

**MARYLAND TRANSPORTATION AUTHORITY**

**TRANSPORTATION PUBLIC-PRIVATE PARTNERSHIP**

**GUIDELINES**

**(TP<sup>3</sup>)**



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## I. INTRODUCTION

It is essential to the economic well being of the citizens of Maryland, and maintenance of a high quality of life that the State of Maryland have an efficient transportation system. Maryland has been fortunate to have one of the best transportation systems in the United States and the Maryland Department of Transportation enjoys one of the most flexible transportation funding sources – the Transportation Trust Fund. Maryland has also had the advantage of the Maryland Transportation Authority, created to serve as an additional funding mechanism for transportation needs in Maryland.

The Maryland Secretary of Transportation has declared that a Transportation Public-Private Partnership program has the potential to enhance the State's Transportation System. These guidelines are issued under the authority of the Maryland Transportation Article, Section 4-205 and 4-312, which empower the Maryland Transportation Authority to enter into such partnerships. Properly structured, this initiative can provide sound economic investments while supplementing traditional transportation resources. The Maryland Transportation Authority (MdTA), chaired by the Secretary of Transportation, will be responsible for this program, which shall be implemented in cooperation with local jurisdictions, and which shall promote business and employment opportunities in Maryland.

Maryland's Transportation Public-Private Partnership program will select only qualified and experienced proposers who can demonstrate the capability to successfully acquire, finance, construct and/or operate a new transportation facility or major rehabilitation/expansion of an existing facility in the State of Maryland. Proposers may include any person, corporation, limited liability company, partnership, joint venture or other private business entity. MdTA will only consider proposers that have proven experience, financial resources, and professional expertise to deliver a high-quality, economically feasible transportation facility as described in Section III of these guidelines. All projects must be consistent with and must eventually be incorporated into Maryland's Consolidated Transportation Program, and shall comply with all applicable federal, state and local laws and regulations, including the recently enacted "Smart Growth" legislation – State Finance and Procurement Article, Subtitle 7B – Priority Financing Areas.

It is not the intention of this program to consider or evaluate proposals for highway facilities. In addition, this program is not designed to accept unsolicited proposals for the sale of assets or the procurement of operation or maintenance services. The Council on Management and Productivity will be developing a process for enhancing the ability of State agencies to solicit operating and maintenance services from the private sector. Another effort in the Maryland Department of Transportation focuses on asset management.

## II. EXECUTIVE SUMMARY

Acting on behalf of the Maryland Department of Transportation (MDOT), the MdTA has the power to enter into Transportation Public-Private Partnership agreements to allow private entities to acquire, finance, construct and/or operate a new transportation facilities project or the major rehabilitation/expansion of an existing transportation facility as described in Section III “Transportation Facilities”. The MdTA shall consider entering into Transportation Public-Private Partnership agreements which demonstrate the ability to meet emerging transportation requirements of the State by allowing needed projects to be completed in a more timely or cost-effective manner than otherwise might be possible using traditional sources of public financing.

### A. Procurement Law

These guidelines will furnish private entities with a format in which to submit solicited and unsolicited proposals for certain new transportation facilities for review and evaluation by the MdTA. The evaluation and selection process for both solicited and unsolicited project proposals shall be conducted in accordance with Maryland procurement law and these guidelines. The actual acquisition, financing, construction and/or operation of a specific project may or may not be subject to Maryland procurement laws depending upon the nature of the project and the structure of the partnership. The applicability of such laws will be specified in the Transportation Public-Private Partnership Agreement governing the project. Projects selected by the MdTA under this program also are subject to approval of the Maryland State Board of Public Works.

### B. Financing

Proposers are encouraged to utilize innovate financing methods, to include the imposition of user fees or other charges. Proposed financing arrangements may include the issuance of debt, equity or other securities or obligations. The proposer may propose entering into sale and leaseback transactions and secure any financing with a pledge of a security interest in, or lien on, any or all of its property, including its interest in the proposed transportation facility. Once a project has been selected, the maximum rate of return to the private partner or the fee structure will be negotiated as part of the Transportation Public-Private Partnership Agreement governing the project.

### C. Ownership

The project may be owned by the private partner during the construction period. After completion and final acceptance of the project, ownership may transfer to the MdTA or may be retained by the private partner for a

period established in the project agreement. Upon construction completion and acceptance all projects will be considered part of the State's transportation system.

#### D. Agreements

The Transportation Public-Private Partnership Agreement for each project will be a comprehensive agreement addressing the rights, duties and obligations of both the MdTA and the private partner with respect to the project, including but not limited to: responsibilities for design, acquisition of right-of-way, environmental approvals, construction, financing, operation and maintenance of the project, rate of return to the private partner, ownership of the project, dates for termination of the private partner's authority and dedication of the facility to the State, and terms for reimbursement of State agencies for services rendered during the development, construction and operation of the project.

#### E. Proposals

These guidelines allow for both solicited and unsolicited proposals. The major steps involved in evaluating, selecting and implementing projects are similar for both solicited and unsolicited proposals. Proposers shall follow a two-step proposal process. The first submission for each project should be a conceptual proposal containing specified information outlined in greater detail below under "Submission Requirements: Phase One", such as proposer qualifications and experience, project characteristics, financing, public support and project compatibility with existing and planned infrastructure. There should be enough information in the conceptual proposal such that economic feasibility may be determined. The second submission will be more detailed in nature to include specific deliverables outlined in greater detail below under "Submission Requirements: Phase Two", such as total life-cycle costs of the facility, financing mechanisms, user and revenue forecasts, evidence of local government support and a plan to acquire all necessary property.

#### F. Evaluations

Proposals will be ranked by the MdTA, with the assistance of a Review Committee appointed by the MdTA, according to criteria contained in the "Submission Requirements" section of these guidelines. Proposers who submit more than one project should specify whether they would be willing to undertake more than one project or whether their intent is to undertake only one or several of the projects proposed.

## G. Disclaimers

Under no circumstances shall the MdTA, the MDOT, the State of Maryland or any department or agency thereof be liable for or reimburse the costs incurred by the proposers whether or not they are selected. Any and all information MdTA makes available to proposers shall be as a convenience to the proposer without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If the proposer has a question regarding these guidelines, the proposer must submit the question in writing and the MdTA will provide written answers. The MdTA reserves the right, at any time, to reject any and all proposals; to terminate evaluations of any and all proposals; to suspend, discontinue or terminate project agreement negotiations with any proposer; to request or obtain additional information about any proposals; to issue addenda to or to cancel an RFP; to revise, supplement or withdraw all or any part of these guidelines; or to decline to return any and all fees required of proposers under these guidelines.

## III. TRANSPORTATION FACILITIES

To become subject to the evaluation and selection process, the proposal shall include the acquisition, construction, financing, operation, and/or maintenance of one or a combination of the following types of new major capital projects as defined in the Transportation Article of the Maryland Annotated Code: Airport facilities, Port facilities, Railroad facilities and Transit facilities, including the major expansion or rehabilitation of any aforementioned existing facility, and all incidental property rights, materials, facilities and structures related to transportation facilities. The project must be compatible with and eventually become part of the Maryland Department of Transportation's Consolidated Transportation Program, and the Maryland Transportation Plan, and upon acceptance be considered part of the State transportation system. This program is not designed to consider or evaluate highway facilities, or proposals to merely privatize existing transportation facilities. Such privatization proposals will not be accepted or evaluated under this program.

## IV. PROJECT PROPOSALS

### A. Solicited Proposals

With the approval of the Secretary, the MdTA may solicit project proposals at any time through the issuance of a Request for Proposals (RFP). The normal method of procurement will be "Competitive Sealed Proposals" in accordance with Code of Maryland Regulations (COMAR) 21.05.03. The RFP may invite proposals from private entities to acquire, construct, finance, and/or operate a specific project or a project of the private entity's

choice that meets certain criteria. Proposers will be encouraged to be as innovative as possible in their submissions.

The RFP will outline the minimum qualifications and project selection criteria, including any unique capabilities or credentials which will be required of the proposer. Pre-proposal conferences may be held, as deemed necessary by MdTA, and notice of such will be provided in the RFP. If a specific project's requirements deviate from these guidelines, the proposer will be instructed as to the format and minimum information, materials and fees required for the proposal to be considered complete.

Public notice of the solicited RFP will be posted at least 60 days prior to the date set for receipt of proposals. Posting will be in newspapers, the Maryland Register and Maryland Contract Weekly, and other publications of general circulation within and outside the State of Maryland so as to encourage maximum response to the RFP.

#### B. Unsolicited Proposals

The MdTA will accept unsolicited proposals for a new transportation facility project from private entities at any time as long as the proposal meets the requirements set forth in these guidelines. An unsolicited offer will be evaluated in accordance with COMAR 21.05.02.23 to determine whether it would be to the State's advantage to enter into an agreement based on that offer, using the "Sole Source" procurement method under COMAR 21.05.05, or whether competitive methodologies should be used. If competitive proposals are to be sought, the MdTA will issue an RFP in accordance with COMAR 21.05.03, providing public notice in the Maryland Register and Maryland Contract Weekly and other publications of general circulation for at least 30 days. The RFP will state that the MdTA has received an unsolicited proposal for a new transportation facility project, describe the project, request the submission of competing proposals, and state that it intends to evaluate the unsolicited proposal and any competing proposals received no later than 60 days after the initial publication of the RFP.

Failure to submit a competing proposal within 60 days shall preclude such a proposal from MdTA consideration unless MdTA terminates consideration of, or negotiations on, the original proposal and all competing proposals received within such 60 day period. MdTA will not grant extensions of the 60 day period; and receipt of one or more competing proposals, or resubmissions as unsolicited proposals, will not trigger a new RFP or publication of a new public notice or start a new 60 day period. MdTA recognizes that it may receive proposals which have certain characteristics in common. In such cases, MdTA reserves the

right, in its sole discretion to treat such proposals, or a portion thereof, as competing or non-competing proposals.

Proposers are strongly urged to monitor the MdTA notices of RFPs and be prepared to submit their proposal within such 60 day period if they perceive the proposal they are considering could be construed or interpreted as a competing proposal under the subject RFP. In the event a proposer is unsure whether its planned proposal is sufficiently similar to the proposal which is subject of the RFP, a written request for a preliminary determination may be made to MdTA. MdTA will use its best efforts to respond to such requests within 7 working days.

The MdTA shall notify proposers within 30 days following receipt of the proposal as to the estimated time frame for proposal review. Every attempt will be made to move the proposal through the review process as expeditiously as possible; however development periods may be dependent on the volume of proposals under review, complexities of the proposals, and the need to obtain or clarify additional information.

All proposals must clearly describe the benefits accruing to the State by virtue of the public/private partnership. MdTA reserves the right to complete any proposed project as a public project, using a plan or financial structure different from that proposed by a private entity.

#### C. Delivery

Proposers submitting to MdTA are required to deliver 15 copies of their Conceptual Proposal and, if requested, Detailed Proposal to the following address:

Executive Secretary  
Maryland Transportation Authority  
Suite 150  
2310 Broening Highway  
Baltimore, Maryland 21224-6621

Phone: (410) 537-1001

Fax: (410) 537-1038

E-mail: [mdta@mdtransportationauthority.com](mailto:mdta@mdtransportationauthority.com)

When directed to do so by the MdTA, proposals are to be delivered to all affected local jurisdictions, which is defined to mean the chief executive or administrative officer of the county and/or municipality in which all or a portion of a proposed project is located. Proposals should be sealed in mailing envelopes or packages bearing the proposer's name, address and the words "Transportation Public-Private Partnership Proposal" clearly



written on the outside. The cover page must include the title of the proposal, the name and address of the proposing entity, and be signed by someone authorized to act on behalf of the proposer and include his or her telephone and facsimile numbers.

D. Proposal Review Fee

A non-refundable, non-negotiable proposal review fee of \$30,000 for all unsolicited proposals will be required in two parts, to partially offset the costs of processing and reviewing the proposals. Recognizing the time and cost factors affecting proposers, a two phase process is permitted involving a Conceptual Project Proposal and a following Detailed Project Proposal. The total fee will be split into two components: (1) Each Conceptual Proposal will be accompanied by a \$5,000 initial review fee; and if the concept is approved by the MdTA, (2) the Detailed Proposal will be submitted and accompanied by the remaining fee of \$25,000. Failure to submit all fees shall terminate MdTA's consideration of a proposal. All fees should be submitted in the form of a cashier's check made payable to the Maryland Transportation Authority. Entities submitting multiple project proposals shall be required to provide a separate fee for each project.

E. Proposal Preparation

These guidelines provide the basis for all submissions, solicited and unsolicited. Proposers are encouraged to closely examine any RFP associated with solicited proposals for any additions or amendments to these guidelines that may be required due to the unique nature of a particular transportation project. All information requested under "Submission Requirements" should be submitted. Failure to do so may result in a lowered evaluation rating. Conceptual proposals which lack key information may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the project. Emphasis should be on completeness and clarity.

Any proposals submitted for consideration should include a comprehensive scope of work and provide enough information to determine whether it meets all criteria stated herein to include public support for the project. In addition, the financial plan must contain enough detail so that an analysis will demonstrate economic feasibility.

Proposals should be organized according to these guidelines with all pages of the proposal numbered. Evaluation of the proposal will be better facilitated if proposers will reference responses by citing the guideline tab number, sub-letter, and by repeating the text of the requirement. The

proposal should include a table of contents which cross references the requirements by category. Information the proposer wishes to include which does not fall within any of the requirements should be inserted where appropriate or attached at the end of the proposal and designated as additional material. Each copy should be submitted as a single volume where practical. Proposers who submit a proposal may be required to give an oral presentation to the MdTA.

F. Confidential and Proprietary Information

Proposers should give specific attention to the identification of those portions of their proposals which they deem to be confidential, proprietary information of trade secrets and provide any justification as to why such materials, upon request, should not be disclosed by the MdTA under the Maryland Public Information Act, Section 10-611 et. seq. of the State Government Article of the Annotated Code of Maryland.

V. SUBMISSION REQUIREMENTS

A. PHASE ONE – Conceptual Proposal

Proposers are required to submit the following, separated by tabs within the Conceptual Proposal:

TAB 1: Qualifications and Experience:

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of each firm and the key principals involved in the proposed project. The lead organization must be identified.
- c. Provide the names, addresses and phone numbers of persons within the firm or consortium who may be contacted for further information.
- d. Describe the length of time in business, business experience, public sector experience, private sector experience, and other engagements of the firm(s).
- e. Include the address, telephone number, and the name of a specific contact person for an entity for which the firm, consortium or primary members of the consortium have completed a similar project.

- f. Provide audited financial statements covering the previous three years of the firm, or consortium if available, and each major partner. Submit the most recent SEC 10-K and 10-Q reports, if appropriate.

TAB 2: Project Characteristics:

- a. Provide a description of the facility or facilities, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the project in sufficient detail so the type and intent of the project, the location, and the communities that may be affected are clearly identified. The project description should be prepared in a way that fully recognizes any federal and State requirements to analyze other project alignments and alternatives.
- b. Include a list of all federal, State and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- c. Without completing an Environmental Impact Statement, identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts. Identify the expected positive social, economic and environmental impacts of the project.
- d. List the critical factors for the project's success.
- e. Identify the proposed schedule for implementing the project, including estimated time for completion.
- f. Address responsibility for design, construction, and assurances for timely completion of the project.
- g. Clearly state the assumptions related to ownership, legal liability, law enforcement, operation and maintenance of the facility (all public services may be subject to full reimbursement).
- h. Provide information on any phased (partial) openings proposed prior to final completion of the project.

TAB 3: Project Financing:

- a. Provide an estimate of the cost of the project by phase (e.g. planning, design, construction, etc.)
- b. Submit a plan for the development, financing and operation of the project, showing the anticipated schedule on which funds will be required and proposed sources of those funds.

- c. Include a list and discussion of assumptions (including user fees, usage of the facility, and/or rate of return) underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, State or federal resources that the proposer contemplates requesting for the project. Describe the total commitment (financial, services, property, etc.), if any, expected from governmental sources, and the timing of any financial commitment.

TAB 4: Public Support:

- a. Identify who will benefit from the project, how they will benefit and how the project will enhance the overall transportation system.
- b. Identify any anticipated government support or opposition, and general public support or opposition to the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the agencies and the public in areas affected by the project.

TAB 5: Business, Economic and Community Development:

- a. Describe the significant benefits to the community, region or State. Identify any State benefits resulting from the project including the achievements of State transportation policies or other State goals.
- b. Identify significant benefits to the State's economic condition. Discuss whether this project is critical to attracting or maintaining industries and businesses to the State or region.
- c. Identify positive economic impacts to the State in terms of potential employment of State residents, use of State contractors, fabricators and suppliers, the amount of contract dollars expected to enter into the State's economy as a result of the construction of the project, and an estimate of tax revenues to be generated.
- d. State whether the project is to be located in or near a Priority Funding Area, Foreign Trade Zone, Empowerment Zone, Enterprise Zone, or Urban Renewal Area, and identify the positive economic benefits to be achieved from such location.

**B. PHASE TWO – Detailed Proposal**

The following information illustrates the type of information that may be requested in Phase Two of the evaluation and selection process. Specific

requirements and delivery dates will be determined on a case by case basis according to the proposed transportation facility.

- a. Provide a topographical map, drawings, sketches, etc. depicting the location of the facility or facilities.
- b. Provide a list of public utility facilities that will be crossed by the project and a statement of plans to accommodate such crossings.
- c. Provide a statement setting out the plan for securing all necessary property. The statement must include names and addresses of the current owners as well as a list of any property the proposer intends to request the State to condemn.
- d. Provide a detailed listing of all firms who will provide specific design, construction and completion guarantees. Include a description of the guarantees.
- e. Provide the estimated total costs of the facility and the projected start date. Include anticipated commitment of all parties; equity, debt and other financing mechanisms; and a schedule of project revenues and expenditures. Include in the cost analysis a detailed analysis of the projected rate of return.
- f. Include a detailed discussion of assumptions about user fees, and usage of the facility such as user forecasts and other relevant assumptions.
- g. Identify known government support or opposition, and public support or opposition for the project. Government and public support should be demonstrated through resolutions of official bodies, minutes of meetings, letters, or other official determinations.
- h. Demonstrate consistency with state and local transportation plans, or indicate the steps required for acceptance into such plans.
- i. Provide an explanation of how the proposed facility would impact local transportation plans of each affected locality.
- j. Provide an economic impact analysis quantifying to the extent possible the positive business, economic and employment impacts the project will have upon the State.
- k. Such additional material and information as MdTA may reasonably request.

## VI. EVALUATION AND SELECTION PROCESS

Proposals will be evaluated according to a two phase process. Phase One will require a Conceptual Proposal to be submitted for a pre-qualification review conducted by a Review Committee appointed by the MdTA. Phase Two of the process will consist of a scheduled submission of a Detailed Proposal for final evaluation by the MdTA.

### A. Phase One

The MdTA will appoint a Review Committee including one or more representatives of the Department's modal administrations primarily responsible for the type of transportation facility being proposed, to perform Phase One of the qualification review of each Conceptual Proposal to determine whether each proposer has: (i) submitted a complete proposal; (ii) assembled a team which is qualified and capable of completing the proposed facility; (iii) developed a plan which is technically feasible; (iv) provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility; and (v) proposed a project which fulfills a legitimate State transportation need. The Review Committee may confer with financial, technical, and legal consultants under contract with the MdTA or MDOT in reaching its decision. The Review Committee may request formal presentations and additional documentation in order to assess project feasibility and proposer qualifications. Those projects meriting further consideration will be recommended to the MdTA for approval of the Conceptual Proposal. The MdTA may reject or concur with the recommendation. Approval of the Conceptual Proposal by the MdTA will advance the project to Phase Two of the evaluation and selection process.

### B. Phase Two

The primary focus of Phase Two will be to conduct an in-depth evaluation and analysis of each Detailed Proposal to determine whether the proposal promotes a State transportation goal and serves the public interest, and whether the proposal should be selected for a Transportation Public-Private Partnership. In conducting such analysis, the MdTA may solicit advice from federal, State and local agencies, representatives of the private sector, or any financial, technical, legal or other such consultant under contract with MdTA or MDOT, as appropriate, in making its determinations. The MdTA may request formal presentations and additional documentation as part of its evaluation process.

### C. Jurisdictional Review

These guidelines require that each proposal be provided to all affected local jurisdictions. Proposers should provide copies of the Phase One Conceptual Proposal and the Phase Two Detailed Proposal to the affected local jurisdictions when directed to do so by the MdTA. Those affected jurisdictions will have 60 days from receipt of the proposals to submit written comments to the MdTA, and will be so notified by the MdTA. If comments have not been received within 60 days, the MdTA will assume that local jurisdictions have no comment on the proposal and shall so notify them of that assumption.

### D. Final Approval

After comments have been received from affected jurisdictions, the MdTA may request proposers to make oral presentations. The format of these presentations will include a formal briefing by the proposer, followed by any questions the MdTA may have pertaining to the project. The MdTA also may ask the proposer to address concerns expressed by local jurisdictions. If there is an issue to which the proposer is unable to respond during the formal presentation, the MdTA may grant the proposer a reasonable period of time to submit a written response.

Following the formal presentations, the MdTA will evaluate all proposals using an established list of criteria. The Review Committee's findings, information gathered at the presentations, and the MdTA's evaluation results will be used to select proposals to be recommended to the Secretary of Transportation. The MdTA may elect to recommend any number of projects from proposals received.

The Secretary of Transportation will review the recommendations and select those projects which: (i) satisfy a public need; (ii) are compatible with State and local transportation plans; (iii) are reasonable in terms of costs; and (iv) will result in the timely acquisition, construction, financing or operation of the proposed new transportation facility. The Secretary reserves the right to reject any or all recommended proposals.

Final approval will be contingent on successful negotiation and execution of a Transportation Public-Private Partnership Agreement between the private entity and MdTA, and approval by the Maryland Board of Public Works. The Agreement for each project will be a comprehensive agreement addressing the rights, duties and obligations of both the MdTA and the private partner with respect to the project, as detailed below in "Transportation Public-Private Partnership Agreements."

Should satisfactory negotiations not be possible with a proposer, MdTA reserves the right to proceed no further with the project, to request the next ranked proposer to submit a detailed proposal for further consideration, to re-advertise the RFP, or to proceed with the project as a public project.

E. Transportation Public-Private Partnership Agreements

Selected proposers must enter into a comprehensive Transportation Public-Private Partnership Agreement with the MdTA, the terms of which shall include but not be limited to:

- a. The right of the private partner to acquire, construct, finance, and/or operate the transportation facility, the duration of such rights, and if applicable, the terms and conditions for transfer of the transportation facility to the State.
- b. How user fees or other charges for the transportation facility will be established from time to time by the agreement of the parties.
- c. Performance milestones that will be required.
- d. The requirements for interconnections and interoperability between the transportation facility and other public transportation facilities.
- e. Responsibilities for the acquisition of necessary environmental approvals and other required permits and approvals for the transportation facility.
- f. Responsibilities for the acquisition of land for the project, including any requirements and conditions for the exercise of eminent domain by the State for the benefit of the transportation facility.
- g. Responsibilities for the design, financing, construction, operation and maintenance of the transportation facility, and the design, construction, operation and maintenance standards which the transportation facility must meet.
- h. The applicability of the State's procurement laws and regulations to any phase of the design, acquisition, construction, operation or maintenance of the transportation facility.
- i. The requirements and procedures for the submission of plans and specifications to the MdTA for approval.



- j. The rights of the MdTA to inspect construction of the transportation facility.
- k. The obligations of the private partner to maintain the transportation facility and the rights of the MdTA to monitor such maintenance.
- l. The rights of the private partner to make and enforce reasonable rules, with the consent of the MdTA and MDOT, applicable to the transportation facility.
- m. The terms under which the private partner will reimburse State and local agencies for services provided during the development, construction, operation and/or maintenance of the transportation facility.
- n. The fee structure for the facility or the reasonable maximum rate of return on investment authorized for the private partner to earn, the formula by which such rate of return will be calculated, and the distribution of project revenues.
- o. The terms and conditions of financing for the transportation facility, including any terms or conditions under which the MdTA will contribute financial or other resources to the project.
- p. The events that will constitute default by the parties, notice and cure rights, and remedies available to the parties in the event of default.
- q. Lenders' rights and remedies with respect to events of default.
- r. The events that will constitute force majeure and the remedies available to the parties in such events.
- s. Insurance and bonding requirements that the private partner will be required to provide.
- t. The liability of the parties for, among other things, property damage, personal injury, facility repair and hazardous waste remediation at the transportation facility.
- u. The obligations of the private partner to maintain records, to allow inspections and audits and to provide regular reports to the MdTA.
- v. The conditions under which the private partner may assign its rights under the Agreement and/or its rights in and to the transportation facility.

- w. Any other terms and conditions appropriate for the selected transportation facility.

Any changes in the terms of the Transportation Public-Private Partnership Agreement must be agreed upon by the parties and added to the Agreement by written amendment.

## VII. ADDITIONAL INFORMATION

### A. Minority Business Enterprises (MBE)

Proposers are hereby notified that in regard to any agreements entered into pursuant to this Transportation Public-Private Partnership program, all persons shall be afforded full opportunity to submit proposals and shall not be subjected to discrimination on the basis of age, ancestry, color, creed, marital status, mental or physical disability, national origin, race, religious affiliation, belief or opinion, sex or sexual orientation in consideration for award. The State encourages the utilization of minority businesses for any subcontracting opportunities, and if the construction of any project under this program is subject to Maryland procurement law, MBE utilization will be required. Proposers are requested to identify any certified MBEs to be utilized, the portions of the work that they will perform, and the total dollar value which that work represents.

The State's MBE certification process is managed by the Maryland Department of Transportation, Office of Minority Business Enterprise. Certification applications may be obtained by contacting MDOT at (410) 865-1241, or toll free (800) 544-6056.

### B. Compliance with Law

By submitting a proposal, the proposer agrees that it will comply with all federal, State, and local laws applicable to its activities and obligations. The proposer shall be deemed to represent that it is not in arrears in the payment of any obligation due and owing the State of Maryland or any department or unit thereof, including but not limited to the payment of taxes and employment benefits, and if selected for award, that it shall not become so in arrears.