



COMMONWEALTH of VIRGINIA

Commonwealth Transportation Board

Pierce R. Homer
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Agenda item # 1

RESOLUTION OF THE COMMONWEALTH TRANSPORTATION BOARD

November 7, 2007

MOTION

Made By: Mr. Bowie **Seconded By: Mr. Martin**
Action: Motion Carried, Unanimously

Title: A RESOLUTION AUTHORIZING A LOAN FROM THE STATE INFRASTRUCTURE BANK TO FLUOR VIRGINIA, INC., AND TRANSURBAN (USA) DEVELOPMENT INC., FOR THE I-95/I-395 HOT LANES PROJECT

WHEREAS, the 1995 General Assembly enacted Chapter 647, entitled the Public-Private Transportation Act of 1995 (PPTA), enabling the Commonwealth of Virginia and local governments to enter into agreements authorizing private entities to acquire, construct, improve, maintain, and/or operate qualifying transportation facilities; and

WHEREAS, the PPTA permits responsible public entities to receive, evaluate and select for negotiation, solicited or unsolicited proposals from private entities to acquire, construct, improve, maintain, and/or operate qualifying transportation facilities; and

WHEREAS, the Virginia Department of Transportation (the "Department") promulgated Implementation Guidelines dated July 1, 1995, and subsequently revised October 31, 2005, (the "Guidelines") to guide the selection of transportation privatization projects under the Department's purview; and

WHEREAS, in September 2003, Clark Construction and Shirley Contracting Company (Clark/Shirley) submitted an unsolicited conceptual proposal for the development, design, financing, construction, operation and maintenance of the I-95/I-395 High Occupancy Toll (HOT) Lanes Project in Virginia (the "Project"); competing proposals were invited by the Department and on March 15, 2004, Fluor Enterprises, Inc. ("Fluor"), and Transurban Limited ("Transurban") submitted an unsolicited competing proposal; detailed proposals were solicited by the Department from both Clark/Shirley and Fluor/Transurban, and, on June 3, 2005, the detailed proposals were received from the respective proposers; and

WHEREAS, in accordance with the PPTA, the Department determined that a) the development and/or operation of the Project serves the public purpose of the PPTA on the basis of i) the Project serves a public need, ii) the improvements contemplated by the Project are reasonable and shall address needs identified in the appropriate local or regional transportation plan to, among others, address congestion and enhance safety, iii) the estimated cost of the Project is reasonable in relation to similar facilities, and iv) the proposers' plan shall result in the timely development and /or operation of the Project and its more efficient operation; and b) it is in the public's interest to enter into an interim or a comprehensive agreement with multiple private entities; and

WHEREAS, in accordance with the PPTA guidelines, the Department negotiated with Fluor Virginia, Inc., a Delaware corporation and Transurban (USA) Development Inc., a Delaware corporation, (Fluor and Transurban being referred to jointly and severally as the "Recipient") and have entered into an Interim Agreement, dated October 24, 2006, (the "Interim Agreement") to develop and/or operate the Project; and

WHEREAS, the Recipient had previously applied for, and the Governor approved a \$10,000,000 loan for the Project from the Transportation Partnership Opportunity Fund (TPOF), however, due to TPOF's statutory requirements, the TPOF loan could not be executed in accordance with the business agreement between the Department and Fluor and Transurban at this preliminary stage of project development and a State Infrastructure Bank (the "SIB") loan is now a more appropriate funding mechanism and is proposed to substitute for the TPOF loan; and

WHEREAS, the Commonwealth Transportation Board (the "CTB") is authorized by Section 33.1-23.03:4 of the Code of Virginia to make allocations from funds in the federal subaccount of the Toll Facilities Revolving Account (the "TFRA") of the Transportation Trust Fund to make a loan to pay any cost of a qualifying transportation facility pursuant to the terms of an interim or comprehensive agreement entered into under the PPTA between a responsible public entity and private operators; and

WHEREAS, the Department executed a Cooperative Agreement with the Federal Highway Administration, dated September 27, 1996, authorizing the use of the federal subaccount of the TFRA as the SIB; and

WHEREAS, the Department has negotiated a State Infrastructure Bank Loan Agreement between the Department and the Recipient (the "SIB Loan Agreement"), a draft copy of which was presented at this meeting, which, along with certain provisions of the Interim Agreement, will govern the terms and conditions of the loan to be made from funds initially received from the federal government, loaned for other eligible purposes and subsequently repaid to the Department, in the maximum principal amount of \$10,000,000 (the "SIB Loan") to Fluor and Transurban for activities associated with the Project.

NOW, THEREFORE, BE IT RESOLVED THAT subject to the successful completion of final negotiations, execution and delivery of the SIB Loan Agreement, the CTB authorizes:

1. A SIB Loan to be made to the Recipient in the maximum principal amount of \$10,000,000 for the Project in accordance with the provisions of the SIB Loan Agreement which is approved in substantially the form presented to this meeting of the CTB with such changes as may be approved by the Commissioner.
2. The Commissioner to execute the SIB Loan Agreement, on behalf of the CTB, his execution conclusively evidencing his approval, on behalf of the CTB, of any changes from the draft presented to this meeting of the CTB.
3. The Chief Financial Officer, and any other person designated by the Commissioner, to take all actions necessary to effect the SIB Loan in accordance with the SIB Loan Agreement.
4. This resolution to take effect immediately.

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