

PPEA WORKING GROUP - FINAL TRACKING DOCUMENT (2009) DRAFT

| | Item | Discussion/Determination |
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| 1 | <p>Clarify the role of the Public Private Advisory Commission to include a more functional role for the Commission and to position the Commission to encourage the use of the PPEA projects at the state level.</p> | <p>Staffing for the Commission may be an issue; DGS not be in the best position to provide independent review. Commission must establish a process for reviewing; to be effective, the commission must adopt a process to carry out its review.</p> <p>Determination: Develop suggested guidelines for Commission's use. DLS should replace staffing role currently held by DGS.</p> |
| 2 | <p>Create a PPEA "czar" in the administration who will advocate use of PPEA or at least serve as a central clearinghouse in the administration for PPEA to speed approvals.</p> | <p>May be more appropriate for the position to serve as an information source rather than as an advocate. The wide variety that exists in the types and levels of sophistication of RPE's was noted. Could be accomplished by designating a point of contact in each RPE.</p> <p>Determination: Best practices commentary will include a suggestion that each RPE should designate a knowledgeable point of contact for PPEA inquiries. In addition, the single point of contact concept should remain as the RPE proceeds with individual PPEA projects.</p> |
| 3 | <p>Request the Office of the Attorney General to assign an individual to specialize in the review of PPEA agreements to assist in accelerating the process.</p> | <p>A good idea; development of expertise and consistency. There may be something very similar already in place.</p> <p>Determination: Request the Chairs of House General Laws and Senate General Laws and Technology to consider the request.</p> |
| 4 | <p>Develop model comprehensive agreements and interim agreements.</p> | <p>Should be viewed as a template to start from rather than model or uniform document. Consider multiple templates to cover services and the different types of projects. Query-who would develop? Concerns: (i) fear that would be viewed as "uniform" agreements rather than templates, (ii) models can quickly become outdated, and (iii) standardization may lessen creativity and ingenuity. The key is for the RPE and proposer's expectations to be the same and that project specifications are clearly understood.</p> <p>Determination: Develop a checklist to provide general guidance; enhanced website including links to Auditor of Public Accounts website (where electronic copies of comprehensive agreements will be housed) and other resource sites will provide further assistance to RPE's.</p> |

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| 5 | <p>Should the definition of "qualifying project" be amended to remove the "list" and use a more general definition?</p> <p>Review definition of "qualifying project" to ensure that services are broadly enough defined to include the management of some portion or all of a state facility.</p> | <p>2007 amendment clarified inclusion of all services. Act is sufficiently clear that list is not exclusive.</p> <p>Determination: No further action required.</p> |
| 6 | <p>Does the PPEA process, in particular when unsolicited proposals are involved, provide for an adequate level of competition?</p> <p>Is the level of public participation at key stages of the proposal review process adequate?</p> <p>Consider requiring all accepted proposals to be posted on eVA to enhance competition.</p> | <p>2007 amendments established points in the process for notice to be provided to the public and potential competing proposers. The best prospect for success in terms of generating a sufficient number of competing proposals is the amount of time and the extent of the area that the proposal advertised.</p> <p>Determination: Best practices commentary will include a suggestion that all RPE's consider using eVA in addition to postings required in the PPEA. In addition, information and a link to DGS' EVa site will be provided.</p> |
| 7 | <p>Should the PPEA model guidelines (or statute) provide more specificity or clarity regarding the level of communication that the RPE has with potential bidders. Currently, the amount of communication with potential bidders varies widely by jurisdiction and state agency.</p> | <p>2007 amendments to the current model guidelines include language requiring the RPE to make staff available to entities considering competing proposals.</p> <p>Determination: Best practices commentary will include additional commentary regarding the need to make knowledgeable staff available to potential bidders.</p> |
| 8 | <p>Should there be a time limit on how long a PPEA proposal can be reviewed?</p> | <p>Public entity representatives asserted the need for flexibility to perform adequate review; result would be rejection of most proposals. From the private entity perspective it was noted that the review period may be limited by placing a time limit on the pricing included in the proposal.</p> <p>Determination: No action.</p> |

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| 9 | <p>Clarify applicability of mandatory procurement source requirements to PPEA projects. (e.g. the Virginia Correctional Enterprises)</p> | <p>The intent regarding application of such provisions should be clear; however, several nuances come into play in the case of a PPEA project that may not be easily resolved without addressing important policy issues requiring legislative action.</p> <p>Determination: Best practices commentary will include a statement on the current status of mandatory procurement source requirements. In addition, a copy of the most recent Attorney General's opinion on the application of the VCE mandatory source requirement to the PPEA will be made accessible.</p> |
| 10 | <p>Does the PPEA adequately protect against inappropriate or unlawful conflicts of interests?</p> | <p>Relevant conflict of interest statutes are already applicable. Model guidelines currently include reference to State and Local Government Conflict of Interest Act.</p> <p>Determination: No further action needs to be taken by the working group.</p> |
| 11 | <p>Should the PPEA require an RPE deciding to reject a services proposal to formally state the basis for the rejection to include addressing the purported savings and efficiencies asserted by the private entity? In addition, should there be an appeals process available to the private entity presenting the proposal?</p> | <p>Should not be a requirement, but best practices should provide for the RPE, if requested, to make staff available to a losing proposer to discuss basis for decision. Providing for an appeal would add time to the process.</p> <p>Determination: Best practices commentary will include a suggestion that the RPE make staff available to debrief unsuccessful proposers as appropriate.</p> |
| 13 | <p>Should the PPEA discourage an RPE from rejecting an attractive unsolicited proposal then converting all or part of the proposal into a standard RFP?</p> | <p>Would be difficult to address through statute; also difficult to enforce. The RPE may have already been working on an invitation for bid involving the same or similar subject matter before the unsolicited bid was submitted. It would be difficult to untangle which aspects of the rejected proposal have been included in the standard RFP subsequently issued by the RPE.</p> <p>Determination: No action</p> |

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| 14 | <p>Consider changing the requirement for the locality to own the property where the courthouse is located. (See § 15.2-1638)</p> | <p>At least one PPEA project had the ownership requirement as a major issue. Purpose may be a holdover from annexation situations where courthouse may be in another locality. Also ownership would prevent foreclosure and liens being placed on the courthouse. Discussion on whether the prohibition prevented leasing for the courthouse space.</p> <p>Determination: This represents a greater policy issue that the working group is not able to address at this time.</p> |
| 15 | <p>Provide more guidance on how to comply with the public hearing requirement.</p> <p>Clarify what proposals should be included in the required public hearing. Suggested that only detailed proposals should be included.</p> | <p>Currently the provisions allows the RPE the flexibility of holding the hearing anytime from when initial conceptual proposals have been received to when detailed proposals have been received to when the RPE has decided to move forward with a single proposal, as long as it is at least 30 prior the signing of the interim or comprehensive agreement. One locality includes the hearing as a part of the project's presentation to the local governing body for approval. Also, it appears as currently written the herein is required before the interim and comprehensive agreement.</p> <p>Determination: RPE should continue to have maximum flexibility regarding the timing of the required public hearing.</p> |
| 16 | <p>Best practices should include a statement on the need to periodically update guidelines to incorporate amendments that are made to the PPEA as well as changes derived from the RPE's practical experience.</p> | <p>It was noted that many localities do not regularly update their guidelines. Annual updating of guideline should be recommended for best practices.</p> <p>Determination: Best practices commentary will include a statement that all RPE's should update their PPEA guidelines annually. In addition, the enhanced website of the working group will serve as a resource for updating.</p> |
| 17 | <p>Best practices should include more guidance regarding proposal fees. Such fees vary and should be related to actual, reasonable costs of reviewing the proposal. Possibly consider the approached used in determine FOIA costs.</p> | <p>Model guidelines already include several statements on proposal fees. There is a need to balance recouping bona fide review costs and setting the fee at a level that will hinder (rather than encourage) private entities from using the PPEA. The approach to costs under FOIA is suggested as a possible model.</p> <p>Determination: Best practices commentary will include discussion on the need to set proposal fees at an appropriate level. FOIA approach will be reviewed and incorporated where appropriate.</p> |

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| 18 | <p>Model guidelines should include a best practices component that is comprised of commentary and explanations.</p> | <p>Inclusion of a best practices component and enhanced website will provide a better PPEA resource to both RPE's and private entities.</p> <p>Determination: Best practices component will be incorporated throughout the model guidelines and presented to the working group for review.</p> |
| 19 | <p>Expand the PPEA Working Group's website to serve more as a resource. The website should be accessed from other RPE sites.</p> | <p>Inclusion of a best practices component and enhanced website will provide a better resource to both RPE's and private entities.</p> <p>Determination: The website will be organized to serve as a resource for both RPE's and private entities involved with PPEA projects.</p> |
| 20 | <p>Award bonus points for state grants that are applied to PPEA projects.</p> | <p>This item needs to be fleshed out more. It is unclear what entity would award the bonus points and what entity would be awarded the bonus points. Would the bonus points have to be awarded to all subsequent proposers?</p> <p>Determination: <i>(Note this issue was not discussed at the 8/11/09 meeting)</i></p> |
| 21 | <p>More emphasis should be placed on the cost to the private entity to participate in the PPEA process.</p> | <p>The cost to participate in the PPEA process is expensive. Concern expressed that going forward small to medium businesses may not be able to participate leaving only large companies.</p> <p>Determination: The working group will continue to review this concern.</p> |