steering Committee was presented with a recommendation by the current Commissioner that the FOPI remained valid, and the Steering Committee made an affirmative determination that the Project serves the public interest pursuant to § 33.2-1803.2(C).
- The Department issued an initial draft of the Request for Proposals (RFP) on May 22, 2018 for public comment, and later drafts on June 29 and August 24, 2018 for Offeror feedback.

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Endorsement of the Commissioner's Certification to the Governor and General Assembly for the I-64 Hampton Roads Bridge-Tunnel Expansion Project

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- The Department provided the CTB with a Project update on June 19, 2018, and briefed the CTB on major business terms on September 17, 2018.
- On July 31, 2018, HRCC and HRCP notified the Department of their selection of the bored tunnel construction method.
- On September 27, 2018, the Department issued the RFP which was amended and finalized in December, 2018, based on several proprietary meetings with HRCC and HRCP.
- In response to the final RFP, the Department received Technical Proposals and Price Proposals on January 14/15, 2019 and February 8, 2019, respectively, from HRCC and HRCP.
- On February 15, 2019, the Department identified HRCP as having submitted the Apparent Best Value Proposal.
- In February and March 2019, an independent audit pursuant to § 33.2-1803 (F) was conducted.

The Commissioner is now prepared to submit his Certification to the Governor and General Assembly pursuant to § 33.2-1803 (D), (attached hereto as Attachment A), which provides for the continued validity of the FOPI, provides that there have been no material changes relating to the transfer, assignment and assumption of risks, liabilities, and permitting responsibilities by the private sector in the Comprehensive Agreement, and provides that, because the Project has no element of private financing, the concept of maximum public contribution to be established in accord with § 33.2-1803.1:1 does not apply and therefore, no maximum public contribution was established.

- Prior to submission to the Governor and General Assembly, endorsement of the Commissioner's Certification by the CTB, indicating support of his execution of the Comprehensive Agreement, is being requested.

**Recommendations:** Based on the Department's evaluation of the Proposals and selection of HRCP as having submitted the Apparent Best Value Proposal, the Department recommends that the CTB endorse the Commissioner's Certification to the Governor and General Assembly which will be issued pursuant to § 33.2-1803 (D), indicating support for the Commissioner's execution of a Comprehensive Agreement with HRCP for the Hampton Roads Bridge-Tunnel Expansion Project.

**Action Required by CTB:** The CTB will be presented with a resolution for a formal vote to endorse the Commissioner's Certification to the Governor and the General Assembly, indicating support of the Commissioner's execution of a Comprehensive Agreement with the Hampton Roads Connector Partners for the Hampton Roads Bridge-Tunnel Expansion Project.

**Result, if Approved:** The Commissioner will submit his Certification to the Governor and the General Assembly pursuant to § 33.2-1803 (D), and will complete the procurement of this project by executing the Comprehensive Agreement with Hampton Roads Connector Partners.

**Options:** Approve, Deny, or Defer.

**Public Comments/Reactions:** None

## ATTACHMENT A



# COMMONWEALTH of VIRGINIA

## DEPARTMENT OF TRANSPORTATION

1401 EAST BROAD STREET  
RICHMOND, VIRGINIA 23219 2000

**Stephen C. Brich, P.E.**  
Commissioner

March 21, 2019

The Honorable Ralph Northam  
Governor  
P.O. Box 1475  
Richmond, VA 23218

The Honorable Stephen D. Newman  
President Pro Tempore of the Senate  
P.O. Box 480  
Forest, VA 24551

The Honorable Kirk M. Cox  
Speaker of the House  
Virginia House of Delegates  
P.O. Box 1205  
Colonial Heights, VA 23834

The Honorable Shannon Valentine  
Secretary of Transportation  
P.O. Box 1475  
Richmond, VA 23218

Dear Ladies and Gentlemen:

Based on information available in January 2018, the former Commissioner of Highways made a finding that it was in the public interest (such finding, the "Finding of Public Interest") to advance the development and procurement of the I-64 Hampton Roads Bridge-Tunnel Expansion Project (the "Project") via the design-build delivery method pursuant to the Public-Private Transportation Act of 1995, as amended (Virginia Code §§ 33.2-1800 *et seq.*). I re-affirmed the Finding of Public Interest on May 9, 2018, at a meeting of the Transportation Public-Private Partnership Steering Committee. Following this re-affirmation, the Virginia Department of Transportation (the "Department") prepared procurement documents consistent

The Honorable Ralph Northam  
The Honorable Stephen D. Newman  
The Honorable Kirk M. Cox  
The Honorable Shannon Valentine  
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with the benefits described in the Finding of Public Interest and advanced the procurement of the Project.

The Department received technical proposals in January 2019 and price proposals in February 2019 from Hampton Roads Capacity Constructors (“HRCC”) and Hampton Roads Connector Partners (“HRCP”) in response to the Request for Proposals for the Project. After a comprehensive review of each proposal by my staff, I have determined that the technical and price proposals submitted by HRCP provides the best overall value to the Department, and that HRCP should be awarded the Comprehensive Agreement for the Project.

With respect to the foregoing determination, please accept this letter as my certification, given pursuant to § 33.2-1803(D), that:

- (1) the Finding of Public Interest, as re-affirmed by me on May 9, 2018, is still valid;
- (2) the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities by the private sector set forth in the Comprehensive Agreement have not materially changed since the Finding of Public Interest was issued;<sup>1</sup> and
- (3) because the Project has no element of private financing, the concept of a maximum public contribution to be established in accordance with § 33.2-1803.1:1 does not apply and therefore, no maximum public contribution was established.

In closing, the Department is engaged in the final steps necessary for financing and entering into a Comprehensive Agreement for the I-64 Hampton Roads Bridge-Tunnel Expansion Project and we look forward, with great anticipation, to delivering this critical Project to the Hampton Roads region. In the meantime, should you have questions regarding the Project or its status, please do not hesitate to contact me.

Sincerely,

Stephen C. Brich, P.E.  
Commissioner of Highways

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<sup>1</sup> Please note that no certification relating to the mitigation of revenue risk by the private sector is required as the scope of work set forth in the Comprehensive Agreement is limited to the design and construction of the Project and does not otherwise include the financing or long-term operation of the Project by the private sector.