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HOUSE BILL NO. 1692

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Transportation
on January 31, 2013)

(Patrons Prior to Substitute—Delegates Jones and James [HB 2258])

A BILL to amend and reenact § 56-573.1:1 of the Code of Virginia, relating to the Public-Private Transportation Act; receipt of competing proposals; disclosure of major business points.

Be it enacted by the General Assembly of Virginia:

1. That § 56-573.1:1 of the Code of Virginia is amended and reenacted as follows:

§ 56-573.1:1. Posting of conceptual proposals; public comment; public access to procurement records.

A. Conceptual proposals submitted in accordance with subsection A or B of § 56-560 to a responsible public entity shall be posted by the responsible public entity within 10 working days after acceptance of such proposals as follows:

1. For responsible public entities that are state agencies, authorities, departments, institutions, and other units of state government, posting shall be on the Department of General Services' central electronic procurement website. *For proposals submitted pursuant to subsection A of § 56-560, the notice posted shall (a) provide for a period of 120 days for the submission of competing proposals; (b) include specific information regarding the proposed nature, timing, and scope of the qualifying transportation facility; and (c) outline the opportunities that will be provided for public comment during the review process; and*

2. For responsible public entities that are local public bodies, posting shall be on the responsible public entity's website or on the Department of General Services' central electronic procurement website. In addition, such public bodies may publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposals and the location where copies of the proposals are available for public inspection. Such local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Nothing in this section shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the responsible public entity and the private entity.

B. In addition to the posting requirements of subsection A, for 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. The public comment period required by this subsection may include a public hearing in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required.

C. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by a responsible public entity, the responsible public entity shall (i) *post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on the Department of General Services' central electronic procurement website, (ii) outline how the public can submit comments on those major business points, and (iii) present the major business points of the interim or comprehensive agreement, including the use of any public funds, to its oversight board at a regularly scheduled meeting of the board that is open to the public.*

D. Once an interim agreement or a comprehensive agreement has been entered into, a responsible public entity shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§ 2.2-3700 et seq.). For the purposes of this subsection, procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

E. Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

F. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

60 G. The provisions of this section shall apply to accepted proposals regardless of whether the process
61 of bargaining will result in an interim or a comprehensive agreement.
62 2. That the provisions of this act shall apply to any proposal submitted or solicited on or after
63 July 1, 2013.