

**CITY OF ROANOKE'S COMMENTS ON THE 2007 PUBLIC COMMENT
DRAFT OF THE UPDATED PPEA MODEL GUIDELINES
(July 11, 2007)**

Page 1, footnote after line 26 – shouldn't this read "Revised – September 2007"?

Page 4, line 11 – the acronym "RPE" is used to represent "responsible public entity". However, "RPE" is not used consistently throughout the rest of the document. Examples include page 5, line 31; page 7, line 2; page 11, line 15; page 15, line 19.

Pages 5-7, under the section "Guidelines for the review and approval of proposals and projects", lines 38 and 39 state "Guidelines adopted by state public entities shall and guidelines adopted by other public entities may include the following provisions". The rest of page 5, page 6, and a portion of page 7 identify the twelve provisions. However, in the review of Senate bill 756, lines 201- 213, provisions 7 (page 6, lines 14-15) and 12 (page 6, lines 42-46 and page 7, lines 1-2) are required to be included in the guidelines for other public entities. Therefore, the guidelines should reflect this requirement.

Pages 5-7, under the section "Guidelines for the review and approval of proposals and projects", the twelve provisions listed are not listed in the same order as they appear in Senate Bill 756, lines 164-213. Should they be?

Page 8, under "C. Proposal Review Fee", lines 39 and 40 state, "No fee may be charged by a public entity to process, review, or evaluate any solicited proposal submitted under the PPEA." Is there a specific provision that prohibits this, or is this just the preference of the committee? We have in our guidelines a provision that allows the option to charge a fee for solicited proposals, and we understand some other localities have similar provisions.

Page 9, under "D. Freedom of Information Act", lines 32-46 outline documents that are exempt from FOIA requests. However, FOIA cannot release a responsible public entity from its duty to respond to a court order or other applicable law, and this should be added to the guidelines. Something like the following at the end of line 34 could be added "... except to the extent the documents are those as set forth below, unless otherwise required by law or a court."

Page 10, lines 9, 15, and 21 reference "Section D.1." Shouldn't these be listed as "Section I(D)(1)"? The Section number should be listed since there is more than one provision designated as (D)(1).

Page 10, under "D. Freedom of Information Act", lines 23-26 read, "Once a written determination has been made by the RPE, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the RPE or any affected jurisdiction to which such documents are provided." We feel the following verbiage should be added to the end of that paragraph, "unless otherwise

required by law or a court.” Additionally, can the RPE require the private entity to pay the RPE its costs for defending any request or action to compel disclosure of records? Or is this prohibited by law?

Page 11, under “D. Freedom of Information Act”, line 20 should be revised to read, “RPE may not withhold from public access, unless otherwise required or authorized by law or a court.”

Page 12, “Section II. Solicited Proposals”, lines 9-12 indicate that the RPE may issue Requests for Proposals (RFPs) inviting proposals from private entities to develop or operate qualifying projects. Doesn’t the act also allow for Invitations for Bids (IFBs), and does the jurisdiction need to first decide if an RFP is needed, or does this only apply for the detailed phase in connection with entering into a comprehensive agreement?

Page 13, under “B. Posting Requirements”, lines 36-38 read, “Conceptual proposals, whether solicited or unsolicited, shall be posted by the RPE within 10 working days after acceptance of such proposals ...” What is meant by “acceptance” in this situation? Does it mean the physical acceptance of the proposal when the public entity’s Purchasing Dept opens the proposal, or does it mean the RPE’s acceptance of a proposal for consideration?

Page 14, Section B(1)(b), lines 1-7 outline the posting the RPE must do within 10 days after the acceptance of proposals. Who is responsible for paying the cost of posting this information on websites or in publications and newspapers – the RPE or the private entity that submitted the proposal?

Page 14, under “C. Initial Review by the Responsible Public Entity at the Conceptual Stage”, line 25 references “Section V (A).” Shouldn’t this read, “Section IV (A)”?

Page 15, under “A. Format for Submissions at Conceptual Stage”, lines 34-35 should be revised to read, “Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents the RPE may request:”

Page 20, under “C. Project Financing”, line 45 should be revised to read, “Financing and the impact on the debt or debt burden of the RPE and appropriating body.” The RPE could be our Roanoke City School Board, but the School Board does not have debt or a debt burden. Technically, only the City has debt or a debt burden.

Page 21, line 6, what does “opportunity costs assessment” mean?

Page 22, after line 24, should an additional section on the selection process be added that allows the RPE to try to reach a comprehensive agreement with the selected private entity, but if it’s not able to, the RPE can move on to negotiations with another proposer, thus keeping its options open until a comprehensive agreement acceptable to the RPE is

reached? This would be a similar process to that used when negotiating proposals in “Other than Professional Services” solicitations.

Page 22, “A. Public Private Partnership Oversight Advisory Committee”, lines 29-34, we wish to confirm that this section only applies to state agencies and that localities may establish an advisory committee, but they are not required to do so?

On pages 22 and 23, “B. Appropriating Body”, lines 38-41 on page 22 and lines 1-3 on page 23, it references that “... the public entity should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. For proposals where school board is the RPE, the governing body shall serve as the appropriating body. The review of the governing body for such projects as required by Section 56-575.16 5 shall meet the requirements of this section.” Shouldn’t the reference be to Section 56-575.16 (6) and read as follows, “The review of the local governing body for such school board projects as required by Section 56-575.16 (6) shall meet the requirements of this section.” In Roanoke, both the City and the City Schools are considered RPE’s and both have implemented PPEA guidelines. However, the City could be the public entity responsible for appropriating or authorizing funding to pay for a qualifying project for our Schools. Only our City Council, not our School Board, can obligate us to long term debt. As such, which public entity, or both, should include in its guidelines the mechanism for the City to review any proposed interim or comprehensive agreement prior to execution? In addition, for the proposals where the school board is the RPE, is the “governing body” that is referenced above the City Council or the governing body for the school board, or both? Therefore, should there be a reference to “local governing body”, and should it be defined in the definitions?

Page 25, under “C. Notice and Posting requirements”, line 23 references “Section V”; shouldn’t that be “Section III (B)”?

Page 26, under “C. Notice and Posting requirements”, we feel lines 11-13 should be revised to read, “Once an interim agreement or a comprehensive agreement has been entered into, a RPE shall make procurement records available for public inspection, upon request, unless otherwise required or authorized by law or by a court.” Also, even though an interim agreement may have been entered into, if a comprehensive agreement is still under negotiation, we don’t feel the records should be disclosed in case the RPE may need to go to the next private entity to get an acceptable comprehensive agreement.

Page 26, “VIII. Governing Provisions”, on line 27, shouldn’t the word “provisions” be replaced with the word “guidelines”?