

Public-Private Education Facilities and Infrastructure Act of 2002

Model ~~Procedures~~ Guidelines

AMENDED

~~September 30, 2002~~ July 2005

Public-Private Education Facilities and Infrastructure Act of 2002

Model **Procedures** GuidelinesTable of Contents

I.	Introduction.....	p. 1
II.	General Provisions.....	p. 2
	A. Proposal Submission.....	p. 2
	B. Affected Jurisdictions.....	p. 3
	C. Proposal Review Fee.....	p. 3
	D. Virginia Freedom of Information Act	p. 4
	E. Use of Public funds.....	p. 4
	F. Applicability of Other Laws.....	p. 5
III.	Solicited Proposals.....	p. 5
IV.	Unsolicited Proposals.....	p. 5
	A. Decision to Accept and Consider Unsolicited Proposal; Notice.....	p. 6
	B. Initial Review by the Responsible Public Entity.....	p. 6
V.	Proposal Preparation and Submission.....	p. 7
	A. Format for Submissions at the Conceptual Stage.....	p. 7
	B. Format for Submissions at the Detailed Stage.....	p. 10
VI.	Proposal Evaluation and Selection Criteria.....	p. 11
	A. Qualifications and Experience.....	p. 11
	B. Project Characteristics.....	p. 11
	C. Project Financing.....	p. 12
	D. Public Benefit and Compatibility.....	p. 12
VII.	<u>Interim and</u> Comprehensive Agreements.....	p. 13

I. Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA defines “responsible public entity” to include any public entity that “has the power to ~~acquire, design, construct, improve, renovate, expand, equip, maintain, develop~~ or operate the applicable qualifying project.” Individually negotiated interim¹ or comprehensive agreements between ~~an operator~~ a private entity and a responsible public entity will define the respective rights and obligations of the responsible public entity and the ~~private operator~~ entity.²

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of qualifying project that includes public buildings and facilities of all types; for example:

- (i) Any education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) Any building or facility ~~for principal use by any public entity that meets a public purpose and is developed or operated by or for any public entity;~~³
- (iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility and telecommunications and other communications infrastructure;
~~or~~
- (v) A recreational facility;
- (vi) Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.⁴
- (vii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.⁵

1 The PPEA establishes requirements that the responsible public entity must adhere
2 to when reviewing and approving proposals received pursuant to the PPEA. In addition,
3 the PPEA specifies the criteria that must be used to select a proposal and the contents of
4 the interim or comprehensive agreement detailing the relationship between the
5 responsible public entity and the private entity.

6
7 In passing the legislation, and following subsequent amendments to the Act in
8 2005, the General Assembly directed the Governor and the chairs of the House and
9 Senate Committees on General Laws to facilitate the development of model
10 guidelinesprocedures to assist in the implementation of the PPEA. The respective
11 governing body of the public entity must first adopt guidelinesprocedures⁶—that it will
12 follow to receive and evaluate any proposal submitted to the public entity under the
13 provisions of the PPEA. Such guidelines shall be made publicly available.⁷ The
14 guidelinesprocedures adopted by the public entity should designate an individual to serve
15 as the point of contact to receive proposals submitted under the PPEA and to respond to
16 inquiries regarding the PPEA or the guidelinesprocedures. The guidelines may also
17 contain provisions for an accelerated documentation, review, and selection process for
18 proposals involving a qualifying project that the responsible public entity deems a
19 priority.⁸

20
21 Because the PPEA is intended to encourage innovative partnerships between
22 responsible public entities and private entities, public entities are encouraged to maintain
23 an open dialogue with private entities to discuss the need for infrastructure
24 improvements.⁹

25
26 The following model guidelinesprocedures have been developed to assist public
27 entities in adopting guidelinesprocedures to guide the implementation of the PPEA. The
28 guidelines are intended to serve as a general guide for the implementation of the PPEA.
29 Each public body has the flexibility to include provisions not contained in the model
30 guidelines so long as the provisions comply with the PPEA.¹⁰ The complete text of the
31 PPEA has been included in the Appendix to these model guidelinesprocedures. Although
32 guidance with regard to the application of the PPEA is provided herein, it will be
33 incumbent upon all entities, both public and private, to comply with the provisions of the
34 PPEA.

35
36 In the event that the PPEA is amended in a manner that either conflicts with
37 guidelines developed by a responsible public entity or concerns material matters not
38 addressed by such guidelines, the responsible public entity should appropriately amend
39 the guidelines. If the guidelines are not amended prior to the effective date of the new
40 law, the guidelines nonetheless shall be interpreted in a manner to conform to the new
41 law.¹¹

42 43 II. General Provisions

44 45 A. Proposal Submission

46

1 A proposal may be either solicited by a public entity or delivered by a private
2 entity on an unsolicited basis. Proposers may be required to follow a two-part proposal
3 submission process consisting of an initial conceptual phase and a detailed phase. The
4 initial phase of the proposal should contain specified information on proposer
5 qualifications and experience, project characteristics, project financing, anticipated public
6 support or opposition, or both, and project benefit and compatibility. The detailed
7 proposal should contain specified deliverables.

8
9 The PPEA allows private entities to include innovative financing methods,
10 including the imposition of user fees or service payments, in a proposal. Such financing
11 arrangements may include the issuance of debt instruments, equity or other securities or
12 obligations, including, if applicable, the portion of the tax-exempt private activity bond
13 limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to
14 the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of
15 education facilities using public-private partnerships, and to provide for carryovers of any
16 unused limitation amount. The PPEA is a flexible development tool that allows the use of
17 innovative financing techniques. Depending on the public entity's authority and the
18 circumstances of each transaction, financing options might include the use of special
19 purpose entities, sale and lease back transactions, enhanced use leasing, property
20 exchanges, development agreements, conduit financing and other methods allowed by
21 law.¹²
22

23 Proposals should be prepared simply and economically, providing a concise
24 description of the proposer's capabilities to complete the proposed qualifying project and
25 the benefits to be derived from the project by the public entity. Project benefits to be
26 considered are those occurring during the construction, renovation, expansion or
27 improvement phase and during the life cycle of the project. Proposals also should
28 include a ~~comprehensive~~ scope of work and a financial plan for the project, containing
29 enough detail to allow an analysis by the public entity of the financial feasibility of the
30 proposed project. The public entity may establish criteria by which the proposer may
31 provide clarification to the submission. The cost analysis of a proposal should not be
32 linked solely to the financing plan as the responsible public entity may determine to
33 finance the project through other available means.¹³
34

35 **B. Affected Local Jurisdictions**

36

37 Any private entity requesting approval from or submitting a conceptual or
38 detailed proposal to a responsible public entity must provide each affected local
39 jurisdiction with a copy of the private entity's request or proposal by certified mail,
40 express delivery or hand delivery. Affected local jurisdictions that are not responsible
41 public entities under the proposed qualifying project shall have 60 days from the receipt
42 of the request or proposal to submit written comments to the responsible public entity and
43 to indicate whether the proposed qualifying project is compatible with the (i) local
44 comprehensive plan, (ii) local infrastructure development plans, or (iii) capital
45 improvements budget or other government spending plan. Comments received within the
46 60-day period shall be given consideration by the responsible public entity, and no

negative inference shall be drawn from the absence of comment by an affected local jurisdiction.

C. Proposal Review Fee

A public entity ~~may seek the advice of~~ shall receive an analysis of the proposal from appropriate¹⁴ internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. No fee may be charged by a public entity to process, review or evaluate any solicited proposal submitted under the PPEA. The public entity may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project. “Direct costs” may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants and financial advisors.

The proposal fee may cover all or part of the initial review process. For example, a public entity may require a proposal fee in an amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or a public entity may require a smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

The public entity may establish a fee schedule for the cost of the proposal review. The public entity shall set forth in the procedures it has established for the implementation of the PPEA the methodology used to calculate proposal fees. If the cost of reviewing the proposal exceeds the initially established proposal fee, the public entity may assess the proposer the additional costs deemed necessary to evaluate the proposal.

For rejected proposals, the public entity may establish a schedule for refunding any portion of fees paid in excess of its direct costs associated with evaluating the proposal. If the cost of reviewing the proposal is less than the initially established proposal fee, the public entity may refund to the proposer the excess fee. As noted in section IV.A. 1 below, fees should be refunded entirely if the public entity decides not to proceed to publication and conceptual-phase review of an unsolicited proposal.

D. Freedom of Information Act

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“FOIA”). In accordance with § 2.2-3705 A 56 of FOIA, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the responsible public entity under a promise of confidentiality or (ii) memoranda, working papers or other records related to

proposals if making public such records would adversely affect the financial interest of the public or private entity or the bargaining position of either party.

Subsection 56-575.4 G of the PPEA imposes an obligation on a public entity and any affected local jurisdiction to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the public entity not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the public entity or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the public entity as to the anticipated scope of protection prior to submitting the proposal. The public entity is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the public entity shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the proposer. If the determination regarding protection or the scope thereof differs from the proposer's request, then the public entity should accord the proposer a ~~reasonably~~ reasonable opportunity to clarify and justify its request. Upon a final determination by the public entity to accord less protection than requested by the proposer, the proposer should be accorded an opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided in section IV.A.1 below.

Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make available, upon request, procurement records in accordance with Section 2.2-4342.¹⁵

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of a responsible public entity to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. Solicited Proposals

A public entity may issue Requests for Proposals (RFPs), inviting proposals from private entities to develop or acquire, construct, improve, renovate, expand, maintain or operate qualifying projects ~~or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.~~ A public entity may not issue a RFP until it has adopted guidelines to govern the PPEA documentation, review, and selection process.¹⁶ The public entity may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the public entity. In such a case the responsible public entity should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the public entity's notices, including the public entity's website. Notices should also be published in a newspaper or other publications of general circulation and advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site.¹⁷ The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the public entity.

IV. Unsolicited Proposals

The PPEA permits public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop ~~acquire, construct, improve, renovate, expand, maintain,~~ or operate a qualifying project ~~or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.~~

A responsible public entity may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the responsible public entity should determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the public entity determines not to accept the proposal and proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the proposer.

2. If the responsible public entity chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the public entity for posting of public notices for a period of not less than 45 days. The responsible public entity shall also publish the same notice for a period of not less than 45 days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice should also be advertised in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website.¹⁸ The notice shall state that the public entity (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the public entity and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA. Representatives of the public entity are encouraged to answer questions from private entities that are contemplating submission of a competing unsolicited proposal.¹⁹

B. Initial Review by the Responsible Public Entity at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format should be considered by the responsible public entity for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section V A.

2. The responsible public entity should determine at this initial stage of review whether it will proceed using:

- a. Standard procurement procedures consistent with the VPPA; or
- b. GuidelinesProcedures developed by the responsible public entity that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The responsible public entity may proceed using such guidelinesprocedures only if it makes a written determination that doing so is likely to be advantageous to the responsible public entity and the public

based upon either (i) the probable scope, complexity or ~~urgency-priority~~²⁰ of need, ~~or~~²¹; (ii) the risk sharing including guaranteed cost or completion guarantees²¹, added value, or debt or equity investments proposed by the private entity²²; or (iii) increase in funding, dedicated revenue²³ or other economic benefit ~~from the project that~~ would otherwise not be available.

3. After reviewing the original proposal and any competing proposals submitted during the notice period, the responsible public entity may determine:

- (i) not to proceed further with any proposal,
- (ii) to proceed to the detailed phase of review with the original proposal,
- (iii) to proceed to the detailed phase with a competing proposal, or
- (iv) to proceed to the detailed phase with multiple proposals.

In the event that more than one proposal will be considered in the detailed phase of review, the public entity should consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

4. Discussions between responsible public bodies and private entities about the need for infrastructure improvements shall not limit the ability of a public entity to later determine to use standard procurement procedures to meet its infrastructure needs.²⁴ The public entity retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.²⁵

V. Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

A responsible public entity may require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as the responsible public entity may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include:

1. Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.

- 1
2 b. Describe the experience of the firm or consortium of firms making the
3 proposal and the key principals involved in the proposed project including
4 experience with projects of comparable size and complexity. Describe the
5 length of time in business, business experience, public sector experience
6 and other engagements of the firm or consortium of firms. Include the
7 identity of any firms that will provide design, construction and completion
8 guarantees and warranties and a description of such guarantees and
9 warranties.
- 10
11 c. Provide the names, addresses, and telephone numbers of persons within
12 the firm or consortium of firms who may be contacted for further
13 information.
- 14
15 d. Provide a current or most recently audited financial statement of the firm
16 or firms and each partner with an equity interest of twenty percent or
17 greater.
- 18
19 e. Identify any persons known to the proposer who would be obligated to
20 disqualify themselves from participation in any transaction arising from or
21 in connection to the project pursuant to The Virginia State and Local
22 Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of
23 Title 2.2.

24
25 2. Project Characteristics

- 26
27 a. Provide a description of the project, including the conceptual design.
28 Describe the proposed project in sufficient detail so that type and intent of
29 the project, the location, and the communities that may be affected are
30 clearly identified.
- 31
32 b. Identify and fully describe any work to be performed by the public entity.
- 33
34 c. Include a list of all federal, state and local permits and approvals required
35 for the project and a schedule for obtaining such permits and approvals.
- 36
37 d. Identify any anticipated adverse social, economic and environmental
38 impacts of the project. Specify the strategies or actions to mitigate known
39 impacts of the project.
- 40
41 e. Identify the projected positive social, economic and environmental
42 impacts of the project.
- 43
44 f. Identify the proposed schedule for the work on the project, including the
45 estimated time for completion.
- 46

- 1 g. Propose allocation of risk and liability for work completed beyond the
2 agreement's completion date, and assurances for timely completion of the
3 project.
4
- 5 h. State assumptions related to ownership, legal liability, law enforcement
6 and operation of the project and the existence of any restrictions on the
7 public entity's use of the project.
8
- 9 i. Provide information relative to phased or partial openings of the proposed
10 project prior to completion of the entire work.
11
- 12 j. List any other assumptions relied on for the project to be successful.
13
- 14 k. List any contingencies that must occur for the project to be successful.²⁶
15

16 3. Project Financing

- 17
- 18
- 19 a. Provide a preliminary estimate and estimating methodology of the cost of
20 the work by phase, segment, or both.
21
- 22 b. Submit a plan for the development, financing and operation of the project
23 showing the anticipated schedule on which funds will be required.
24 Describe the anticipated costs of and proposed sources and uses for such
25 funds including any anticipated debt service costs. The operational plan
26 should include appropriate staffing levels and associated costs. Include
27 supporting due diligence studies, analyses, or reports.²⁷
28
- 29 c. Include a list and discussion of assumptions underlying all major elements
30 of the plan. Assumptions should include all significant fees associated
31 with financing given the recommended financing approach. In addition
32 complete disclosure of interest rate assumptions should be included. Any
33 ongoing operational fees, if applicable, should also be disclosed as well as
34 any assumptions with regard to increases in such fees.²⁸
35
- 36 d. Identify the proposed risk factors and methods for dealing with these
37 factors.
38
- 39 e. Identify any local, state or federal resources that the proposer
40 contemplates requesting for the project. Describe the total commitment, if
41 any, expected from governmental sources and the timing of any
42 anticipated commitment. Such disclosure should include any direct or
43 indirect guarantees or pledges of the public entity's credit or revenue.²⁹
44
- 45 f. Identify the amounts and the terms and conditions for any revenue
46 sources.³⁰

- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.³¹

4. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall community, region, or state.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the anticipated significant benefits to the community, region or state including anticipated benefits to the economic condition of the public entity and whether the project is critical to attracting or maintaining competitive industries and businesses to the public entity or the surrounding region
- e. Compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other government spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.³²

B. Format for Submissions at Detailed Stage

If the responsible public entity decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the responsible public entity:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property. ~~The statement must include the names and addresses, if known, of~~

~~the current owners of the subject property as well as a list of any property the proposer intends to request the public entity to condemn³³;~~

4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
6. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
9. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification³⁴ of any known conflicts of interest or other disabilities that may impact the public entity's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
11. Additional material and information as the public entity may reasonably request.

VI. Proposal Evaluation and Selection Criteria

The following items shall be considered in the evaluation and selection of PPEA proposals.

A. Qualifications and Experience

Factors to be considered in either phase of the responsible public entity's review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing

allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the responsible public entity;
2. Financing and the impact on the debt or debt burden of the responsible public entity;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;³⁵
4. Estimated cost; ~~and~~
5. Life-cycle cost analysis;
6. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
7. Such other items as the public entity deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the public entity, or if financing such a project may impact the public entity's debt rating or financial position, the public entity may select its own finance team, source, and financing vehicle.³⁶

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors.

Other factors that may be considered by a responsible public entity in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents; and
9. Other criteria that the responsible public entity deems appropriate.³⁷

VII. Interim and Comprehensive Agreements

Prior to ~~developing, acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining,~~ or operating the qualifying project, the selected ~~proposer~~ private entity shall enter into a comprehensive agreement with the responsible public entity. Prior to entering a comprehensive agreement an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project.³⁸ The responsible public entity may designate a working group to be responsible for negotiating ~~the any interim or~~ comprehensive agreement. ~~Each~~Any interim or comprehensive agreement shall define the rights and obligations of the responsible public entity and the selected proposer with regard to the project.

A. Interim Agreement Terms

The scope of an interim agreement may include but is not limited to:

1. Project planning and development
2. Design and engineering
3. Environmental analysis and mitigation
4. Survey

5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis

6. Establish a process and timing of the negotiation of the comprehensive agreement; and

7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.³⁹

B. Comprehensive Agreement Terms

The terms scope of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the responsible public entity;
3. The rights of the responsible public entity to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the operator private entity by the responsible public entity to ensure proper maintenance;
6. The terms under which the operator private entity will reimburse the responsible public entity for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the responsible public entity and the operator private entity in the event that the comprehensive agreement is terminated or there is a material default by the operator private entity including the conditions governing assumption of the duties and responsibilities of the operator private entity by the responsible public entity and the transfer or purchase of property or other interests of the operator private entity by the responsible public entity;

8. The terms under which the ~~operator~~ private entity will file appropriate financial statements on a periodic basis.

9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;

a. A copy of any service contract shall be filed with the responsible public entity.

b. A schedule of the current user fees or lease payments shall be made available by the ~~operator~~ private entity to any member of the public upon request.

c. Classifications according to reasonable categories for assessment of user fees may be made.

10. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project; and

11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action; and⁴⁰

~~10. Other requirements of the PPEA.~~

12. The terms and conditions under which the public entity will be required to pay money to the private entity and the amount of any such payments for the project.

13. Other requirements of the PPEA or other applicable law; and

14. Such other terms and conditions as the public entity may deem appropriate⁴¹.

Any changes in the terms of the interim or comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the interim or comprehensive agreement by written amendment.

The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.⁴²

VIII. Governing Provisions

In the event of any conflict between these provisions and the PPEA, the terms of the PPEA shall control.⁴³

¹ SB 1107 (2004) Page 6, Lines 314 through 323 (reference to "interim agreements" made throughout draft).

² SB 1107(2005) Page 1, line 19; line 31 (Chapter 865 of 2005 Acts of Assembly)

³ SB 1107(2005) Page 1, line 46

⁴ HB 1925(2003), Page 1, line 37 (Chapter 1034 of 2003 Acts of Assembly)

⁵ HB 1945 (2005, Page 1, line 38 (Chapter 618 of the 2005 Acts of Assembly)

⁶ SB 1107(2005) Page 2, line 118 (Change from "procedures" to "guidelines" made throughout draft).

⁷ SB 1107(2005) Page 3, line 119.

⁸ SB 1107(2005) Page 2, line 124.

⁹ Language adopted by the Work Group.

¹⁰ Language adopted by Work Group.

¹¹ Language adopted by the Work Group.

¹² Language adopted by the Work Group.

¹³ Language adopted by Work Group.

¹⁴ HB 148 (2004) Page 2, lines 103 through 110 (Chapter 986 of 2004 Acts of Assembly.

¹⁵ SB 352 (2004) Page 7, line 405 through Page 8, line (Chapter 690 of the 2004 Acts of Assembly)

¹⁶ SB 1107(2005) Page 2, line 117 (Chapter 986 of the 2005 Acts of Assembly)

¹⁷ SB 1330(2003) Page 2, line 64 (Chapter 292 of the 2003 Acts of Assembly).

¹⁸ SB 1330(2003) Page 2, line 64.

¹⁹ Language adopted by the Work Group.

²⁰ SB 1107 (2005) Page 8, line 426.

²¹ SB 1107 (2005) Page 8, line 427.

²² SB 1107 (2005) Page 8, line 427.

²³ SB 1107 (2005) Page 8, lines 428 through 429.

²⁴ Language adopted by the Work Group.

²⁵ SB 1330 (2003) Page 1, line 24.

²⁶ Suggested by City of Roanoke during public comment period; accepted by Work Group.

²⁷ Suggested by City of Roanoke during public comment period; accepted by Work Group.

²⁸ Suggested by City of Roanoke during public comment period; accepted by Work Group.

²⁹ Suggested by City of Roanoke during public comment period; accepted by Work Group.

³⁰ SB 1107 (2005) Page 3, line 149.

³¹ Language adopted by the Work Group.

³² Suggested by City of Roanoke during public comment period; accepted by Work Group.

³³ SB 1107 (2005) Page 3, lines 137 through 140.

³⁴ Suggested by City of Roanoke during public comment period; accepted by Work Group.

³⁵ Suggested by City of Roanoke during public comment period; accepted by Work Group.

³⁶ Suggested by City of Roanoke during public comment period; accepted by Work Group.

³⁷ SB 1107 (2005) Page 7, lines 416 through 422.

³⁸ Language adopted by the Work Group.

³⁹ SB 1107 (2005) Page 6, lines 317 through 323.

⁴⁰ Language adopted by the Work Group.

⁴¹ Suggested by City of Roanoke during public comment period; accepted by Work Group.

⁴² SB 1107 (2005) Page 6, line 312.

⁴³ Suggested by City of Roanoke during public comment period; accepted by Work Group.