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**Public-Private Education Facilities and Infrastructure  
Act of 2002**

**Model Guidelines**

**REVISED**

**~~September 2007~~ October 2009**

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**Public-Private Education Facilities and Infrastructure Act of 2002  
Model Guidelines**

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## Introduction

### Overview

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” (RPE) to include any public entity that “has the power to develop or operate the applicable qualifying project.” Individually negotiated interim or comprehensive agreements between a private entity and an RPE will define the respective rights and obligations of the RPE and the private entity.

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 that meets a public purpose and is developed or operated by or for any public entity;
- (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;
- (v) A recreational facility;
- (vi) Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (vii) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;~~;~~~~or~~
- (viii) Services designed to increase the productivity or efficiency through the use of technology or other means;

4            (ix) Any improvements necessary or desirable to any unimproved locally- or  
5            state-owned real estate; or

6  
7            (x) A solid waste management facility that produces electric energy from  
8            solid waste.

9  
10           The PPEA establishes requirements that the RPE must adhere to when reviewing  
11 and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies  
12 the criteria that must be used to select a proposal and the contents of the interim or  
13 comprehensive agreement detailing the relationship between the RPE and the private  
14 entity.

15  
16           ~~In passing the legislation, and following subsequent amendments to the Act in~~  
17 ~~2005, 2006, and 2007, the General Assembly directed the Governor and the chairs of the~~  
18 ~~House and Senate Committees on General Laws to facilitate the development of model~~  
19 ~~guidelines to assist in the implementation of the PPEA. Because the PPEA is intended to~~  
20 ~~encourage innovative partnerships between RPEs and private entities, RPEs are~~  
21 ~~encouraged to maintain an open dialogue with private entities to discuss the need for~~  
22 ~~infrastructure improvements.~~

23  
24           In passing the legislation, the General Assembly directed the Governor and the  
25 chairs of the House and Senate Committees on General Laws to facilitate the  
26 development of model guidelines to assist in the implementation of the PPEA. The  
27 Committee Chairs jointly established a working group consisting of members from state  
28 and local government, private entities, and other interested parties. That working group  
29 developed Model Guidelines, which became available on September 30, 2002.  
30 Subsequent amendments to the Act in 2005, 2006, and 2007, also directed the chairs of  
31 the House Committee on General Laws and Senate Committees on General Laws and  
32 Technology to reconvene the working group to revise the Model Guidelines to  
33 incorporate substantive changes.

34  
35           Senate Bill 1153, passed during the 2009 legislative session, provides for the  
36 review of the Model Guidelines by the working group on an annual basis and make  
37 revisions as needed. In addition, the legislation charged the working group to develop  
38 best practices recommendations for use by RPEs. Best practices recommendations are  
39 indicated throughout the Model Guidelines in shaded italics.

#### 40 41           **Guidelines for the review and approval of proposals and projects**

42  
43           Responsible public entities are required to adopt and make publicly available  
44 guidelines that are sufficient to enable the public entity to comply with the requirements  
45 of the PPEA. The guidelines should be reasonable and structured to encourage  
46 competition. In addition, to facilitate communication, the RPE should designate an  
47 individual to serve as the point of contact for receiving proposals submitted under the  
48 PPEA and responding to inquiries regarding the PPEA or the guidelines.

4 Guidelines adopted by all RPEs are required to include provisions that require the  
5 posting and publishing of public notice of a private entity's request for approval of a  
6 qualifying project, including (i) specific information and documentation to be released  
7 regarding the nature, timing, and scope of the qualifying project pursuant to subsection A  
8 of § 56-575.4; (ii) a reasonable time period of at least 45 days during which the RPE shall  
9 receive competing proposals pursuant to subsection A of § 56-575.4. Such time period  
10 shall also be determined by the RPE to encourage competition and public-private  
11 partnerships in accordance with the goals of the PPEA; and (iii) a requirement for  
12 advertising the public notice in the Virginia Business Opportunities publication and  
13 posting a notice on the Commonwealth's electronic procurement website.  
14

15 RPEs that are agencies or institutions of the Commonwealth are required to  
16 include the following provisions in their guidelines:  
17

- 18 1. Opportunities for competition through public notice and availability of representatives  
19 of the RPE to meet with private entities considering a proposal;  
20
- 21 2. Reasonable criteria for choosing among competing proposals;  
22
- 23 3. Suggested timelines for selecting proposals and negotiating an interim or  
24 comprehensive agreement;  
25
- 26 4. Authorization for accelerated selection and review and documentation timelines for  
27 proposals involving a qualifying project that the RPE deems a priority;  
28
- 29 5. Financial review and analysis procedures that shall include, at a minimum, a cost-  
30 benefit analysis, an assessment of opportunity cost, and consideration of the results of all  
31 studies and analyses related to the proposed qualifying project. These procedures shall  
32 also include requirements for the disclosure of such analysis to the appropriating body for  
33 review prior to execution of an interim or comprehensive agreement;  
34
- 35 6. Consideration of the nonfinancial benefits of a proposed qualifying project;  
36
- 37 7. A mechanism for the appropriating body to review a proposed interim or  
38 comprehensive agreement prior to execution;  
39
- 40 8. Criteria for triggering the establishment of an advisory committee consisting of  
41 representatives of the RPE and the appropriating body to review the terms of the  
42 proposed interim or comprehensive agreement. Suggested criteria include the scope,  
43 costs, and duration of the qualifying project, as well as whether the project involves or  
44 impacts multiple RPEs;  
45
- 46 9. Analysis of the adequacy of the information released when seeking competing  
47 proposals and providing for the enhancement of that information, if deemed necessary, to  
48 encourage competition; and  
49

4 10. Establishment of criteria, key decision points, and approvals required to ensure that  
5 the RPE considers the extent of competition before selecting proposals and negotiating an  
6 interim or comprehensive agreement.

7  
8 Guidelines of local RPEs must include a requirement that such RPEs engage the  
9 services of qualified professionals, which may include an architect, professional engineer,  
10 or certified public accountant, not otherwise employed by the public entity, to provide  
11 independent analysis regarding the specifics, advantages, disadvantages, and the long-  
12 and short-term costs of any request by a private entity for approval of a qualifying project  
13 unless the governing body of the RPE determines that such analysis of a request by a  
14 private entity for approval of a qualifying project shall be performed by employees of the  
15 RPE.

16  
17 Because the PPEA is intended to encourage innovative partnerships between  
18 RPEs and private entities, RPEs are encouraged to maintain an open dialogue with  
19 private entities to discuss the need for infrastructure improvements.

### 20 21 **Best Practice Commentary**

#### 22 23 **General comments on PPEA Guidelines**

24  
25 Since the PPEA statute became effective in 2002, several amendments have been made by  
26 the General Assembly. Many of these amendments made significant changes to key  
27 provisions of the Act. Compliance by the RPE with all applicable provision of the PPEA  
28 is mandatory. It is important for the RPE to make sure that its PPEA guidelines are  
29 consistent with the requirements of the PPEA statute. The RPE should perform annual  
30 compliance reviews of its PPEA guidelines and periodically engage in a more  
31 comprehensive review of the guidelines and its overall PPEA process.

32  
33 In addition, whenever the RPE revises its guidelines, there should be clear indication  
34 throughout the document when the revision occurred. This will assist the reader in  
35 determining which version is being used.

36  
37 The PPEA Working Group has established a website to provide to serve as a resource to  
38 RPEs, private entities and others interested in the PPEA. The website includes previous  
39 reports of the working group, a PPEA Checklist and other documents, and hot links to  
40 other relevant websites. The website address is: <http://dls.state.va.us/ppea.htm>

#### 41 42 **Mandatory Source Provisions for state RPEs**

43  
44 When considering PPEA proposals, RPEs that are state agencies or institutions should  
45 ensure compliance with applicable mandatory source requirements for certain  
46 purchases. This may become more relevant as more PPEA proposals are submitted for  
47 services only. For state agencies, an important mandatory source is Virginia  
48 Correctional Enterprises (VCE). Section 53.1-47 of the Code of Virginia provides that  
49 goods and services produced or manufactured by state correctional facilities must be

4 purchased by all departments, institutions, and agencies of the Commonwealth, which  
5 are supported in whole or in part with state funds. In addition, VCE products may also be  
6 purchased by any county, district of any county, city or town. Products include, but are  
7 not limited to, wood and metal case goods, seating, office systems, shoes, clothing,  
8 embroidery services, silk screening services or products, vinyl binders, pad holders,  
9 signs, microfilming and data storage, optical products, laundry services, wooden pallets,  
10 warehousing, license tags, janitorial products, and VCE Digital Works.

11  
12 In 2008 the Attorney General opined that the PPEA is not exempt from the mandatory  
13 language of § 53.1-47. (See 2008 Va. AG LEXIS 6) It should be noted that the same  
14 opinion also determined that the mandatory source provision was not applicable to all  
15 procurements contemplated under the PPEA.

16  
17 Other mandatory sources predominantly involve goods and not services. Therefore, the  
18 provisions may not apply to the typical PPEA project. Those sources include the  
19 following:

20  
21 Virginia Industries for the Blind (VIB) - VIB is the mandatory source for writing  
22 instruments, pillows, mattresses, gloves (exam, latex, vinyl, nitrile, high risk EMS), mop  
23 heads and handles, spices, tea, contract office services (not including temporary  
24 employment services) and mailing services.

25  
26 Virginia Information Technologies Agency (VITA) - VITA is the mandatory source for the  
27 purchase of technology-related equipment such as computers, printers, servers,  
28 hardware, software, and peripherals for all state agencies except public institutions of  
29 higher education.

### 30 31 **Statement of Purpose**

32  
33 The following model guidelines have been developed to assist RPEs in adopting  
34 guidelines to guide the implementation of the PPEA. The guidelines are intended to  
35 serve as a general guide for the implementation of the PPEA. The RPE is not required to  
36 adopt the entire text of the model guidelines. Each RPE has the flexibility to add or  
37 delete provisions included in the model guidelines and to include provisions not  
38 contained in the model guidelines so long as the resulting guidelines comply with the  
39 PPEA. The complete text of the PPEA has been included in the Appendix to these model  
40 guidelines. Although guidance with regard to the application of the PPEA is provided  
41 herein, it will be incumbent upon all entities, both public and private, to comply with the  
42 provisions of the PPEA.

43  
44 In the event that the PPEA is amended in a manner that either conflicts with  
45 guidelines developed by the RPE or concerns material matters not addressed by such  
46 guidelines, the RPE should appropriately amend the guidelines. If the guidelines are not  
47 amended prior to the effective date of the new law, the guidelines nonetheless shall be  
48 interpreted in a manner to conform to the new law.

4 **I. General Provisions**

5  
6 **A. Proposal Submission**

7  
8 A proposal may be either solicited by the RPE or delivered by a private entity on  
9 an unsolicited basis. Proposers may be required to follow a two-part proposal submission  
10 process consisting of an initial conceptual phase and a detailed phase. The initial phase  
11 of the proposal should contain specified information on proposer qualifications and  
12 experience, project characteristics, project financing, anticipated public support or  
13 opposition, or both, and project benefit and compatibility. The detailed proposal should  
14 contain specified deliverables.

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

29  
30 Proposals should be prepared simply and economically, providing a concise  
31 description of the proposer's capabilities to complete the proposed qualifying project and  
32 the benefits to be derived from the project by the RPE. Project benefits to be considered  
33 are those occurring during the construction, renovation, expansion or improvement phase  
34 and during the life cycle of the project. Proposals also should include a scope of work  
35 and a financial plan for the project, containing enough detail to allow an analysis by the  
36 RPE of the financial feasibility of the proposed project. The cost analysis of a proposal  
37 should not be linked solely to the financing plan, as the RPE may determine to finance  
38 the project through other available means.

39  
40 The RPE should establish clearly delineated criteria for (i) selecting among  
41 competing proposals and (ii) the use of accelerated documentation, review, and selection  
42 processes for proposals involving a qualifying project that the RPE deems a priority. In  
43 addition, to facilitate the flow of critical information, the RPE may establish criteria by  
44 which the proposer may provide clarification to a submitted proposal.

45  
46 **B. Affected Jurisdictions**

47  
48 Any private entity requesting approval from or submitting a conceptual or  
49 detailed proposal to the RPE must provide each affected jurisdiction with a copy of the

4 private entity's request or proposal by certified mail, express delivery, or hand delivery.  
5 Affected jurisdictions that are not RPEs under the proposed qualifying project shall have  
6 60 days from the receipt of the request or proposal to submit written comments to the  
7 RPE and to indicate whether the proposed qualifying project is compatible with the (i)  
8 local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital  
9 improvements budget or other government spending plan. Comments received within the  
10 60-day period shall be given consideration by the RPE, and no negative inference shall be  
11 drawn from the absence of comment by an affected jurisdiction.

### 12 13 **C. Proposal Review Fee** 14

15 The RPE shall receive an analysis of the proposal from appropriate internal staff  
16 or outside advisors or consultants with relevant experience in determining whether to  
17 enter into an agreement with the private entity. The RPE may charge a fee to the private  
18 entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal  
19 or competing unsolicited proposal submitted under the PPEA, including a fee to cover the  
20 costs of outside attorneys, consultants, and financial advisors. Any fee charged for such  
21 review of a proposal should be reasonable in comparison to the level of expertise required  
22 to review the proposal and should not be greater than the direct costs associated with  
23 evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of  
24 staff time required to process, evaluate, review and respond to the proposal and (ii) the  
25 out-of-pocket costs of attorneys, consultants, and financial advisors.

26  
27 The proposal fee may cover all or part of the initial review process. For example,  
28 the RPE may require a proposal fee in an amount sufficient to cover all anticipated direct  
29 costs associated with evaluating the proposal, or the RPE may require a smaller initial  
30 processing fee with an additional proposal fee to be charged should the project proceed  
31 beyond the initial review.

32  
33 The RPE may establish a fee schedule for the cost of the proposal review. The  
34 RPE shall set forth in the procedures it has established for the implementation of the  
35 PPEA the methodology used to calculate proposal fees. If the cost of reviewing the  
36 proposal exceeds the initially established proposal fee, the RPE may assess the proposer  
37 the additional costs deemed necessary to evaluate the proposal.

38  
39 For rejected proposals, the RPE may establish a schedule for refunding any  
40 portion of fees paid in excess of its direct costs associated with evaluating the proposal. If  
41 the cost of reviewing the proposal is less than the initially established proposal fee, the  
42 RPE may refund to the proposer the excess fee. As noted in Section IV.A. 1 below, fees  
43 should be refunded entirely if the RPE decides not to proceed to publication and  
44 conceptual-phase review of an unsolicited proposal.

#### 45 46 **Best Practice Commentary**

#### 47 48 **Determining appropriate proposal review fees.** 49

4 The proposal review fee charged by an RPE is required to be reasonable;  
5 the fee should not exceed the actual cost incurred by the RPE to conduct the necessary  
6 review of the project. The RPE should periodically perform a general cost analysis to  
7 assist in determining actual costs to ensure that the costs are as accurately as possible.  
8 While it is true that the specific costs to review individual PPEA proposals may vary,  
9 using a set fee or a sliding scale of fees based on the projected size of the project should  
10 nonetheless be based on actual costs.

11  
12 In addition, any proposal review fee or charge, as well as the general breakdown  
13 of how the fee is calculated if a sliding scale is used, should be clearly documented so  
14 that the private entity may be fully aware of such costs. Where possible, proposal review  
15 charges or rates should be included in the RPE's PPEA guidelines to ensure that a  
16 private entity contemplating an unsolicited proposal is aware of the fees associated with  
17 the review.

#### 18 19 **D. Freedom of Information Act**

##### 20 21 **1. General applicability of disclosure provisions.**

22  
23 Proposal documents submitted by private entities are generally subject to the  
24 Virginia Freedom of Information Act (“FOIA”) except that subdivision 11 of § 2.2-  
25 3705.6 exempts certain documents from public disclosure. FOIA exemptions, however,  
26 are discretionary, and the RPE may elect to release some or all of documents except to  
27 the extent the documents are:

28  
29 a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
30 (§ 59.1-336 et seq.);

31  
32 b. Financial records of the private entity that are not generally available to the  
33 public through regulatory disclosure or otherwise, including but not limited to, balance  
34 sheets and financial statements; or

35  
36 c. Other information submitted by a private entity, where if the record or  
37 document were made public prior to the execution of an interim or comprehensive  
38 agreement the financial interest or bargaining position of the public or private entity  
39 would be adversely affected.

40  
41 Additionally, to the extent access to proposal documents submitted by private  
42 entities are compelled or protected from disclosure by a court order, the RPE must  
43 comply with the provisions of such order.

44  
45 An RPE may contact the Freedom of Information Act Council (FOIAC) regarding  
46 the applicability of the access provisions of FOIA:

47  
General Assembly Building, 2<sup>nd</sup> Floor Telephone: 804/225-3056  
910 Capitol Street Richmond, VA 23219 Toll-Free: 1-866-448-4100

4  
5       **2. Protection from mandatory disclosure for certain documents submitted**  
6 **by a private entity.**

7  
8       Before a document of a private entity may be withheld from disclosure, the  
9 private entity must make a written request to the RPE at the time the documents are  
10 submitted designating with specificity the documents for which the protection is being  
11 sought and a clear statement of the reasons for invoking the protection with reference to  
12 one or more of three classes of records listed in Section I.D.1.

13  
14       Upon the receipt of a written request for protection of documents, the RPE shall  
15 determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii)  
16 other information that would adversely affect the financial interest or bargaining position  
17 of the RPE or private entity in accordance with Section I.D.1. The RPE shall make a  
18 written determination of the nature and scope of the protection to be afforded by the RPE  
19 under this subdivision. If the written determination provides less protection than  
20 requested by the private entity, the private entity should be accorded an opportunity to  
21 withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be  
22 accorded protection from release although what may be protected must be limited to the  
23 categories of records identified in Section I.D.1 .

24  
25       Once a written determination has been made by the RPE, the documents afforded  
26 protection under this subdivision shall continue to be protected from disclosure when in  
27 the possession of the RPE or any affected jurisdiction to which such documents are  
28 provided.

29  
30       If a private entity fails to designate trade secrets, financial records, or other  
31 confidential or proprietary information for protection from disclosure, such information,  
32 records or documents shall be subject to disclosure under FOIA.

33  
34       **3. Protection from mandatory disclosure for certain documents produced by**  
35 **the RPE.**

36  
37       The RPE may withhold from disclosure memoranda, staff evaluations, or other  
38 records prepared by the RPE, its staff, outside advisors, or consultants exclusively for the  
39 evaluation and negotiation of proposals where (i) if such records were made public prior  
40 to or after the execution of an interim or a comprehensive agreement, the financial  
41 interest or bargaining position of the RPE would be adversely affected, and (ii) the basis  
42 for the determination required in clause (i) is documented in writing by the RPE.

43  
44       Cost estimates relating to a proposed procurement transaction prepared by or for  
45 the RPE shall not be open to public inspection.

46  
47       **4. The RPE may not withhold from public access:**  
48

4 (a) procurement records other than those subject to the written determination of  
5 the RPE;

6  
7 (b) information concerning the terms and conditions of any interim or  
8 comprehensive agreement, service contract, lease, partnership, or any agreement of any  
9 kind entered into by the RPE and the private entity;

10  
11 (c) information concerning the terms and conditions of any financing arrangement  
12 that involves the use of any public funds; or

13  
14 (d) information concerning the performance of any private entity developing or  
15 operating a qualifying transportation facility or a qualifying project.

16  
17 However, to the extent that access to any procurement record or other document  
18 or information is compelled or protected by a court order, then the RPE must comply  
19 with such order.

#### 20 21 **E. Use of Public Funds**

22  
23 Virginia constitutional and statutory requirements as they apply to appropriation  
24 and expenditure of public funds apply to any interim or comprehensive agreement  
25 entered into under the PPEA. Accordingly, the processes and procedural requirements  
26 associated with the expenditure or obligation of public funds shall be incorporated into  
27 planning for any PPEA project or projects.

#### 28 29 **F. Applicability of Other Laws**

30  
31 Nothing in the PPEA shall affect the duty of the RPE to comply with all other  
32 applicable law not in conflict with the PPEA. The applicability of the Virginia Public  
33 Procurement Act (the "VPPA") is as set forth in the PPEA.

### 34 35 **II. Solicited Proposals**

36  
37 The RPE may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs),  
38 inviting proposals from private entities to develop or operate qualifying projects. An RPE  
39 may not issue a RFP until it has adopted guidelines to govern the PPEA documentation,  
40 review, and selection process. The RPE may use a two-part proposal process consisting  
41 of an initial conceptual phase and a detailed phase. An RFP may invite proposers to  
42 submit proposals on individual projects identified by the RPE. In such a case the RPE  
43 should set forth in the RFP the format and supporting information that is required to be  
44 submitted, consistent with the provisions of the PPEA. The RPE may establish suggested  
45 timelines for selecting proposals for the review and selection of solicited proposals.

46  
47 The RFP should specify, but not necessarily be limited to, information and  
48 documents that must accompany each proposal and the factors that will be used in  
49 evaluating the submitted proposals. The RFP should be posted in such public areas as are

4 normally used for posting of the RPE's notices, including the RPE's website. Notices  
5 should also be published in a newspaper or other publications of general circulation and  
6 advertised in *Virginia Business Opportunities* and posted on the Commonwealth's  
7 electronic procurement site. In addition, solicited proposals should be posted pursuant to  
8 Section III.B. The RFP should also contain or incorporate by reference other applicable  
9 terms and conditions, including any unique capabilities or qualifications that will be  
10 required of the private entities submitting proposals. Pre-proposal conferences may be  
11 held as deemed appropriate by the RPE.

### 12 13 **III. Unsolicited Proposals**

14  
15 The PPEA permits public entities to receive, evaluate and select for negotiations  
16 unsolicited proposals from private entities to develop or operate a qualifying project.

17  
18 The RPE may publicize its needs and may encourage interested parties to submit  
19 unsolicited proposals subject to the terms and conditions of the PPEA. When such  
20 proposals are received without issuance of an RFP, the proposal shall be treated as an  
21 unsolicited proposal. The RPE may establish suggested timelines for selecting proposals  
22 for the review and selection of unsolicited proposals.

#### 23 24 **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

25  
26 1. Upon receipt of any unsolicited proposal or group of proposals and payment of  
27 any required fee by the proposer or proposers, the RPE should determine whether to  
28 accept the unsolicited proposal for the purpose of publication and conceptual-phase  
29 consideration. If the RPE determines not to accept the proposal and proceed to  
30 publication and conceptual-phase consideration, it should return the proposal, together  
31 with all fees and accompanying documentation, to the proposer.

32  
33 2. If the RPE chooses to accept an unsolicited proposal for publication and  
34 conceptual-phase consideration, it shall post a notice in a public area regularly used by  
35 the RPE for posting of public notices for a period of not less than 45 days. The RPE shall  
36 also publish the same notice for a period of not less than 45 days in one or more  
37 newspapers or periodicals of general circulation in the jurisdiction to notify any parties  
38 that may be interested in submitting competing unsolicited proposals. In addition, the  
39 notice should be advertised in *Virginia Business Opportunities* and on the  
40 Commonwealth's electronic procurement website. The notice shall state that the RPE (i)  
41 has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the  
42 proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer  
43 based on the proposal, and (iv) will receive for simultaneous consideration any  
44 competing proposals that comply with the procedures adopted by the RPE and the PPEA.  
45 The notice also shall summarize the proposed qualifying project or projects, and identify  
46 their proposed locations.

47  
48 To ensure that sufficient information is available upon which to base the  
49 development of a serious competing proposal, representatives of the RPE familiar with

4 the unsolicited proposal and the guidelines established by the RPE shall be made  
5 available to respond to inquiries and meet with private entities that are considering the  
6 submission of a competing proposal. The RPE shall conduct an analysis of the  
7 information pertaining to the proposal included in the notice to ensure that such  
8 information sufficiently encourages competing proposals. Further, the RPE shall establish  
9 criteria, including key decision points and approvals to ensure proper consideration of the  
10 extent of competition from available private entities prior to selection.

## 11 **B. Posting Requirements**

12  
13  
14 1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the  
15 RPE within 10 working days after acceptance of such proposals in the following manner:

16  
17 a. For RPEs that are state agencies, departments, and institutions, posting shall be  
18 on the Department of General Service's web-based electronic procurement program  
19 commonly known as "eVA" ; and

20  
21 b. For RPEs that are local public bodies, posting shall be on the RPEs website or  
22 by publication, in a newspaper of general circulation in the area in which the contract is  
23 to be performed, of a summary of the proposals and the location where copies of the  
24 proposals are available for public inspection. Posting may also be on the Department of  
25 General Service's web-based electronic procurement program commonly known as  
26 "eVA," in the discretion of the local RPE.

27  
28 2. Nothing shall be construed to prohibit the posting of the conceptual proposals  
29 by additional means deemed appropriate by the RPE so as to provide maximum notice to  
30 the public of the opportunity to inspect the proposals.

31  
32 3. In addition to the posting requirements, at least one copy of the proposals shall  
33 be made available for public inspection. Trade secrets, financial records, or other records  
34 of the private entity excluded from disclosure under the provisions of subdivision 11 of §  
35 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE  
36 and the private entity. Any inspection of procurement transaction records shall be subject  
37 to reasonable restrictions to ensure the security and integrity of the records.

### 38 **Best Practice Commentary**

#### 39 **Publicizing solicitations and proposals.**

40  
41 *At this stage in the process, in particular if an unsolicited proposal is involved, it is*  
42 *generally advantageous to the RPE to have as much competition as possible. The PPEA*  
43 *includes a minimum time period for publicizing proposals that have been received,*  
44 *although the RPE may publicize the proposals for longer periods of time, if it deems it*  
45 *appropriate.*  
46  
47  
48

4 One tool that may be used by the RPE to publicize a PPEA proposal or solicitation is the  
5 web-based purchasing system used by Virginia government--eVA. This system is used by  
6 all state agencies, colleges, universities and many local governments to announce bid  
7 opportunities, invite bidders, receive quotes, and place orders for goods and services.  
8 There is no cost for vendors to register on the system. PPEA solicitations may be posted  
9 on eVA and there is no charge as long as the resulting purchase order from the  
10 solicitation posted is not processed through eVA. Posting the solicitation or proposal on  
11 eVA will provide statewide exposure and may serve to increase the number and diversity  
12 of possible proposers. For information and procedures for processing a PPEA  
13 solicitation or proposal posting on eVA contact eVA Customer Care (866)289-7367/371-  
14 2525 or eVACustomerCare@dgs.virginia.gov.

### 15 16 **C. Initial Review by the Responsible Public Entity at the Conceptual Stage**

17  
18 1. Only proposals complying with the requirements of the PPEA that contain  
19 sufficient information for a meaningful evaluation and that are provided in an appropriate  
20 format should be considered by the RPE for further review at the conceptual stage.  
21 Formatting suggestions for proposals at the conceptual stage are found in Section I. V. A.

22  
23 2. The RPE should determine at this initial stage of review whether it will  
24 proceed using:

- 25  
26 a. Standard procurement procedures consistent with the VPPA; or  
27  
28 b. Guidelines developed by the RPE that are consistent with procurement of  
29 other than professional services through "competitive negotiation" as the  
30 term is defined in § 2.2-4301 of the Code of Virginia. The RPE may  
31 proceed using such guidelines only if it makes a written determination that  
32 doing so is likely to be advantageous to the RPE and the public based  
33 upon either (i) the probable scope, complexity or priority of need; (ii) the  
34 risk sharing including guaranteed cost or completion guarantees, added  
35 value or debt, or equity investments proposed by the private entity; or (iii)  
36 the increase in funding, dedicated revenue or other economic benefit that  
37 would otherwise not be available.

38  
39 3. After reviewing the original proposal and any competing proposals submitted  
40 during the notice period, the RPE may determine:

- 41  
42 (i) not to proceed further with any proposal;  
43  
44 (ii) to proceed to the detailed phase of review with the original proposal;  
45  
46 (iii) to proceed to the detailed phase with a competing proposal;  
47  
48 (iv) to proceed to the detailed phase with multiple proposals; or  
49

- 4 (v) to request modifications or amendments to any proposals.  
5

6 In the event that more than one proposal will be considered in the detailed phase  
7 of review, the RPE should consider whether the unsuccessful proposer should be  
8 reimbursed for costs incurred in the detailed phase of review, and such reasonable costs  
9 may be assessed to the successful proposer in the comprehensive agreement.  
10

11 | 4. Discussions between RPEs and private entities about the need for  
12 infrastructure improvements shall not limit the ability of a RPE to later determine to use  
13 standard procurement procedures to meet its infrastructure needs. The RPE retains the  
14 right to reject any proposal at any time prior to the execution of an interim or  
15 comprehensive agreement.  
16

#### 17 **IV. Proposal Preparation and Submission**

##### 18 **A. Format for Submissions at Conceptual Stage**

19 A RPE may require that proposals at the conceptual stage contain information in  
20 the following areas: (i) qualifications and experience, (ii) project characteristics, (iii)  
21 project financing, (iv) anticipated public support or opposition, or both, (v) project  
22 benefit and compatibility and (vi) any additional information as the RPE may reasonably  
23 request to comply with the requirements of the PPEA. Suggestions for formatting  
24 information to be included in proposals at this stage include the items listed below, as  
25 well as any additional information or documents that RPE may request:  
26  
27  
28

##### 29 **1. Qualification and Experience**

- 30
- 31 a. Identify the legal structure of the firm or consortium of firms making the  
32 proposal. Identify the organizational structure for the project, the  
33 management approach and how each partner and major subcontractor in  
34 the structure fits into the overall team.  
35
- 36 b. Describe the experience of the firm or consortium of firms making the  
37 proposal and the key principals involved in the proposed project including  
38 experience with projects of comparable size and complexity. Describe the  
39 length of time in business, business experience, public sector experience  
40 and other engagements of the firm or consortium of firms. Include the  
41 identity of any firms that will provide design, construction and completion  
42 guarantees and warranties, and a description of such guarantees and  
43 warranties.  
44
- 45 c. Provide the names, addresses, and telephone numbers of persons within  
46 the firm or consortium of firms who may be contacted for further  
47 information.  
48

- 4 d. Provide a current or most recently audited financial statement of the firm  
5 or firms and each partner with an equity interest of twenty percent or  
6 greater.  
7
- 8 e. Identify any persons known to the proposer who would be obligated to  
9 disqualify themselves from participation in any transaction arising from or  
10 in connection to the project pursuant to the Virginia State and Local  
11 Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of  
12 Title 2.2.  
13

14 2. Project Characteristics  
15

- 16 a. Provide a description of the project, including the conceptual design.  
17 Describe the proposed project in sufficient detail so that type and intent of  
18 the project, the location, and the communities that may be affected are  
19 clearly identified.  
20
- 21 b. Identify and fully describe any work to be performed by the RPE.  
22
- 23 c. Include a list of all federal, state, and local permits and approvals required  
24 for the project and a schedule for obtaining such permits and approvals.  
25
- 26 d. Identify any anticipated adverse social, economic, and environmental  
27 impacts of the project. Specify the strategies or actions to mitigate known  
28 impacts of the project.  
29
- 30 e. Identify the projected positive social, economic, and environmental  
31 impacts of the project.  
32
- 33 f. Identify the proposed schedule for the work on the project, including the  
34 estimated time for completion.  
35
- 36 g. Propose allocation of risk and liability for work completed beyond the  
37 agreement's completion date, and assurances for timely completion of the  
38 project.  
39
- 40 h. State assumptions related to ownership, legal liability, law enforcement,  
41 and operation of the project and the existence of any restrictions on the  
42 RPE's use of the project.  
43
- 44 i. Provide information relative to phased or partial openings of the proposed  
45 project prior to completion of the entire work.  
46
- 47 j. List any other assumptions relied on for the project to be successful.  
48
- 49 k. List any contingencies that must occur for the project to be successful.

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### 3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the RPE's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

### 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.

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- d. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the RPE and whether the project is critical to attracting or maintaining competitive industries and businesses to the RPE or the surrounding region.
- e. Describe 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.

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

If the RPE 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 RPE:

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;
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 project or projects;

- 4 7. Identification of any known government support or opposition, or general  
5 public support or opposition for the project. Government or public support  
6 should be demonstrated through resolution of official bodies, minutes of  
7 meetings, letters, or other official communications;  
8
- 9 8. Demonstration of consistency with appropriate local comprehensive or  
10 infrastructure development plans or indication of the steps required for  
11 acceptance into such plans;  
12
- 13 9. Explanation of how the proposed project would impact local development  
14 plans of each affected jurisdiction;  
15
- 16 10. Identification of the executive management and the officers and directors of  
17 the firm or firms submitting the proposal. In addition, identification of any  
18 known conflicts of interest or other disabilities that may impact the RPE's  
19 consideration of the proposal, including the identification of any persons  
20 known to the proposer who would be obligated to disqualify themselves from  
21 participation in any transaction arising from or in connection to the project  
22 pursuant to the Virginia State and Local Government Conflict of Interest Act,  
23 Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2;  
24
- 25 11. Additional material and information as the RPE may reasonably request.  
26

## 27 **V. Proposal Evaluation and Selection Criteria**

28  
29 There are several factors that the RPE may wish to consider when  
30 evaluating and selecting a proposal under the PPEA. The following are some of the  
31 factors that may be considered by the RPE in the evaluation and selection of PPEA  
32 proposals.  
33

### 34 **A. Qualifications and Experience**

35  
36 Factors to be considered in either phase of the RPE's review to determine whether  
37 the proposer possesses the requisite qualifications and experience include:  
38

- 39 1. Experience with similar projects;  
40
- 41 2. Demonstration of ability to perform work;  
42
- 43 3. Leadership structure;  
44
- 45 4. Project manager's experience;  
46
- 47 5. Management approach;  
48
- 49 6. Financial condition; and

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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 RPE;
- 2. Financing and the impact on the debt burden of the RPE or appropriating body;
- 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;
- 4. Opportunity costs assessment;
- 5. Estimated cost;
- 6. Life-cycle cost analysis;

4           7.     The identity, credit history, past performance of any third party that will  
5           provide financing for the project and the nature and timing of their  
6           commitment, as applicable; and

7  
8  
9

8           8.     Such other items as the RPE deems appropriate.

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

14

#### 15           **D. Project Benefit and Compatibility**

16

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

19

20           1.     Community benefits;

21

22           2.     Community support or opposition, or both;

23

24           3.     Public involvement strategy;

25

26           4.     Compatibility with existing and planned facilities; and

27

28           5.     Compatibility with local, regional, and state economic development efforts.

29

#### 30           **E. Other Factors**

31

32           Other factors that may be considered by the RPE in the evaluation and selection  
33           of PPEA proposals include:

34

35           1.     The proposed cost of the qualifying project;

36

37           2.     The general reputation, industry experience, and financial capacity of the  
38           private entity;

39

40           3.     The proposed design of the qualifying project;

41

42           4.     The eligibility of the project for accelerated documentation, review, and  
43           selection;

44

45           5.     Local citizen and government comments;

46

47           6.     Benefits to the public, including financial and nonfinancial;

48

- 4 7. The private entity's compliance with a minority business enterprise  
5 participation plan or good faith effort to comply with the goals of such  
6 plan;
- 7
- 8 8. The private entity's plans to employ local contractors and residents;
- 9
- 10 9. The recommendation of a committee of representatives of members of the  
11 RPE and the appropriating body which may be established to provide  
12 advisory oversight for the project; and
- 13
- 14 10. Other criteria that the RPE deems appropriate.

15  
16 **Best Practice Commentary**

17  
18 **Establishing a single point of contact for the RPE; treatment of unsuccessful**  
19 **proposers.**

20  
21 **To facilitate the free flow of information and efficiency The RPE may wish to establish a**  
22 **single point of contact once the open competition period has closed through which all**  
23 **questions may be addressed.**

24  
25 **The RPE should if requested, make staff available to an unsuccessful proposer to discuss**  
26 **generally the basis for the decision.**

27  
28 **VI. Additional Review Procedures.**

29  
30 **A. Public Private Partnership Oversight Advisory Committee**

31  
32 An RPE that is an agency or institution of the Commonwealth shall and all other  
33 RPEs may establish criteria to trigger establishment of an advisory committee consisting of  
34 representatives of the RPE and the appropriating body to review the terms of the proposed  
35 interim or comprehensive agreement. The criteria should include, but not be limited to, the  
36 scope, total cost and duration of the proposed project, and whether the project involves or  
37 impacts multiple public entities. Timelines for the work of the committee should be  
38 developed and made available to proposers.

39  
40 **B. Appropriating Body**

41  
42 If the RPE for appropriating or authorizing funding to pay for a qualifying project is  
43 different from the RPE reviewing or approving the project, then the RPE reviewing or  
44 approving the project should establish a mechanism for that appropriating body to review  
45 any proposed interim or comprehensive agreement prior to execution. When a school board  
46 is the RPE, review by the local governing body shall satisfy this requirement..

47  
48 **VII. Interim and Comprehensive Agreements**

4 Prior to developing or operating the qualifying project, the selected private entity  
5 shall enter into a comprehensive agreement with the RPE. Prior to entering a  
6 comprehensive agreement, an interim agreement may be entered into that permits a  
7 private entity to perform compensable activities related to the project. The RPE may  
8 designate a working group to be responsible for negotiating any interim or  
9 comprehensive agreement. Any interim or comprehensive agreement shall define the  
10 rights and obligations of the RPE and the selected proposer with regard to the project.

### 11 **A. Interim Agreement Terms**

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

- 13 1. Project planning and development;
- 14 2. Design and engineering;
- 15 3. Environmental analysis and mitigation;
- 16 4. Survey;
- 17 5. Ascertaining the availability of financing for the proposed facility through  
18 financial and revenue analysis;
- 19 6. Establishing a process and timing of the negotiation of the comprehensive  
20 agreement; and
- 21 7. Any other provisions related to any aspect of the development or operation of  
22 a qualifying project that the parties may deem appropriate prior to the  
23 execution of a comprehensive agreement.

### 24 **Best Practice Commentary**

25 *An Interim Agreement will usually be less detailed than a Comprehensive Agreement and*  
26 *will leave open items for further negotiations to be included in the Comprehensive*  
27 *Agreement. An Interim Agreement may be used in situations where information is needed*  
28 *to further develop the concept of the project and perhaps even the feasibility of going*  
29 *forward with the qualifying project. Thus, an Interim Agreement might be appropriate in*  
30 *order to have the selected private entity do certain architectural and engineering (A/E)*  
31 *drawings and feasibility studies so that the locality can determine how the final*  
32 *qualifying project might be developed or even if the project should proceed before*  
33 *entering into a more detailed and final Comprehensive Agreement.*

34 *An Interim Agreement may also be used to allow the private entity to start work on the*  
35 *A/E design and drawings while the remainder of the Comprehensive Agreement is*  
36 *completed. Therefore, an Interim Agreement should establish a process and timing for*  
37 *the continued negotiations and completion of a Comprehensive Agreement. In addition,*

4 | the Interim Agreement should allow the RPE or private entity to terminate the Interim  
5 | Agreement if matters do not work out during continued negotiations. This type of clause  
6 | in the Interim Agreement would allow for termination of the agreement and provide for  
7 | payment of the agreed-upon compensation to the private entity for the scheduled work  
8 | that the private entity completed pursuant to the Interim Agreement.

9  
10 | **B. Comprehensive Agreement Terms**

11  
12 | The scope of the comprehensive agreement shall include but not be limited to:

- 13  
14 | 1. The delivery of maintenance, performance and payment bonds or letters of  
15 | credit in connection with any acquisition, design, construction, improvement,  
16 | renovation, expansion, equipping, maintenance, or operation of the qualifying  
17 | project;
- 18  
19 | 2. The review of plans and specifications for the qualifying project by the RPE;
- 20  
21 | 3. The rights of the RPE to inspect the qualifying project to ensure compliance  
22 | 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 private entity by the RPE to ensure  
30 | proper maintenance;
- 31  
32 | 6. The terms under which the private entity will reimburse the RPE for services  
33 | provided;
- 34  
35 | 7. The policy and procedures that will govern the rights and responsibilities of  
36 | the RPE and the private entity in the event that the comprehensive agreement  
37 | is terminated or there is a material default by the private entity including the  
38 | conditions governing assumption of the duties and responsibilities of the  
39 | private entity by the RPE and the transfer or purchase of property or other  
40 | interests of the private entity by the RPE;
- 41  
42 | 8. The terms under which the private entity will file appropriate financial  
43 | statements on a periodic basis;
- 44  
45 | 9. The mechanism by which user fees, lease payments, or service payments, if  
46 | any, may be established from time to time upon agreement of the parties. Any  
47 | payments or fees shall be set at a level that is the same for persons using the  
48 | facility under like conditions and that will not materially discourage use for  
49 | the qualifying project;

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- a. A copy of any service contract shall be filed with the RPE.
  - b. A schedule of the current user fees or lease payments shall be made available by the 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 RPE may contribute financial resources, if any, for the qualifying project;
  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;
  12. The terms and conditions under which the RPE 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 RPE may deem appropriate.

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.

**C. Public hearing during proposal review process; Notice and Posting requirements notice and posting requirements.**

~~1. In addition to the posting requirements of Section III. B, 30 days prior to entering into an interim or comprehensive agreement, the RPE shall provide an opportunity for public comment on the proposals. Such public comment period may include a public hearing in the sole discretion of the RPE. After the end of the public comment period, no additional posting shall be required based on any public comment received. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, the RPE shall hold a public hearing on the proposals that have been received.~~

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the RPE, the RPE shall post the proposed agreement in the following manner:

4 a. For RPEs that are state agencies, departments, and institutions, posting shall be  
5 on the Department of General Service's web-based electronic procurement program  
6 commonly known as "eVA"; and

7  
8 b. For RPEs that are local public bodies, posting shall be on the RPEs' website or  
9 by publication, in a newspaper of general circulation in the area in which the contract  
10 work is to be performed, of a summary of the proposals and the location where copies of  
11 the proposals are available for public inspection. Posting may also be on the Department  
12 of General Service's web-based electronic procurement program commonly known as  
13 "eVA," in the discretion of the local RPE.

14  
15 | c. ~~In addition to the posting requirements, at~~ At least one copy of the proposals  
16 shall be made available for public inspection. Trade secrets, financial records, or other  
17 records of the private entity excluded from disclosure under the provisions of subdivision  
18 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the  
19 RPE and the private entity.

20  
21 | d. Any studies and analyses considered by the RPE in its review of a proposal  
22 shall be disclosed to the appropriating body at some point prior to the execution of an  
23 interim or comprehensive agreement.

24  
25 3. Once an interim agreement or a comprehensive agreement has been entered  
26 into, the RPE shall make procurement records available for public inspection, upon  
27 request.

28  
29 a. Such procurement records shall include documents protected from disclosure  
30 during the negotiation phase on the basis that the release of such documents would have  
31 adverse affect on the financial interest or bargaining position of the RPE or private entity  
32 in accordance with Section II.D.3.

33  
34 b. Such procurement records shall not include (i) trade secrets of the private  
35 entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial  
36 records, including balance sheets or financial statements of the private entity that are not  
37 generally available to the public through regulatory disclosure or otherwise.

38  
39 | To the extent access to procurement records are compelled or protected by a court  
40 order, then the RPE must comply with such order.

41  
42 | 4. The RPE shall electronically file a copy of all interim and comprehensive  
43 agreement and any supporting documents with the Auditor of Public Accounts. Such  
44 agreements and supporting documents should be provided within 30 days of the  
45 execution of the interim or comprehensive agreement.

4 **VIII. Governing Provisions**

5

6 In the event of any conflict between these guidelines and the PPEA, the terms of the  
7 PPEA shall control.

4  
5 **Terms and Definitions**  
6

7 **"Affected jurisdiction"** means any county, city, or town in which all or a portion of a  
8 qualifying project is located.  
9

10 **"Appropriating body"** means the body responsible for appropriating or authorizing  
11 funding to pay for a qualifying project.  
12

13 **"Comprehensive agreement"** means the comprehensive agreement between the private  
14 entity and the responsible public entity that is required prior to the development or  
15 operation of a qualifying project.  
16

17 **"Conceptual stage"** means the initial phase of project evaluation when the public entity  
18 makes a determination whether the proposed project serves a public purpose, meets the  
19 criteria for a qualifying project, assesses the qualifications and experience of a private  
20 entity proposer, reviews the project for financial feasibility, and warrants further pursuit.  
21

22 **"Cost-benefit analysis"** means an analysis that weighs expected costs against expected  
23 benefits in order to choose the best option. For example, a city manager may compare  
24 the costs and benefits of constructing a new office building to those of renovating and  
25 maintaining an existing structure in order to select the most financially advantageous  
26 option.  
27

28 **"Detailed stage"** means the second phase of project evaluation where the public entity  
29 has completed the conceptual stage and accepted the proposal and may request additional  
30 information regarding a proposed project prior to entering into competitive negotiations  
31 with one or more private entities to develop an interim or comprehensive agreement.  
32

33 **"Develop"** or **"development"** means to plan, design, develop, finance, lease, acquire,  
34 install, construct, or expand.  
35

36 **"Interim agreement"** means an agreement between a private entity and a responsible  
37 public entity that provides for phasing of the development or operation, or both, of a  
38 qualifying project. Such phases may include, but are not limited to, design, planning,  
39 engineering, environmental analysis and mitigation, financial and revenue analysis, or  
40 any other phase of the project that constitutes activity on any part of the qualifying  
41 project.  
42

43 **"Lease payment"** means any form of payment, including a land lease, by a public entity  
44 to the private entity for the use of a qualifying project.  
45

46 **"Lifecycle cost analysis"** means an analysis that calculates cost of an asset over its entire  
47 life span and includes the cost of planning, constructing, operating, maintaining,  
48 replacing, and when applicable, salvaging the asset. Although one proposal may have a

4 lower initial construction cost, it may not have the lowest lifecycle cost once  
5 maintenance, replacement, and salvage value is considered.

6  
7 **"Material default"** means any default by the private entity in the performance of its  
8 duties that jeopardizes adequate service to the public from a qualifying project.

9  
10 **"Operate"** means to finance, maintain, improve, equip, modify, repair, or operate.

11  
12 **"Opportunity cost"** means the cost of passing up another choice when making a  
13 decision or the increase in costs due to delays in making a decision.

14  
15 **"Private entity"** means any natural person, corporation, general partnership, limited  
16 liability company, limited partnership, joint venture, business trust, public benefit  
17 corporation, nonprofit entity, or other business entity.

18  
19 **"Public entity"** means the Commonwealth and any agency or authority thereof, any  
20 county, city or town and any other political subdivision of the Commonwealth, any  
21 public body politic and corporate, or any regional entity that serves a public purpose.

22  
23 **"Qualifying project"** means (i) any education facility, including, but not limited to a  
24 school building, any functionally related and subordinate facility and land of a school  
25 building (including any stadium or other facility primarily used for school events), and  
26 any depreciable property provided for use in a school facility that is operated as part of  
27 the public school system or as an institution of higher education; (ii) any building or  
28 facility that meets a public purpose and is developed or operated by or for any public  
29 entity; (iii) any improvements, together with equipment, necessary to enhance public  
30 safety and security of buildings to be principally used by a public entity; (iv) utility and  
31 telecommunications and other communications infrastructure; (v) a recreational facility;  
32 (vi) technology infrastructure and services, including, but not limited to,  
33 telecommunications, automated data processing, word processing and management  
34 information systems, and related information, equipment, goods and services; (vii) any  
35 technology, equipment, or infrastructure designed to deploy wireless broadband services  
36 to schools, businesses, or residential areas; ~~or~~ (viii) any services designed to increase the  
37 productivity or efficiency through the use of technology or other means; (ix) any  
38 improvements necessary or desirable to any unimproved locally- or state-owned real  
39 estate; or (x) any solid waste management facility that produces electric energy derived  
40 from solid waste.

41  
42 **"Responsible public entity"** means a public entity that has the power to develop or  
43 operate the applicable qualifying project.

44  
45 **"Revenues"** means all revenues, income, earnings, user fees, lease payments, or other  
46 service payments arising out of or in connection with supporting the development or  
47 operation of a qualifying project, including without limitation, money received as grants  
48 or otherwise from the United States of America, from any public entity, or from any  
49 agency or instrumentality of the foregoing in aid of such facility.

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**"Service contract"** means a contract entered into between a public entity and the private entity pursuant to § 56-575.5.

**"Service payments"** means payments to the private entity of a qualifying project pursuant to a service contract.

**"State"** means the Commonwealth of Virginia.

**"User fees"** mean the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to § 56-575.9.