Terms and Definitions

Affected jurisdiction - any county, city or town in which all or a portion of a qualifying project is located. It is important for the public entity to consider all the jurisdictions that may be affected by a qualifying project so responsible public entities from those jurisdictions are involved in evaluating a qualifying project. It should be noted that a qualifying project, depending on its purpose, may affect jurisdictions outside of where the project is physically located. For example, a water treatment facility might affect jurisdictions beyond where it is physically located. While the Code of Virginia does not specifically include these jurisdictions in its definition, the public entity may expand their definition of affected jurisdiction to include such entities.

Appropriating body - the body responsible for appropriating or authorizing funding to pay for a qualifying project. For example, the board of supervisors for a county may appropriate or authorize funding for the school board. The board of supervisors would be the appropriating body for the purposes of this statute.

Comprehensive agreement - the comprehensive agreement between the private entity and the responsible public entity. A comprehensive agreement is a written document that contains information specific to the public private partnership including terms and conditions similar to a contract.

Conceptual stage – the initial phase of project evaluation where the public entity assesses whether the proposed project serves a public purpose, meets the criteria for a qualifying project, and warrants further pursuit.

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

Detailed stage – the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and enters into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement. During the detailed stage the public entity will inform and involve other parties, such as the appropriating body.

Earmarking - denotes the method used to identify or designate trade secrets and other proprietary records for which protection is sought, such as, but not limited to, highlighted, italicized or bolded font. It is the private entity's responsibility to earmark information that the public entity should protect.

Interim agreement – an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying project. An interim agreement would typically take the nature of a draft comprehensive agreement and allows the public entity to formally notify the private entity of their intent to execute a comprehensive agreement in the future. The interim agreement provides many of the details found in a comprehensive agreement and forms the basis for the comprehensive agreement.

Lifecycle cost analysis – an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and salvaging the asset. It is an important analysis because it shows more than the initial construction costs associated with a project and facilitates a comparison of the total cost of ownership for several proposals. In practical terms, a lifecycle cost analysis would allow a county to compare several proposals for the construction of a new library and determine which proposal has the lowest total cost of ownership. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

Operate - to finance, maintain, improve, equip, modify, repair, or operate. A public private partnership may involve any or all of these features.

Opportunity cost – the cost of passing up the next best choice when making a decision or the increase in costs due to delays in making a decision. For example, if an asset is used for one purpose, the opportunity cost is the value of the next best purpose the asset could have been used for. Specifically, if a county decides to use a parcel of land it owns to construct a school, the opportunity cost is the cost of something else that could have been done with the land and construction funds. By constructing the school, the county has forgone the opportunity to build a public library or other facility on the land or to sell the land and use the profits and construction funds for another purpose. In another example, when a county chooses to wait another year before deciding whether to construct a school, they are subject to potential increases in cost of materials and supplies for the project, such as steel. These cost increases are an opportunity cost of that decision.

Private entity – any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity. A private entity is the entity that approaches the governmental organization with a proposal to develop and/or operate a qualifying project. For example, a corporation may propose a project to a city council to build and/or operate a school. In this example the corporation is considered the private entity.

Public entity - the Commonwealth and any agency or authority thereof, any county, city, or town and any other political subdivision of any of the foregoing, but shall not include any public service company. For example, a business may approach a school board with a proposal that the business build a school in a locality. In this example the school board is considered a public entity.

Public Private Partnership Oversight Advisory Committee –the Code of Virginia establishes this as an advisory committee in the legislative branch of state government. The purpose of the Committee shall be to review and advise responsible public entities that are agencies or institutions of the Commonwealth on proposals received. The committee was established to ensure the legislative branch was adequately informed regarding public private partnerships that may represent significant financial obligations to the Commonwealth and to ensure issues and concerns are addressed early, before a comprehensive agreement is finalized. Public entities other than agencies or institutions of the Commonwealth may wish to create a similar committee structure in those instances where the responsible public entity is not also the appropriating body. Such a committee may help to prevent potential delays in the execution of a comprehensive agreement by ensuring the appropriating body remains informed of the qualifying project once proposed.

Qualifying project - A qualifying project is:

1. An education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), 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;

2. Any building or facility that meets a public purpose and is developed or operated by or for any public entity;

3. Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;

4. Utility and telecommunications and other communications infrastructure;

5. A recreational facility;

6. Technology infrastructure and technology services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;

7. Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or

8. Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

Generally a qualifying project will be an education facility and/or the facilities contents, such as desks and chairs; a public building, such as a courthouse or police headquarters; public parks and recreational facilities, such as swimming pools; or telecommunication and technology infrastructure. If a project does not meet the criteria for a qualifying project, the public entity may not use the provisions of the Public-Private Education Facilities and Infrastructure Act of 2002.

Responsible public entity - a public entity, including local governments and regional authorities, that has the power to develop and/or operate the qualifying project. For county, city, or town and any other political subdivisions, the public entity may negotiate with a private entity but the public entity may not have the authority to financially obligate the county, city, or town. That authority may reside with another public entity known as the appropriating body. For example, a county school board, as a responsible public entity, may negotiate with a private entity to construct and operate a new school building however they must receive the board of supervisors’ approval, as the appropriating body, before they can financially obligate the county under a comprehensive agreement.