

DEPARTMENT OF TRANSPORTATION
ACTION AGENDA
January 8, 2020

MDOT 1



Supplemental

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23-GM. STATE HIGHWAY ADMINISTRATION
Public-Private Partnership (P3) Program

Contract ID: I-495 and I-270 P3 Program

Recommendation: The Maryland Transportation Authority (MDTA) and the Maryland Department of Transportation (MDOT), together as the “Reporting Agencies,” recommend to the Board of Public Works (BPW) that the conditional designation of the P3 Program and approval of the proposed competitive solicitation method, be amended to:

- (1) provide regional transit services as part of the P3 Agreements; and
- (2) approve delivery of the P3 Program through the solicitations of phase developers to deliver the entire P3 Program through a phased approach allowing further minimization of impacts and design concept collaboration with communities and stakeholders within the delivery process of the various phases.

The original designation of the P3 Program and approval of the solicitation method occurred during the June 5, 2019 BPW meeting. All documentation and information presented for the June 5, 2019 BPW meeting remains the same, unless otherwise indicated below.

Authority: State Finance and Procurement Article, §10A-201(c), Annotated Code of Maryland. This law, enacted in 2013 (Maryland Laws, Chapter 5), authorizes the Board of Public Works to designate a public infrastructure asset as a P3 and approve the agency’s proposed solicitation method.

P3 Designation and Approval of Solicitation Method Conditions: On June 5, 2019, the BPW:

- (1) Designated the I-495 and I-270 P3 Program (Program), a public infrastructure asset, as a public-private partnership (P3); and
- (2) Approved the proposed competitive solicitation method for selecting a developer for each phase of the Program, resulting in multiple P3 Agreements.

This designation and approval were based on the below conditions. The Reporting Agencies request that the BPW approve the amendments to conditions (3) and (5) as stated below. Conditions (1), (2) and (4) remain unchanged and an update as to their status has been provided. Further, the Reporting Agencies request that the BPW approves certain changes to the proposed competitive solicitation method for the Program, as further described below.

- 1) No property acquisitions related to Traffic Relief Plan may take place before BPW final approval of the P3 agreement.

UPDATE: The Reporting Agencies are committed to implementing a solution with the least amount of impacts through minimization techniques and innovative solutions from the private sector. Through this process, the Reporting Agencies are implementing an approach in which no property shall be acquired prior to the final approval.

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- 2) RFP soliciting P3 contractor will permit mass transit bus access on managed toll lanes without tolls.
UPDATE: The Reporting Agencies are developing a solicitation approach in which it will be clear that public agency mass transit buses will be allowed on the managed toll lanes for free.

- 3) Ten percent (10%) of net State toll proceeds – after P3 contractor gets reimbursed for construction cost – will go to Montgomery and Prince George’s Counties for regional transit services.

AMENDMENT: The Reporting Agencies will develop memoranda of understanding with the affected Counties defining regional transit service improvements to be provided as part of the P3 Agreements. Terms of the agreements will be provided to the BPW concurrently with the P3 Agreements. Furthermore, the Reporting Agencies will develop the transit service improvements collaboratively with the affected Counties.

Specific transit investment will be provided as part of the P3 agreements. This will ensure these regional transit service improvements are provided at defined and predictable times. By including the regional transit service improvements in the P3 agreements, the affected Counties will be guaranteed the transit service improvements. This approach will fully honor the BPW request from June 5, 2019. The memoranda of understanding between MDOT and the affected Counties defining transit service improvements to be developed as part of the P3 Agreements will be provided to the BPW as part of the request for approval of the P3 Agreements to clearly show that the Reporting Agencies have complied with this BPW condition.

- 4) Initial feasibility study of monorail to be performed.
UPDATE: The Reporting Agencies are advancing a monorail study, with substantial work currently underway. A preliminary draft Feasibility Study Report is expected in early 2020 and completion of the Final Feasibility Study Report is expected in May 2020.
- 5) Condition that the TRP begin with “I-270 as Phase 1 which will delay Montgomery County beltway [I-495] portion to Phase II which moves Prince George’s County beltway [I-495] developments to last and final phase.”

AMENDMENT: The P3 Program will be delivered through the solicitation of one or more phase developers. The first solicitation, referred to herein as “Phase 1,” will include the Bi-state Capital Beltway Accord partnership for the American Legion Bridge which will include I-495 from south of the George Washington Memorial Parkway to I-270 and I-270 from I-495 to I-70. The first section to be delivered under Phase 1 will be along I-495 from south of the George Washington Memorial Parkway to I-270 and along I-270 from I-495 to I-370. The remaining phases on I-495 from I-270 to the Woodrow Wilson Memorial Bridge and on I-270 from I-370 to I-70 will be solicited at a later date subject to BPW amendment approval of each subsequent phase(s).

More details about the solicitation approach for each phase are provided in the following *Amended and Restated Description of the Process for Soliciting, Evaluating, Selecting and Awarding the P3*.

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The Reporting Agencies believe that delivering the P3 Program through solicitations for phase developers will deliver better value with the following benefits relative to multiple fixed-price solicitations:

- Ensure sufficient market participation in the P3 Program;
- Allow for improved design-build market pricing;
- Enable the Reporting Agencies to engage the phase developer in stakeholder outreach;
- Facilitate more collaborative dialogue between the State, the local communities, and the phase developer, and
- Allow for dialogue with local agencies to focus on providing meaningful mitigation for impacts to the environment and community.
- Ensure that all sections within each phase are delivered efficiently, taking into account the interdependent nature of the phases.

AMENDED AND RESTATED DESCRIPTION OF THE PROCESS FOR SOLICITING, EVALUATING, SELECTING AND AWARDING THE P3

The Reporting Agencies submit this amended and restated solicitation process to the Board of Public Works with this Agenda Item in support of the request that the Board approve the amended proposed competitive solicitation method for a phased approach for the Program.

The Reporting Agencies are prepared to commence a competitive and transparent solicitation process to select a phase developer for the Phase P3 Agreement to develop Phase 1 and any subsequent phases of the P3 Program.

The solicitation process for Phase 1 and any subsequent phases will be consistent with §10A-202 of the State Finance and Procurement Article, Annotated Code of Maryland, Code of Maryland Regulations (COMAR) 11.07.06 (MDTA's P3 regulations) and COMAR 11.01.17 (MDOT's P3 regulations). The Reporting Agencies will use a multi-step solicitation process that includes but is not limited to issuance of a request for qualifications (RFQ), issuance of a draft request for proposals (RFP), industry review meetings, and issuance of a final RFP.

Each competitive solicitation process will begin with an RFQ to which proposer teams will submit Statements of Qualifications (SOQ). The purpose of the RFQ is to identify private entities that qualify as participants in the solicitation process and identify a shortlist of the highest qualified teams for continuing in the solicitation process. It is anticipated that SOQs, in response to the RFQ, will be due approximately two months following its issuance. For each private entity, or respondent, that responds to a public notice of solicitation, the Reporting Agencies shall make a responsibility determination in accordance with State Finance and Procurement Article, §10A-202(c), Annotated Code of Maryland. Responsibility determination means the determination by a Reporting Agency that a private entity has the capacity in all respects to perform fully the requirements of a Phase P3 Agreement and possesses the integrity and reliability that will ensure good faith performance.

Based on the SOQs, the Reporting Agencies plan to evaluate the submissions in accordance with the evaluation criteria and will determine the shortlisted proposers. Only shortlisted private entities are eligible to participate in industry review meetings; receive drafts of the RFP; submit comments on drafts of the RFP; receive the final RFP; and submit a written proposal in response to the final RFP.

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The Reporting Agencies will then issue a draft RFP to the shortlisted private entities. The draft RFP may include several related volumes, including but are not limited to:

- Instructions to Proposers (ITP), which defines the rules of the competitive process and the process and criteria for the selection of the selected proposer. The ITP includes exhibits and forms to describe the required content and form of the proposals;
- Phase P3 Agreement, which sets the rights and obligations of the phase developer to perform pre-development work; competitively solicit all or a portion of the design-build work, equity, private debt financing and other work as determined by the Reporting Agencies; collaborate with community stakeholders to develop the phase in such a way as to minimize impacts, accelerate delivery and provide congestion relief. The Phase P3 Agreement shall set out the rights and obligations of the phase developer to design, build, finance, operate, and maintain one or more sections, where more detailed terms are further defined such as funding and financing terms, payment terms, responsibilities for major permits, federal requirements, tolling services requirements, participation requirements, insurance coverage, contractual remedies for non-performance, termination terms, and revenue sharing; and
- Technical Requirements (TRs), which define the scope of work that the developer must follow to deliver on the obligations set forth in the Agreement.

A series of meetings will be held with qualified proposers before the Reporting Agencies issue the final RFP. The Reporting Agencies plan to incorporate an innovative dialogue process as part of the multi-step solicitation process. The innovative dialogue process will consist of a series of confidential one-on-one sessions with shortlisted respondents used to obtain comments, make modifications to the draft RFP and finalize the RFP requirements; obtain the best value for the State; facilitate the full understanding of the P3 concept regarding the requirements of the State; and facilitate the full understanding of the contents of the proposals required to be submitted by shortlisted respondents. Feedback may include identification and sharing of risks, or other information to provide an offeror confidence that their solution may be implemented, while minimizing risk to both parties. Agreement negotiations will not be conducted during the innovative dialogue process. This process will include both verbal and written confidential communication and will be flexible and adaptive to each shortlisted respondent's schedule and needs in developing their solutions. Innovative dialogue meetings between the Reporting Agencies and the shortlisted respondents will be structured to ensure a fair and competitive process. The Reporting Agencies may use comments and questions obtained from shortlisted respondents during the meetings for subsequent revisions to the draft RFP. The goal at the end of the solicitation process is to have each shortlisted respondent and the Reporting Agencies fully understand requirements before the shortlisted respondents submits their final technical and financial proposals.

Proposers would then have a period of time to finalize their due diligence and develop their proposal in accordance with the requirements of the RFP. Each proposal will be evaluated using criteria based upon the Program goals. After evaluating the proposals received in response to the RFP, the Reporting Agencies will select a preferred phase developer who would progress to finalize a Phase P3 Agreement to reflect their proposal. The Reporting Agencies will then submit the Phase P3 Agreement to the Comptroller, the State Treasurer, the budget committees, and the Department of Legislative Services (DLS) for review and comment. Following this review and comment period, the Reporting Agencies will return to the BPW for approval of a Phase P3 Agreement. After a Phase P3 Agreement is approved, the phase

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developer will conduct pre-development activities as specified in the Phase P3 Agreement.

The Reporting Agencies may reimburse a shortlisted respondent in accordance with State Finance and Procurement Article §10A-202(f), Annotated Code of Maryland and Code of Maryland Regulations 11.07.06.08(d) and 11.01.17.08(d). If the Reporting Agencies elect to reimburse a shortlisted respondent, the specific terms, conditions, method, and timing for reimbursing shortlisted respondents, including milestones to achieving a reimbursement and requirements to document incurred costs will be described in the solicitation documents. The reimbursement terms and conditions will include the requirement for the shortlisted respondent to transfer rights to use the work product produced by the shortlisted respondent during the solicitation process to the Reporting Agencies as a condition to receiving reimbursement.

Information deemed confidential, proprietary, or otherwise exempt from disclosure under applicable law shall be withheld from the public version of the Phase P3 agreements, in accordance with General Provisions Article § 4-335 of the Annotated Code of Maryland relating to trade secrets, confidential commercial information, and confidential financial information.

The Reporting Agencies are concurrently developing the I-495 and I-270 Managed Lanes Study, which will result in the development of an environmental impact statement (EIS) in careful conformance with the NEPA process. In the event that priced managed lanes are not part of the recommended preferred alternative, the solicitation would not proceed.

The Reporting Agencies are also concurrently conducting pre-NEPA planning activities for I-270, from I-370 to I-70, which will be applied toward an eventual NEPA environmental review process. An environmental process has not yet commenced for the part of I-495 from MD 5 to the Woodrow Wilson Bridge.

Preliminary Solicitation Schedule:

Solicitation Milestones for Phase 1	Date
Seek BPW affirmation of amended designation	January 8, 2020
RFQ released to industry	February 2020
SOQs Due	April 2020
Shortlist of qualified teams announced	June 2020
Draft RFP released to shortlisted teams	July 2020
Final RFP released to shortlisted teams	December 2020
Proposals due	February 2021
Selection of preferred offeror	March 2021
Seek BPW approval of Phase P3 Agreement	May 2021
Phase P3 Agreement executed	May 2021

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Outline of the Organization and Contents of the Public Solicitation Notice

The public solicitation notice for Phase 1 and any subsequent phases will begin with an RFQ and is intended to include:

- A description of the portion of the Program subject to the solicitation, including: limits; characteristics; and environmental and permit requirements. It also provides a listing and access to additional reference documents for the proposer's use.
- Preliminary information regarding the anticipated Phase P3 Agreement and key commercial terms.
- Preliminary information regarding the Form of the Phase P3 Agreement.
- Description of the solicitation process, including guidelines for questions/clarifications; key communications guidance and restrictions; and general proposer requirements.
- Requirements for SOQ content and submittals.
- Details of the SOQ evaluation process and criteria.

BOARD OF PUBLIC WORKS ACTION – THIS ITEM WAS:

APPROVED

DISAPPROVED

DEFERRED

WITHDRAWN

WITH DISCUSSION

WITHOUT DISCUSSION