



PORT PRIVATIZATION IN VIRGINIA

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April 10, 2013
Boston, MA

OVERVIEW

- Virginia Port Authority (“VPA”) is the Virginia state agency responsible for the Commonwealth-owned ports
- Virginia International Terminals (“VIT”) is a Virginia nonstock corporation formed by VPA to operate VPA’s port facilities
- In April 2012, Virginia’s Secretary of Transportation received an unsolicited conceptual proposal under Virginia’s Public-Private Transportation Act of 1995 for the concession of VPA’s facilities
- Two additional unsolicited conceptual proposals were submitted in the summer and fall of 2012, with the VPA in November soliciting detailed proposals from two proposers
- On March 26, 2013, after a detailed review by VPA and its advisors, the PPTA process was terminated and a restructuring of VIT recommended

VIRGINIA'S PPTA

- Focuses on PPP transactions across all modes of transportation
 - Road
 - Rail
 - Transit
 - Port
 - Aviation
- Emphasis on private investment
- Designed to be flexible and deliver projects and transactions in a more timely and cost effective manner
- Authorizes both solicited and unsolicited proposals
- Fundamentally an alternative method of procurement, but providing significant protections of confidential information from FOIA disclosure and relief from stringent public procurement rules and protocols typical of public bodies

VIRGINIA'S PPTA EXPERIENCE

- PPTA enacted in 1995
- First PPP concession for a transportation project completed in 1998
- In 2012 alone, three major road projects totaling nearly \$5 billion in investment completed
 - Midtown Tunnel
 - I-95 HOT Lanes
 - Route 460 Corridor
- The recent VPA process was the second PPTA experience for Virginia's port facilities (first in 2009)
- Virginia has a dedicated Office of Transportation P3s to manage the PPTA process
 - established in 2010
 - has a dedicated funding source
 - has developed programmatic approach to procurement and delivery of PPP projects
 - has created PPTA implementation guidelines

RECENT VPA PPTA PROCESS

- On April 4, 2012, APM Terminals, an owner of adjacent port facilities in Hampton Roads, submitted an unsolicited conceptual proposal to concession VPA's facilities for a 48-year period valued by APMT between \$3.16 billion and \$3.91 billion
- Under PPTA, the APMT proposal was posted and other proposals were permitted to be submitted until mid-August, with two such private proposals being submitted (Carlyle and RREEF)
- All conceptual proposals were submitted to Virginia's Secretary of Transportation, who was acting as a "responsible public entity" under the PPTA pursuant to an Executive Order issued by Governor McDonnell
- In early October, Carlyle withdrew its proposal and, in one of the more intriguing aspects of the process, the Virginia Attorney General issued an opinion stating that the VPA, not the Secretary of Transportation, was the sole RPE for purposes of accepting, evaluating and awarding a PPTA concession
- Following formal Instructions to Proposers issued by the VPA, APMT and a successor to RREEF, Virginia Port Partners, submitted detailed proposals in early December, proposals that were then evaluated over the following three months

VPA'S EVALUATION

- VPA's evaluation of the detailed proposals consisted of two parts
 - Part 1 was qualifications, with grading on a “pass/fail” basis
 - Part 2 covered the proposer's business plan and financial plan, with each plan having customized scoring
 - Assuming a proposal passed the “pass/fail” assessment qualification, the business plan and financial plan scores were aggregated
- Each proposal was based on minimum payments required from the concessionaire over 30, 40 and 48-year concession terms
- Subject to the required minimum payments, each proposal was required to set forth the amount of concession fee payable at closing and the amount of fixed concession payments to be paid monthly, in each case over the three concession terms

VPA'S EVALUATION

- Each proposal was required to set forth the maximum amount of capital expenditures by VPA for the three concession terms
- Other requirements included what land, if any, to be contributed by VPA
- Concurrent with VPA's evaluation of the detailed proposals, drafts of concession agreement term sheets prepared and negotiated as were initial drafts of a comprehensive agreement

VPA'S DECISION

- Based on its evaluation, VPA determined only one of the private investor options presented significant value to Commonwealth when compared to a public sector comparator
- While this option did create a value premium, VPA believed there to be substantial risk and uncertainty that were considered to be too great so that the option would be unachievable
- VPA, instead, recommends a corporate restructuring of VIT, a restructuring the VPA board believes will reduce many duplicative functions at VIT and VPA, increasing operation efficiencies and cost savings
 - Restructure will convert VIT from a nonstock corporation to a single member limited liability corporation, with VPA being the sole member
 - VPA will undertake a comprehensive audit of VIT
 - VPA will commence a global search for a permanent Executive Director and Chief Commercial Officer