

**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 Guidelines

Table 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 Actp. 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. Interim and 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 interim 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.¹

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) An 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) A 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;~~²
- (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.³

The PPEA establishes requirements that the responsible public entity must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition,

1 the PPEA specifies the criteria that must be used to select a proposal and the contents of
2 the interim or comprehensive agreement detailing the relationship between the
3 responsible public entity and the private entity.

4
5 In passing the legislation, and following subsequent amendments to the Act in
6 2005, the General Assembly directed the Governor and the chairs of the House and
7 Senate Committees on General Laws to facilitate the development of model
8 guidelinesprocedures to assist in the implementation of the PPEA. The respective
9 governing body of the public entity must first adopt guidelinesprocedures⁴-that it will
10 follow to receive and evaluate any proposal submitted to the public entity under the
11 provisions of the PPEA. Such guidelines shall be made publicly available.⁵ The
12 guidelinesprocedures adopted by the public entity should designate an individual to serve
13 as the point of contact to receive proposals submitted under the PPEA and to respond to
14 inquiries regarding the PPEA or the guidelinesprocedures. The guidelines may also
15 contain provisions for an accelerated documentation, review, and selection process for
16 proposals involving a qualifying project that the responsible public entity deems a
17 priority.⁶

18
19 The following model guidelinesprocedures have been developed to assist public
20 entities in adopting guidelinesprocedures to guide the implementation of the PPEA. The
21 complete text of the PPEA has been included in the Appendix to these model
22 guidelinesprocedures. Although guidance with regard to the application of the PPEA is
23 provided herein, it will be incumbent upon all entities, both public and private, to comply
24 with the provisions of the PPEA.

25
26 In the event that the PPEA is amended in a manner that either conflict with
27 guidelines developed by a responsible public entity or concern material matters not
28 addressed by such guidelines, the responsible public entity should appropriately
29 amend the guidelines. If the guidelines are not amended prior to the effective date
30 of the new law, the guidelines nonetheless shall be interpreted in a manner to
31 conform to the new law.⁷

32
33 **II. General Provisions**

34
35 **A. Proposal Submission**

36
37 A proposal may be either solicited by a public entity or delivered by a private
38 entity on an unsolicited basis. Proposers may be required to follow a two-part proposal
39 submission process consisting of an initial conceptual phase and a detailed phase. The
40 initial phase of the proposal should contain specified information on proposer
41 qualifications and experience, project characteristics, project financing, anticipated public
42 support or opposition, or both, and project benefit and compatibility. The detailed
43 proposal should contain specified deliverables.

44
45 The PPEA allows private entities to include innovative financing methods,
46 including the imposition of user fees or service payments, in a proposal. Such financing

1 arrangements may include the issuance of debt instruments, equity or other securities or
2 obligations, including, if applicable, the portion of the tax-exempt private activity bond
3 limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to
4 the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of
5 education facilities using public-private partnerships, and to provide for carryovers of any
6 unused limitation amount. Although the PPEA is a procurement tool and not a
7 financing tool, the flexibility it allows permits the use of innovative financing tools
8 including, but not limited to, the use of special purpose entities, sale and leaseback
9 transactions, enhanced use leasing and property exchanges, development
10 agreements, and other methods allowed by law.⁸

11
12 Because the PPEA is based upon competitive negotiation procedures, public
13 entities are encouraged to maintain an open dialogue with private entities to discuss
14 the need for infrastructure improvements and how they will be developed and
15 financed. Such discussions are especially important prior submission of a proposal
16 and prior to the initial review period after the receipt of all solicited and unsolicited
17 proposals. These discussions shall not limit the ability of a public entity to later
18 determine to use standard procurement procedures to meet its infrastructure
19 needs.⁹

20
21 Proposals should be prepared simply and economically, providing a concise
22 description of the proposer's capabilities to complete the proposed qualifying project and
23 the benefits to be derived from the project by the public entity. Project benefits to be
24 considered are those occurring during the construction, renovation, expansion or
25 improvement phase and during the life cycle of the project. Proposals also should
26 include a ~~comprehensive~~ scope of work and a financial plan for the project, containing
27 enough detail to allow an analysis by the public entity of the financial feasibility of the
28 proposed project. The public entity may establish criteria by which the proposer may
29 provide clarification to the submission.

30 31 **B. Affected Local Jurisdictions**

32
33 Any private entity requesting approval from or submitting a conceptual or
34 detailed proposal to a responsible public entity must provide each affected local
35 jurisdiction with a copy of the private entity's request or proposal by certified mail,
36 express delivery or hand delivery. Affected local jurisdictions that are not responsible
37 public entities under the proposed qualifying project shall have 60 days from the receipt
38 of ~~the request or proposal~~ a request for comments from the responsible public
39 entity¹⁰ to submit written comments to the responsible public entity and to indicate
40 whether the proposed qualifying project is compatible with the (i) local comprehensive
41 plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or
42 other government spending plan. The responsible public entity shall solicit comments
43 from affected local jurisdictions during both the conceptual and detailed review
44 phases.¹¹ Comments received within the 60-day period shall be given consideration by
45 the responsible public entity, and no negative inference shall be drawn from the absence
46 of comment by an affected local jurisdiction.

1
2 **C. Proposal Review Fee**
3

4 | A public entity ~~may seek the~~shall receive advice of from appropriate¹² internal
5 staff or outside advisors or consultants with relevant experience in determining whether
6 | to enter into an agreement with the private entity. No fee may be charged by a public
7 entity to process, review or evaluate any solicited proposal submitted under the PPEA.
8 The public entity may charge a fee to the private entity to cover the costs of processing,
9 reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal
10 submitted under the PPEA, including a fee to cover the costs of outside attorneys,
11 consultants, and financial advisors. Any fee charged for such review of a proposal should
12 be reasonable in comparison to the level of expertise required to review the proposal and
13 should not be greater than the direct costs associated with evaluating the proposed
14 qualifying project. “Direct costs” may include (i) the cost of staff time required to
15 process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of
16 attorneys, consultants and financial advisors.
17

18 The proposal fee may cover all or part of the initial review process. For example,
19 a public entity may require a proposal fee in an amount sufficient to cover all anticipated
20 direct costs associated with evaluating the proposal, or a public entity may require a
21 smaller initial processing fee with an additional proposal fee to be charged should the
22 project proceed beyond the initial review.
23

24 The public entity may establish a fee schedule for the cost of the proposal review.
25 The public entity shall set forth in the procedures it has established for the
26 implementation of the PPEA the methodology used to calculate proposal fees. If the cost
27 of reviewing the proposal exceeds the initially established proposal fee, the public entity
28 may assess the proposer the additional costs deemed necessary to evaluate the proposal.
29 | Such additional fee amounts shall be assessed in consultation with the private
30 | entity.¹³
31

32 For rejected proposals, the public entity may establish a schedule for refunding
33 any portion of fees paid in excess of its direct costs associated with evaluating the
34 proposal. If the cost of reviewing the proposal is less than the initially established
35 proposal fee, the public entity may refund to the proposer the excess fee. As noted in
36 section IV.A. 1 below, fees should be refunded entirely if the public entity decides not to
37 proceed to publication and conceptual-phase review of an unsolicited proposal.
38

39 **D. Freedom of Information Act**
40

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

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

3
4 Subsection 56-575.4 G of the PPEA imposes an obligation on a public entity and
5 any affected local jurisdiction to protect confidential proprietary information submitted
6 by a private entity or operator. When the private entity requests that the public entity not
7 disclose information, the private entity must (i) invoke the exclusion when the data or
8 materials are submitted to the public entity or before such submission, (ii) identify the
9 data and materials for which protection from disclosure is sought, and (iii) state why the
10 exclusion from disclosure is necessary. A private entity may request and receive a
11 determination from the public entity as to the anticipated scope of protection prior to
12 submitting the proposal. The public entity is authorized and obligated to protect only
13 confidential proprietary information, and thus will not protect any portion of a proposal
14 from disclosure if the entire proposal has been designated confidential by the proposer
15 without reasonably differentiating between the proprietary and non-proprietary
16 information contained therein.

17
18 Upon receipt of a request that designated portions of a proposal be protected from
19 disclosure as confidential and proprietary, the public entity shall determine whether such
20 protection is appropriate under applicable law and, if appropriate, the scope of such
21 appropriate protection, and shall communicate its determination to the proposer. If the
22 determination regarding protection or the scope thereof differs from the proposer's
23 request, then the public entity should accord the proposer a reasonable opportunity to
24 clarify and justify its request. Upon a final determination by the public entity to accord
25 less protection than requested by the proposer, the proposer should be accorded an
26 opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the
27 same manner as a proposal not accepted for publication and conceptual-phase
28 consideration as provided in section IV.A.1 below.

29
30 Once a comprehensive agreement has been entered into, and the process of
31 bargaining of all phases or aspects of the comprehensive agreement is complete, a
32 responsible public entity shall make available, upon request, procurement records in
33 accordance with Section 2.2-4332.¹⁴

34
35 **E. Use of Public Funds**

36
37 Virginia constitutional and statutory requirements as they apply to appropriation
38 and expenditure of public funds apply to any comprehensive agreement entered into
39 under the PPEA. Accordingly, the processes and procedural requirements associated
40 with the expenditure or obligation of public funds shall be incorporated into planning for
41 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.¹⁵ 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.¹⁶ 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 1. Upon receipt of any unsolicited proposal or group of proposals and payment of
2 any required fee by the proposer or proposers, the responsible public entity should
3 determine whether to accept the unsolicited proposal for publication and conceptual-
4 phase consideration. If the public entity determines not to accept the proposal and
5 proceed to publication and conceptual-phase consideration, it should return the proposal,
6 together with all fees and accompanying documentation, to the proposer.

7
8 2. If the responsible public entity chooses to accept an unsolicited proposal for
9 conceptual-phase consideration, it shall post a notice in a public area regularly used by
10 the public entity for posting of public notices for a period of not less than 45 days. The
11 responsible public entity shall also publish the same notice for a period of not less than 45
12 days in one or more newspapers or periodicals of general circulation in the jurisdiction to
13 notify any parties that may be interested in submitting competing unsolicited proposals.
14 In addition, the notice should also be advertised in *Virginia Business Opportunities* and
15 on the Commonwealth's electronic procurement website.¹⁷ The notice shall state that the
16 public entity (i) has received and accepted an unsolicited proposal under the PPEA, (ii)
17 intends to evaluate the proposal, (iii) may negotiate a an interim or¹⁸ comprehensive
18 agreement with the proposer based on the proposal, and (iv) will accept for simultaneous
19 consideration any competing proposals that comply with the procedures adopted by the
20 public entity and the PPEA. The notice also shall summarize the proposed qualifying
21 project or projects, and identify their proposed locations. Copies of unsolicited proposals
22 shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of
23 the PPEA. Representatives of the public entity shall be made available to answer
24 questions from private entities which are contemplating submission of a competing
25 unsolicited proposal.¹⁹

26
27 **B. Initial Review by the Responsible Public Entity at the Conceptual Stage**

28
29 1. Only proposals complying with the requirements of the PPEA that contain
30 sufficient information for a meaningful evaluation and that are provided in an appropriate
31 format should be considered by the responsible public entity for further review at the
32 conceptual stage. Formatting suggestions for proposals at the conceptual stage are found
33 at Section V A.

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

- 36
37 a. Standard procurement procedures consistent with the VPPA; or
38
39 b. GuidelinesProcedures developed by the responsible public entity that are
40 consistent with procurement of other than professional services through
41 "competitive negotiation" as the term is defined in § 2.2-4301 of the Code
42 of Virginia. The responsible public entity may proceed using such
43 guidelinesprocedures only if it makes a written determination that doing so
44 is likely to be advantageous to the responsible public entity and the public
45 based upon either (i) the probable scope, complexity or urgency of need,

1 or (ii) the risk sharing, added value, increase in funding or economic
2 benefit from the project would otherwise not be available.

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

- 6
7 (i) not to proceed further with any proposal,
8
9 (ii) to proceed to the detailed phase of review with the original proposal,
10
11 (iii) to proceed to the detailed phase with a competing proposal, or
12
13 (iv) to proceed to the detailed phase with multiple proposals.
14

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

19
20 **4. After all conceptual solicited proposals or competitive unsolicited**
21 **proposals have been received, and prior to initiating the detailed phase, copies of all**
22 **conceptual proposals that warrant further consideration shall be made available to**
23 **the public absent any information protected from disclosure under prior agreement**
24 **between the private entity and the responsible public entity.**²⁰

25
26 **5. The public entity retains the right to reject any proposal at any time prior to the**
27 **execution of an interim or comprehensive agreement.**²¹
28

29
30 **V. Proposal Preparation and Submission**

31
32 **A. Format for Submissions at Conceptual Stage**
33

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

41
42 **1. Qualification and Experience**
43

- 44 a. Identify the legal structure of the firm or consortium of firms making the
45 proposal. Identify the organizational structure for the project, the

1 management approach and how each partner and major subcontractor in
2 the structure fits into the overall team.

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

26

27 2. Project Characteristics

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

- 1 f. Identify the proposed schedule for the work on the project, including the
2 estimated time for completion.
- 3
- 4 g. Propose allocation of risk and liability for work completed beyond the
5 agreement's completion date, and assurances for timely completion of the
6 project.
- 7
- 8 h. State assumptions related to ownership, legal liability, law enforcement
9 and operation of the project and the existence of any restrictions on the
10 public entity's use of the project.
- 11
- 12 i. Provide information relative to phased or partial openings of the proposed
13 project prior to completion of the entire work.
- 14

15 3. Project Financing

- 16
- 17 a. Provide a preliminary estimate and estimating methodology of the cost of
18 the work by phase, segment, or both.
- 19
- 20 b. Submit a plan for the development, financing and operation of the project
21 showing the anticipated schedule on which funds will be required.
22 Describe the anticipated costs of and proposed sources and uses for such
23 funds.
- 24
- 25 c. Include a list and discussion of assumptions underlying all major elements
26 of the plan.
- 27
- 28 d. Identify the proposed risk factors and methods for dealing with these
29 factors.
- 30
- 31 e. Identify any local, state or federal resources that the proposer
32 contemplates requesting for the project. Describe the total commitment, if
33 any, expected from governmental sources and the timing of any
34 anticipated commitment.
- 35
- 36 f. Identify the amounts and the terms and conditions for any revenue
37 sources.²²

38

39 4. Project Benefit and Compatibility

- 40
- 41 a. Identify who will benefit from the project, how they will benefit and how
42 the project will benefit the overall community, region, or state.
- 43
- 44 b. Identify any anticipated public support or opposition, as well as any
45 anticipated government support or opposition, for the project.
- 46

- 1 c. Explain the strategy and plans that will be carried out to involve and
2 inform the general public, business community, and governmental
3 agencies in areas affected by the project.
4
- 5 d. Describe the anticipated significant benefits to the community, region or
6 state including anticipated benefits to the economic condition of the public
7 entity and whether the project is critical to attracting or maintaining
8 competitive industries and businesses to the public entity or the
9 surrounding region
10
- 11 e. Compatibility with the local comprehensive plan, local infrastructure
12 development plans, the capital improvements budget or other government
13 spending plan.
14

15 **B. Format for Submissions at Detailed Stage**

16
17 If the responsible public entity decides to proceed to the detailed phase of review
18 with one or more proposals, the following information should be provided by the private
19 entity unless waived by the responsible public entity:
20

- 21 1. A topographical map (1:2,000 or other appropriate scale) depicting the
22 location of the proposed project;
23
- 24 2. A list of public utility facilities, if any, that will be crossed by the qualifying
25 project and a statement of the plans of the proposer to accommodate such
26 crossings;
27
- 28 3. A statement and strategy setting out the plans for securing all necessary
29 property. The statement must include the names and addresses, if known, of
30 the current owners of the subject property as well as a list of any property the
31 proposer intends to request the public entity to condemn;
32
- 33 4. A detailed listing of all firms that will provide specific design, construction
34 and completion guarantees and warranties, and a brief description of such
35 guarantees and warranties;
36
- 37 5. A total life-cycle cost specifying methodology and assumptions of the project
38 or projects and the proposed project start date. Include anticipated
39 commitment of all parties; equity, debt, and other financing mechanisms; and
40 a schedule of project revenues and project costs. The life-cycle cost analysis
41 should include, but not be limited to, a detailed analysis of the projected
42 return, rate of return, or both, expected useful life of facility and estimated
43 annual operating expenses.
44
- 45 6. A detailed discussion of assumptions about user fees or rates, and usage of the
46 projects.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

- 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 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 public entity's review to determine whether ~~the proposer possesses the requisite qualifications and experience should to proceed with a private entity with the procurement using the PPEA~~²³ include:

- 1. ~~The proposed cost of the qualifying project~~The proposed cost of the qualifying project~~Experience with similar projects;~~
- 2. ~~The general reputation, industry experience, and financial capacity of the private entity~~The general reputation, industry experience, and financial capacity of the private entity~~Demonstration of ability to perform work;~~
- 3. ~~The proposed design of the qualifying project~~The proposed design of the qualifying project~~Leadership structure;~~
- 4. ~~The eligibility of the project for accelerated documentation, review, and selection~~The eligibility of the project for accelerated documentation, review, and selection~~Project manager's experience;~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45
46

- 5. Local citizen and government comments~~Management approach~~;
- 6. Benefits to the public~~Financial condition~~; and
- 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~~Project ownership~~.²⁴

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;

- 4. Estimated cost; and
- 5. Life-cycle cost analysis.

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.

VII. Interim and Comprehensive Agreements

Prior to ~~developing, acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining,~~ or operating the qualifying project, the selected proposer shall enter into either an interim or comprehensive agreement with the responsible public entity. The responsible public entity may designate a working group to be responsible for negotiating the interim or comprehensive agreement. Each 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 terms of an interim agreement shall permit the private entity to commence activities for which it may be compensated relating to the project including but 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

1
2 6. Establish a process and timing of the negotiation of the comprehensive
3 agreement; and

4
5 7. Any other provisions related to any aspect of the development or operation of
6 a qualifying project that the parties may deem appropriate prior to the
7 execution of a comprehensive agreement.²⁵

8
9 **B. Comprehensive Agreement Terms**

10
11 The terms of the comprehensive agreement shall include but not be limited to:

- 12
13 1. The delivery of maintenance, performance and payment bonds or letters of
14 credit in connection with any acquisition, design, construction, improvement,
15 renovation, expansion, equipping, maintenance, or operation of the qualifying
16 project;
 - 17
18 2. The review of plans and specifications for the qualifying project by the
19 responsible public entity;
 - 20
21 3. The rights of the responsible public entity to inspect the qualifying project to
22 ensure compliance with the comprehensive agreement;
 - 23
24 4. The maintenance of a policy or policies of liability insurance or self-insurance
25 reasonably sufficient to insure coverage of the project and the tort liability to
26 the public and employees and to enable the continued operation of the
27 qualifying project;
 - 28
29 5. The monitoring of the practices of the operator by the responsible public
30 entity to ensure proper maintenance;
 - 31
32 6. The terms under which the operator will reimburse the responsible public
33 entity for services provided;
 - 34
35 7. The policy and procedures that will govern the rights and responsibilities of
36 the responsible public entity and the operator in the event that the
37 comprehensive agreement is terminated or there is a material default by the
38 operator including the conditions governing assumption of the duties and
39 responsibilities of the operator by the responsible public entity and the transfer
40 or purchase of property or other interests of the operator by the responsible
41 public entity;
 - 42
43 8. The terms under which the operator will file appropriate financial statements
44 on a periodic basis.
- 45

- 1 9. The mechanism by which user fees, lease payments, or service payments, if
2 any, may be established from time to time upon agreement of the parties. Any
3 payments or fees shall be set at a level that are the same for persons using the
4 facility under like conditions and that will not materially discourage use for
5 the qualifying project;
6
7 a. A copy of any service contract shall be filed with the responsible public
8 entity.
9
10 b. A schedule of the current user fees or lease payments shall be made
11 available by the operator to any member of the public upon request.
12
13 c. Classifications according to reasonable categories for assessment of user
14 fees may be made.
15
16 10. The terms and conditions under which the responsible public entity may
17 contribute financial resources, if any, for the qualifying project; ~~and~~

11. Methods and terms for conducting any site assessment done prior to the commencement of development or operation of the qualifying project including information on which party shall be responsible for conducting the assessment and addressing any issues that could impact the cost or schedule for development or operation of the qualifying project; and²⁶

11.12. Other requirements of the PPEA.

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.²⁷

¹ [SB 1107\(2005\) Page 1, line 19; line 31 \(Chapter 865 of 2005 Acts of Assembly\)](#)

² [SB 1107\(2005\) Page 1, line 46](#)

³ [HB 1925\(2003\), Page 1, line 37 \(Chapter 1034 of 2003 Acts of Assembly\)](#)

⁴ [SB 1107\(2005\) Page 2, line 118.](#)

⁵ [SB 1107\(2005\) Page 3, line 119.](#)

⁶ [SB 1107\(2005\) Page 2, line 124.](#)

⁷ [Language suggested by DLS Staff in re to affect of PPEA amendments on existing guidelines.](#)

⁸ [Language offered by Chris Lloyd.](#)

⁹ [Language offered by Chris Lloyd.](#)

¹⁰ [Language offered by Chris Lloyd.](#)

¹¹ [Language offered by Chris Lloyd.](#)

¹² [HB 148 \(2004\) Page 2, lines 103 through 110; Language suggested by DLS Staff.](#)

¹³ [Language offered by Chris Lloyd.](#)

¹⁴ [SB 352 \(2004\) Page 7, line 402 \(Chapter 690 of the 2004 Acts of Assembly\)](#)

¹⁵ [SB 1107\(2005\) Page 2, line 117 \(Chapter 986 of the 2004 Acts of Assembly\)](#)

¹⁶ [SB 1330\(2003\) Page 2, line 64 \(Chapter 292 of the 2003 Acts of Assembly\).](#)

¹⁷ [SB 1330\(2003\) Page 2, line 64.](#)

¹⁸ [SB 1107 \(2004\) Page 6, Line 315.](#)

¹⁹ [Language offered by Chris Lloyd.](#)

²⁰ [Language offered by Chris Lloyd.](#)

²¹ [SB 1330\(2003\) Page 1, line 24.](#)

²² [SB 1107 \(2005\) Page 3, line 149.](#)

²³ [Language offered by Chris Lloyd](#)

²⁴ [SB 1107 \(2005\) Page 7, lines 416 through 422.](#)

²⁵ [SB 1107 \(2005\) Page 6, lines 317 through 323.](#)

²⁶ [Language offered by Chris Lloyd.](#)

²⁷ [SB 1107 \(2005\) Page 6, line 312.](#)