

**COMMONWEALTH OF VIRGINIA**  
**OFFICE OF THE ATTORNEY GENERAL**  
**SOLICITATION FOR PROPOSALS\***

**SFP No. 2009-29 (Virginia Port Authority - PPTA)**

Issue Date: July 24, 2009

Title: Special Counsel to the Virginia Port Authority for  
Public Private Transportation Act proposals

Issuing Agency: Commonwealth of Virginia  
Office of the Attorney General  
900 East Main Street  
Richmond, Virginia 23219

Using Agency: Virginia Port Authority

Period of Contract: Date of appointment through June 30, 2012, with  
optional one-year renewals thereafter, at the sole  
discretion of the Attorney General. At all times,  
terminable at will by the Attorney General.

**PROPOSALS WILL BE RECEIVED UNTIL: 1:00 P.M. EST, Monday, August 17, 2009**

In compliance with Solicitation for Proposals ("SFP") No. 2009-29 (VPA – PPTA) and subject to all the conditions imposed in Section 7 thereof, the undersigned offers and agrees to furnish the services in accordance with the attached proposal or as mutually agreed upon by subsequent negotiation.

NAME AND ADDRESS OF FIRM: \_\_\_\_\_ DATE: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_ BY: \_\_\_\_\_  
(Signature in ink of Primary Contact)

PRIMARY CONTACT INFO:

NAME: \_\_\_\_\_  
(Please Print)

TITLE: \_\_\_\_\_

ZIP: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

FEDERAL EIN: \_\_\_\_\_ TELEPHONE: \_\_\_\_\_

**\*Attach an executed copy of this form to the front of the proposal submitted.**

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## 1. PURPOSE

The Office of the Attorney General is soliciting proposals from attorneys and law firms wishing to serve as special counsel to the Virginia Port Authority (“VPA”) for the purpose of providing advice, counsel and representation regarding the receipt, evaluation and negotiation of Public Private Transportation Act (“PPTA”) proposals from private commercial business organizations under the Code of Virginia concerning private operation and maintenance of existing, VPA owned or leased domestic international trade transportation facilities, as well as potential construction of new VPA facilities that address maritime shipping into and out of the Commonwealth of Virginia. While the Office of the Attorney General has some expertise in this field, this Office must supplement its in-house staff knowledge with attorneys who have experience in such matters. Additional, related services may also be required of outside counsel on an as-needed basis. Notwithstanding the above, the firms appointed under this solicitation for proposals (“SFP”) will be expected to provide a wide variety of legal services. Each matter or potential transaction requiring legal services must be approved in advance by the designated Assistant Attorney General and will be coordinated within the Office of the Attorney General.

## 2. INSTRUCTIONS TO OFFERORS

2.1 Submission of Proposals. Written proposals responding to the needs outlined and in the manner specified in this SFP must be submitted by the deadline indicated. **Proposals may NOT be e-mailed or faxed.** If proposals are mailed or hand-delivered, send to the following address:

Office of the Attorney General  
Attention: Courtney M. Malveaux  
Deputy Counsel to the Attorney General  
900 East Main Street  
Richmond, Virginia 23219

To receive consideration, one (1) original and two (2) copies of the proposal (*three sets total*), directed to the above address, must be received in the Office of the Attorney General no later than **1:00 P.M. EST, Monday, August 17, 2009.**

2.2 Additional Information. The offeror is responsible for inquiring about and clarifying any aspect of this SFP that is not understood. Questions should be addressed to:

Jeffrey R. Allen  
Assistant Attorney General  
Office of the Attorney General  
900 East Main Street  
Richmond, Virginia 23219  
(804) 786-0063  
Email: **JRAllen@oag.state.va.us**

2.3 Schedule. It is expected that on July 24, 2009, the SFP will be issued, and that proposals will be due on August 17, 2009. Thereafter, the selection of the firm(s) to serve as Special Counsel will be made as soon as practicable.

2.4 Proposal Format. Proposals should conform to the following specifications:

2.4.1 The cover page of this SFP, signed by an authorized person, should be completed and returned as page one of the proposal.

2.4.2 A one-page summary of the proposal should follow the cover sheet.

2.4.3 Responses should be provided to each question asked in Sections 4 and 5 of this SFP. All information requested must be submitted.

2.4.4 Proposal should be prepared simply and economically, providing a straightforward, concise description of capabilities to satisfy the requirements of the SFP. Emphasis should be placed on completeness and clarity of content.

2.4.5 Proposal should be organized in the order in which the requirements are presented in the specific proposal requirements of the SFP. All pages of the proposal should be numbered. Each paragraph in the proposal should reference the paragraph number of the corresponding section of the SFP, citing the paragraph number, subletter, and repeating the text of the requirement as it appears in the SFP, positioned before the response. If a response covers more than one page, the paragraph number and subletter should be repeated at the top of the next page. Information which the offeror desires to present that does not fall within any of the requirements of the SFP should be inserted at the end of the proposal and designated as additional material.

2.4.6 Proposal should be UNBOUND, except for binding by binder clip or staple. Proposals with saddle stitching, tape, wire coil, plastic coil or case binding will not be accepted. Regular weight paper should be used for the entire proposal.

2.4.7 For each page containing confidential or proprietary information, please stamp the top of the page with the word "Proprietary" or "Confidential." This Office intends to make available for inspection and copying bids and contracts in response to requests under the Freedom of Information Act ("FOIA"), Va. Code §§ 2.2-3700 et seq., but it will withhold proprietary or confidential information, such as client information and liability insurance information, at its discretion.

### **3. SCOPE OF WORK**

3.1 General. VPA requires review and evaluation of proposals involving transportation concession proposals under the PPTA. Specifically, VPA requires advice, counsel

and representation regarding the receipt, evaluation and negotiation of Public Private Transportation Act (“PPTA”) proposals from private commercial business organizations under the Code of Virginia concerning private operation and maintenance of existing, VPA owned or leased domestic international trade transportation facilities, as well as potential construction of new VPA facilities that address maritime shipping into and out of the Commonwealth of Virginia.

This SFP is made pursuant to a determination by the Attorney General that it is impracticable or uneconomical at this time for the Office of the Attorney General to render all legal services required in this matter in accordance with Va. Code §§ 2.2-507 and –510. Although counsel will carry the primary legal responsibility under this appointment, the Office of the Attorney General will participate in the matter to the extent appropriate and require being advised of all issues that arise.

3.2 Specification. The work of the selected counsel will include, but not necessarily be limited to, the following:

3.2.1 Providing advice, counsel and representation regarding the receipt, evaluation and negotiation of Public Private Transportation Act (“PPTA”) proposals from private commercial business organizations under the Code of Virginia concerning private operation and maintenance of existing, VPA owned or leased domestic international trade transportation facilities, as well as potential construction of new VPA facilities that address maritime shipping into and out of the Commonwealth of Virginia.

3.2.2 Providing advice, counsel and representation regarding available options and proposals concerning private and public financing associated with PPTA proposals from private commercial business organizations under the Code of Virginia concerning private operation and maintenance of existing, VPA owned or leased domestic international trade transportation facilities, as well as potential construction of new VPA facilities that address maritime shipping into and out of the Commonwealth of Virginia.

3.2.3 Providing advice, counsel and representation to the Commonwealth of Virginia regarding business and maritime legal matters associated with the receipt, evaluation and negotiation of any such PPTA proposals from private commercial business organizations under the Code of Virginia.

3.3 Proposal Questions. Given this background, please respond briefly (no more than one to three pages) to the following questions:

3.3.1 Please provide information regarding any prior experience providing advice, counsel, and representation regarding the receipt, evaluation and negotiation of Public Private Transportation proposals from any private commercial business organizations.

3.3.2 Please provide information concerning your experience providing advice, counsel, and representation regarding the private operation and maintenance of state or government owned or leased domestic international maritime trade transportation facilities.

3.3.3 Please provide information concerning your experience providing advice, counsel, and representation regarding the potential construction of new maritime transportation facilities which performed international shipping into and out of any government or state ports.

3.3.4 Please provide information regarding any prior experience providing advice, counsel and representation regarding available options and proposals concerning private and public financing associated with PPTA proposals.

3.3.5 Please provide information regarding any prior experience providing advice, counsel and representation regarding private commercial business organizations privately operating and maintaining existing, state or government owned or leased domestic international maritime trade transportation facilities.

3.3.6 Please provide information regarding any prior experience providing advice, counsel and representation regarding any potential construction of new state or government transportation facilities which may have addressed maritime shipping operations.

3.4 Length of Engagement. The period of engagement will commence at the date of appointment and will continue through June 30, 2012, with optional one-year renewals thereafter, at the sole discretion of the Attorney General, or until otherwise terminated. The Attorney General reserves the right to engage other counsel to provide legal advice under this SFP and to terminate any appointment (including any appointment made pursuant to this SFP) at will at any time.

3.5 Appointment. Notwithstanding anything as may be to the contrary, the Attorney General further reserves the right to appoint any law firms or individuals he deems most appropriate to represent the Commonwealth in the engagement. While it is the Attorney General's intention to delegate work described above only to the attorneys or firms selected under this SFP, the Attorney General retains the right to make a different selection or handle any particular matter in-house if, in his sole judgment, the needs of the Commonwealth require. The Attorney General also makes no guarantee as to the volume of work that may be referred under this appointment.

#### **4. QUALIFICATIONS OF OFFEROR**

Please respond to all of the following:

4.1 Primary Contact and Assigned Personnel. Give the name of the offeror and firm, address and telephone number, and the name, title and e-mail address of the one individual who

would be primarily responsible for this engagement. Identify the individuals who would perform the work in this engagement and describe how their responsibilities will be assigned and managed. Provide résumés for each person, including background and experience relevant to this engagement, and each person's capacity to provide advice as quickly as needed if the primary contact for the engagement is not available.

4.2 Expertise. Describe each attorney's expertise in complex business and financial transactions, foreign trade and commercial shipping matters.

4.3 Additional Expertise. Describe any additional experience you may believe is relevant given the scope of the work as described in Section 3.

4.4 Changes in Law and Regulations. Briefly describe the offeror's process and resources for keeping abreast of changes in privatization law and for maintaining the legal expertise necessary to successfully represent the Commonwealth's interests in such related matters.

4.5 References. Please identify no more than three persons or companies for whom you have provided legal services in the area of privatization initiatives or similar matters who may be contacted as references (include name, title, address and telephone number for each reference). In a brief format, please also list any other states, or political subdivisions or entities which have retained your firm in the last three years to provide services of the nature described herein.

4.6 Support Staff. Identify each individual who would staff this engagement and indicate each person's experience in the identified substantive areas. Describe how his or her responsibilities will be assigned and managed during this engagement. Provide résumés for each person, including background and experience relevant to this engagement.

4.7 Conflicts. Any attorney or firm selected for this engagement would be precluded from representing any client in any matter against the affected agency, the Office of the Attorney General, and their respective employees. This prohibition will extend to any member of the offeror's firm. If your firm is representing clients in matters where the exercise of your professional judgment in this engagement might be affected, please identify and describe each situation.

4.7.1 If you are representing clients in litigation with the Agency or the Commonwealth, identify and describe each situation.

4.7.2 If you are representing clients in contract or other matters where, in your judgment, the exercise of your professional judgment on behalf of the Agency might be affected, identify and describe each situation.

4.7.3 If any member of, or associate in, your firm serves on any board, commission, committee or other organization related in any way to the Agency, identify

each such affiliation or membership. If any member of, or associate in, your firm serves in such a capacity, please provide documentary evidence, such as resolutions adopted by the firm, proving that such member or associate did not participate and has no authority to participate on behalf of the firm in the procurement or letting of a contract pursuant to this SFP, pursuant to Section 2.2-3110(A)(4) of the State and Local Conflict of Interests Act, Va. Code §§ 2.2-3100 et seq.

4.7.4 Please indicate whether any member of or associate in your firm currently serves as a member of the Virginia General Assembly.

4.8 Professional Liability Coverage. Describe your professional liability coverage for work of this type, including limits of coverage. Please attach a copy of the cover page of your policy.

4.9 Other Disclosures. Describe any investigations by governmental or authoritative bodies or disciplinary actions related to the firm or staff or disclosure of any past or pending matter that may reflect on compliance with laws or professional standards.

4.10 Nondiscrimination policy. The policy of the Commonwealth prohibits unlawful discrimination because of race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status or disability. Describe your law firm's policies and practices that are consistent with the Commonwealth's nondiscrimination policy, including any relating to attorney/employee hiring and retention.

4.11 Policy against knowing employment of unauthorized aliens. Please include a statement that your firm does not, and shall not during the performance of any contract pursuant to this proposal, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

## **5. PRICING PROPOSAL**

### **PUBLIC INTEREST CONSIDERATIONS SHOULD PROMPT FIRMS CONSIDERING THIS SFP TO UNDERTAKE SERVICES AT SUBSTANTIALLY LOWER THAN THEIR NORMAL RATES IF THEY WISH TO BE COMPETITIVE FOR THE AWARD OF THIS APPOINTMENT.**

5.1 Normal Billing Rates. Please list normal hourly billing rates for offeror and any persons identified in Section 4.1 or 4.6 of this SFP who will bill on an hourly basis.

5.2 Proposed Billing Rates and Methods. Please list any discount in hourly billing rates the offeror and any other persons identified in Section 4.1 or 4.6 are willing to offer under this proposal. While there are many creative ways in which a firm can supply lower rates, examples of favorable proposals might include: standard hourly rates subject to an agreed upon ceiling rate, standard hourly rates less an agreed upon percentage, flat rate proposals, or other billing methods.

You should also provide information on how you propose to keep track of, and charge for, any expenses. Incidental office expenses, such as photocopies, facsimiles, mailing postage, courier fees and office supplies will not be reimbursed for this work. Occasional and extraordinary expenses, such as court filing fees, legal research expenses (e.g., Lexis or Westlaw), and extraordinary photocopy costs, may be reimbursable if itemized with appropriate receipts or other appropriate documentation. No fees or expenses will be paid for travel time or mileage, except in cases when the attorney's travel exceeds 50 miles round-trip. Attorney travel in excess of 50 miles round-trip will be reimbursed if itemized with receipts or appropriate documentation, in accordance with guidelines posted for special counsel on the Office of the Attorney General website. Offerors should take this into account in their proposal. Include in your proposal any assumptions on which your hourly fee is based and any factors that you believe would justify an increase in the fee.

5.3 Discrete Projects. If the Attorney General desires selected counsel to undertake a discrete project such as a formal written opinion, administrative proceeding, or assistance with litigation, counsel shall, within ten (10) working days from the date of request, prepare a budget covering all projected legal time and disbursements. In the case of long term projects, budgets will be prepared on an annual basis. In either case, counsel shall be responsible for staying within the budget agreed upon and will not exceed it without the express and advance written approval of the Attorney General. If the budget is to be exceeded, a supplementary budget will be prepared and submitted to the Attorney General for approval in advance. Unauthorized billings will not be paid.

5.4 Billing and Payments. Selected counsel will bill for legal services under this appointment only at the conclusion of an assigned matter, provided that the Office of the Attorney General may approve interim billing on a case-by-case basis. Counsel will provide the Attorney General with detailed statements that will permit thorough monitoring of legal services. The billing statement for each matter must contain a detailed description of the work performed on a daily basis, identifying all personnel involved, the amount of time expended and the authorized charges associated with the work performed. The Office of the Attorney General does not assume any responsibility or liability for payment of work properly performed on behalf of client agencies. Payment of statements will be the sole responsibility of the affected agency. Payment, however, requires advance review and approval by the Office of the Attorney General, designated in-house staff and the authorized agency personnel. Neither the Office of the Attorney General nor the affected agency will authorize payment for work that fails to comply with the terms and conditions stated herein, that is excessive or disproportionate in time or task, or that is contrary to any policy, term or condition as may be specified by the Attorney General now or in the future.

## **6. EVALUATION OF PROPOSALS**

The Office of the Attorney General will review all proposals received by the stated deadline. No interviews are planned at this time. The Office of the Attorney General may, however, determine that interviews should be held with certain offerors, or that additional information may be requested of certain offerors for evaluation. Proposals will be evaluated on the basis of the offeror's qualifications under Section 4; other work experience listed if germane; and, the proposal itself.

## **7. CONDITIONS**

7.1 **Ownership of Proposals.** All proposals become the property of the Commonwealth. However, the offeror must identify any proprietary information contained therein with appropriate markings at the top of each page containing proprietary information.

7.2 **Adverse Representation.** By responding to this SFP, the offeror expressly agrees that, if appointed under this SFP, the offeror will not represent other parties in any action against the Office of the Attorney General, the affected agency, or any interest or employee thereof. This prohibition extends to any member of the offeror's firm.

7.3 **Changes in Personnel.** The Attorney General retains the right to approve or disapprove any proposed changes in the attorneys and personnel who may serve as counsel or who may provide services under this SFP, including any subcontractors. If counsel wishes to substitute personnel, counsel shall provide the Attorney General with a résumé of any proposed substitute, the opportunity to interview the proposed substitute and an explanation of the reason the substitution is necessary. Billings of any unauthorized personnel will not be paid.

7.4 **Liability for Payment.** The Attorney General has no liability for payment for services performed under any contract resulting from this SFP. All bills for payment will be submitted to the Office of the Attorney General for review only. Payment will be the sole responsibility of the affected agency only to the extent that funds are made available for the purpose of any appointment resulting from this SFP.

7.5 **Identification.** Any individual sole practitioner appointed under this SFP shall provide his or her social security number, and any proprietorship, partnership or corporation appointed under this SFP shall provide its federal employer identification number.

7.6 **Subcontractors** (including attorneys, support staff, court reporters, expert witnesses and title companies). All counsel awarded an appointment under this SFP shall be obligated as follows:

7.6.1 To either (i) pay any authorized subcontractor within seven (7) days of the selected firm's receipt of payment from the Commonwealth for the proportionate share of the payment received for work performed by such authorized subcontractor under the contract; or (ii) notify the affected agency and such authorized subcontractor, in writing, of any intention to withhold payment and the reason.

7.6.2 To pay any authorized subcontractor interest at the rate of one percent (1%) per month (unless otherwise provided under the terms of the contract) on all amounts owed by counsel that remain unpaid seven (7) days following receipt of payment from the Commonwealth, except for amounts withheld as stated in Section 7.6.1 above. The date of mailing of any payment by U.S. mail is deemed to be payment to the addressee. These

provisions apply to each subcontractor performing under the primary contract. Counsel's obligation to pay an interest charge to a subcontractor shall not be construed to be an obligation of the Commonwealth.

7.7 Rejection of Offers. The Office of the Attorney General reserves the right to reject any and all offers.

7.8 Virginia Fair Employment Contracting Act. The offeror certifies compliance with the Virginia Fair Employment Contracting Act and agrees that the following clauses will be part of any contract for the services described in this SFP:

7.8.1 The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex or national origin, except where religion, color, sex or national origin is a bona fide occupational qualification, reasonably necessary to the normal occupation of the company. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.

7.8.2 The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that such a contractor is an equal opportunity employer; provided that notices, advertisements and solicitations placed in accordance with federal law, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this Section 7.8.2 and Section 7.8.1 of this SFP.

7.8.3 The contractor will include the provisions of the foregoing Sections 7.8.1 and 7.8.2 in every subcontract or purchase order over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

7.9 Governing Law and Courts. Any contract resulting from this SFP will be governed in all respects, whether as to validity, construction, capacity or otherwise, by the laws of the Commonwealth of Virginia, without regard to its rules of conflict of laws. Any litigation with respect to this SFP and any resulting contract shall be brought only in the courts of the Commonwealth of Virginia.

7.10 Termination. The Attorney General reserves the right to terminate any resulting contract without cause or liability of any kind.

7.11 Compliance with Laws and Regulations. Counsel shall comply with all applicable federal, state and local laws and regulations. Counsel shall also comply with such policies, procedures or guidelines issued now and in the future by the Office of the Attorney General for providing the services contemplated by this SFP.

7.12 Claims. Contractual claims for money or other relief, along with all information on which such claims are based, shall be submitted to the affected agency in writing no later than 60

days after final payment; provided, that written notice of counsel's intention to file such any contractual claim must be given to the affected agency and to the Office of the Attorney General prior to or upon the occurrence or beginning of the work upon which the claim is based, whether the claim is known or unknown at the time. Counsel's claim shall be waived unless notice is provided as stated above. The existence of pending claims shall not delay the remittance of that portion of the final payment that is undisputed.

Counsel shall not institute legal action prior to receipt of the affected agency decision on the claim (with approval of the Office of the Attorney General) unless the affected agency fails to render such decision within 30 days after written submission of the claim to the affected agency. The decision shall be final and conclusive unless counsel, within 6 months of the date of the final decision on the claim, institutes legal action as provided in Va. Code § 2.2-4364.

Notwithstanding the above, any files transferred to counsel under any appointment remain at all times property of the Commonwealth of Virginia. As such, no right, entitlement, contractual claim, or other interest, may accrue to anyone for fees, services, reimbursement of expenses, or other payment, on these files unless and until the work is complete on any given file.

7.13 Confidentiality. All work product prepared hereunder shall constitute confidential work product of the Office of the Attorney General and shall not be publicly disseminated or otherwise released without the express written approval of the Office of the Attorney General.

7.14 No Restrictions. There shall be no copyright, trade secret or other restrictions upon the uses to which the Commonwealth may put work product delivered to it.

7.15 No Consultation Fee. There shall be no fee for consultations regarding fees, costs, development of budgets, and feasibility.