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

**Model Guidelines**

**REVISED  
September 2007**

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

4  
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1  
2 **Introduction**

3  
4 **Overview**

5  
6 The Public-Private Education Facilities and Infrastructure Act of 2002 (the  
7 "PPEA") grants responsible public entities the authority to create public-private  
8 partnerships for the development of a wide range of projects for public use if the public  
9 entities determine there is a need for the project and that private involvement may  
10 provide the project to the public in a timely or cost-effective fashion. The PPEA defines  
11 "responsible public entity" (RPE) to include any public entity that "has the power to  
12 develop or operate the applicable qualifying project." Individually negotiated interim or  
13 comprehensive agreements between a private entity and an RPE will define the respective  
14 rights and obligations of the RPE and the private entity.

15  
16 In order for a project to come under the PPEA, it must meet the definition of a  
17 "qualifying project." The PPEA contains a broad definition of qualifying project that  
18 includes public buildings and facilities of all types; for example:

- 19  
20 (i) An education facility, including but not limited to a school building  
21 (including any stadium or other facility primarily used for school events),  
22 any functionally related and subordinate facility and land to a school  
23 building and any depreciable property provided for use in a school facility  
24 that is operated as part of the public school system or as an institution of  
25 higher education;
- 26  
27 (ii) A building or facility that meets a public purpose and is developed or  
28 operated by or for any public entity;
- 29  
30 (iii) Improvements, together with equipment, necessary to enhance public  
31 safety and security of buildings to be principally used by a public entity;
- 32  
33 (iv) Utility and telecommunications and other communications infrastructure;
- 34  
35 (v) A recreational facility;
- 36  
37 (vi) Technology infrastructure and services, including but not limited to  
38 telecommunications, automated data processing, word processing and  
39 management information systems, and related information, equipment,  
40 goods and services;
- 41  
42 (vii) Technology, equipment, or infrastructure designed to deploy wireless  
43 broadband services to schools, businesses, or residential areas, or
- 44  
45 (viii) Any improvements necessary or desirable to any unimproved locally- or  
46 state-owned real estate.

1  
2 The PPEA establishes requirements that the RPE must adhere to when reviewing  
3 and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies  
4 the criteria that must be used to select a proposal and the contents of the interim or  
5 comprehensive agreement detailing the relationship between the RPE and the private  
6 entity.

7  
8 In passing the legislation, and following subsequent amendments to the Act in  
9 2005, 2006, and 2007, the General Assembly directed the Governor and the chairs of the  
10 House and Senate Committees on General Laws to facilitate the development of model  
11 guidelines to assist in the implementation of the PPEA. Because the PPEA is intended to  
12 encourage innovative partnerships between RPEs and private entities, RPEs are  
13 encouraged to maintain an open dialogue with private entities to discuss the need for  
14 infrastructure improvements.

15  
16 **Guidelines for the review and approval of proposals and projects**

17  
18 Responsible public entities are required to adopt and make publicly available  
19 guidelines that are sufficient to enable the public entity to comply with the requirements  
20 of the PPEA. The guidelines should be reasonable and structured to encourage  
21 competition. In addition, to facilitate communication, the RPE should designate an  
22 individual to serve as the point of contact for receiving proposals submitted under the  
23 PPEA and responding to inquiries regarding the PPEA or the guidelines.

24  
25 Guidelines adopted by all RPEs are required to include provisions that require the  
26 posting and publishing of public notice of a private entity's request for approval of a  
27 qualifying project, including (i) specific information and documentation to be released  
28 regarding the nature, timing, and scope of the qualifying project pursuant to subsection A  
29 of § 56-575.4; (ii) a reasonable time period of at least 45 days during which the RPE shall  
30 receive competing proposals pursuant to subsection A of § 56-575.4. Such time period  
31 shall also be determined by the RPE to encourage competition and public-private  
32 partnerships in accordance with the goals of the PPEA; and (iii) a requirement for  
33 advertising the public notice in the Virginia Business Opportunities publication and  
34 posting a notice on the Commonwealth's electronic procurement website.

35  
36 RPEs that are agencies or institutions of the Commonwealth are required to  
37 include the following provisions in their guidelines:

- 38  
39 1. Opportunities for competition through public notice and availability of representatives  
40 of the RPE to meet with private entities considering a proposal;  
41  
42 2. Reasonable criteria for choosing among competing proposals;  
43  
44 3. Suggested timelines for selecting proposals and negotiating an interim or  
45 comprehensive agreement;  
46

- 1 4. Authorization for accelerated selection and review and documentation timelines for  
2 proposals involving a qualifying project that the RPE deems a priority;  
3
- 4 5. Financial review and analysis procedures that shall include, at a minimum, a cost-  
5 benefit analysis, an assessment of opportunity cost, and consideration of the results of all  
6 studies and analyses related to the proposed qualifying project. These procedures shall  
7 also include requirements for the disclosure of such analysis to the appropriating body for  
8 review prior to execution of an interim or comprehensive agreement;  
9
- 10 6. Consideration of the nonfinancial benefits of a proposed qualifying project;  
11
- 12 7. A mechanism for the appropriating body to review a proposed interim or  
13 comprehensive agreement prior to execution;  
14
- 15 8. Criteria for triggering the establishment of an advisory committee consisting of  
16 representatives of the RPE and the appropriating body to review the terms of the  
17 proposed interim or comprehensive agreement. Suggested criteria include the scope,  
18 costs, and duration of the qualifying project, as well as whether the project involves or  
19 impacts multiple RPEs;  
20
- 21 9. Analysis of the adequacy of the information released when seeking competing  
22 proposals and providing for the enhancement of that information, if deemed necessary, to  
23 encourage competition; and  
24
- 25 10. Establishment of criteria, key decision points, and approvals required to ensure that  
26 the RPE considers the extent of competition before selecting proposals and negotiating an  
27 interim or comprehensive agreement.  
28

29 | Guidelines of local RPEs must include a requirement that such RPEs engage the  
30 services of qualified professionals, which may include an architect, professional engineer,  
31 or certified public accountant, not otherwise employed by the public entity, to provide  
32 independent analysis regarding the specifics, advantages, disadvantages, and the long-  
33 and short-term costs of any request by a private entity for approval of a qualifying project  
34 unless the governing body of the RPE determines that such analysis of a request by a  
35 private entity for approval of a qualifying project shall be performed by employees of the  
36 RPE.  
37 |

### 38 | **Statement of Purpose**

39  
40 The following model guidelines have been developed to assist RPEs in adopting  
41 guidelines to guide the implementation of the PPEA. The guidelines are intended to  
42 serve as a general guide for the implementation of the PPEA. The RPE is not required to  
43 | adopt the entire text of the model guidelines. Each RPE has the flexibility to add or  
44 delete provisions included in the model guidelines and to include provisions not  
45 contained in the model guidelines so long as the resulting guidelines comply with the  
46 PPEA. The complete text of the PPEA has been included in the Appendix to these model

1 guidelines. Although guidance with regard to the application of the PPEA is provided  
2 herein, it will be incumbent upon all entities, both public and private, to comply with the  
3 provisions of the PPEA.

4  
5 In the event that the PPEA is amended in a manner that either conflicts with  
6 guidelines developed by the RPE or concerns material matters not addressed by such  
7 guidelines, the RPE should appropriately amend the guidelines. If the guidelines are not  
8 amended prior to the effective date of the new law, the guidelines nonetheless shall be  
9 interpreted in a manner to conform to the new law.

## 10 11 **I. General Provisions**

### 12 13 **A. Proposal Submission**

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

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

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

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

### 6 7 **B. Affected Jurisdictions**

8  
9 Any private entity requesting approval from or submitting a conceptual or  
10 detailed proposal to the RPE must provide each affected jurisdiction with a copy of the  
11 private entity's request or proposal by certified mail, express delivery, or hand delivery.  
12 Affected jurisdictions that are not RPEs under the proposed qualifying project shall have  
13 60 days from the receipt of the request or proposal to submit written comments to the  
14 RPE and to indicate whether the proposed qualifying project is compatible with the (i)  
15 local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital  
16 improvements budget or other government spending plan. Comments received within the  
17 60-day period shall be given consideration by the RPE, and no negative inference shall be  
18 drawn from the absence of comment by an affected jurisdiction.

### 19 20 **C. Proposal Review Fee**

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

33  
34 The proposal fee may cover all or part of the initial review process. For example,  
35 the RPE may require a proposal fee in an amount sufficient to cover all anticipated direct  
36 costs associated with evaluating the proposal, or the RPE may require a smaller initial  
37 processing fee with an additional proposal fee to be charged should the project proceed  
38 beyond the initial review.

39  
40 The RPE may establish a fee schedule for the cost of the proposal review. The  
41 RPE shall set forth in the procedures it has established for the implementation of the  
42 PPEA the methodology used to calculate proposal fees. If the cost of reviewing the  
43 proposal exceeds the initially established proposal fee, the RPE may assess the proposer  
44 the additional costs deemed necessary to evaluate the proposal.

45



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

## 7 8 **D. Freedom of Information Act**

### 9 10 **1. General applicability of disclosure provisions.**

11  
12 Proposal documents submitted by private entities are generally subject to the  
13 Virginia Freedom of Information Act (“FOIA”) except that subdivision 11 of § 2.2-  
14 3705.6 exempts certain documents from public disclosure. FOIA exemptions, however,  
15 are discretionary, and the RPE may elect to release some or all of documents except to  
16 the extent the documents are:

17  
18 a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act  
19 (§ 59.1-336 et seq.);

20  
21 b. Financial records of the private entity that are not generally available to the  
22 public through regulatory disclosure or otherwise, including but not limited to, balance  
23 sheets and financial statements; or

24  
25 c. Other information submitted by a private entity, where if the record or  
26 document were made public prior to the execution of an interim or comprehensive  
27 agreement the financial interest or bargaining position of the public or private entity  
28 would be adversely affected.

29  
30 Additionally, to the extent access to proposal documents submitted by private  
31 entities are compelled or protected from disclosure by a court order, the RPE must  
32 comply with the provisions of such order.

33  
34 An RPE may contact the Freedom of Information Act Council (FOIAC) regarding  
35 the applicability of the access provisions of FOIA:

36  
General Assembly Building, 2<sup>nd</sup> Floor Telephone: 804/225-3056  
910 Capitol Street Richmond, VA 23219 Toll-Free: 1-866-448-4100  
E-mail: [foiacouncil@leg.state.va.us](mailto:foiacouncil@leg.state.va.us) Fax: 804/371-8705

### 37 38 **2. Protection from mandatory disclosure for certain documents submitted** 39 **by a private entity.**

40  
41 Before a document of a private entity may be withheld from disclosure, the  
42 private entity must make a written request to the RPE at the time the documents are  
43 submitted designating with specificity the documents for which the protection is being

1 sought and a clear statement of the reasons for invoking the protection with reference to  
2 one or more of three classes of records listed in Section I.D.1.

3  
4 Upon the receipt of a written request for protection of documents, the RPE shall  
5 determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii)  
6 other information that would adversely affect the financial interest or bargaining position  
7 of the RPE or private entity in accordance with Section I.D.1. The RPE shall make a  
8 written determination of the nature and scope of the protection to be afforded by the RPE  
9 under this subdivision. If the written determination provides less protection than  
10 requested by the private entity, the private entity should be accorded an opportunity to  
11 withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be  
12 accorded protection from release although what may be protected must be limited to the  
13 categories of records identified in Section I.D.1 .

14  
15 Once a written determination has been made by the RPE, the documents afforded  
16 protection under this subdivision shall continue to be protected from disclosure when in  
17 the possession of the RPE or any affected jurisdiction to which such documents are  
18 provided.

19  
20 If a private entity fails to designate trade secrets, financial records, or other  
21 confidential or proprietary information for protection from disclosure, such information,  
22 records or documents shall be subject to disclosure under FOIA.

23  
24 **3. Protection from mandatory disclosure for certain documents produced by**  
25 **the RPE.**

26  
27 The RPE may withhold from disclosure memoranda, staff evaluations, or other  
28 records prepared by the RPE, its staff, outside advisors, or consultants exclusively for the  
29 evaluation and negotiation of proposals where (i) if such records were made public prior  
30 to or after the execution of an interim or a comprehensive agreement, the financial  
31 interest or bargaining position of the RPE would be adversely affected, and (ii) the basis  
32 for the determination required in clause (i) is documented in writing by the RPE.

33  
34 Cost estimates relating to a proposed procurement transaction prepared by or for  
35 the RPE shall not be open to public inspection.

36  
37 **4. The RPE may not withhold from public access:**

38  
39 (a) procurement records other than those subject to the written determination of  
40 the RPE;

41  
42 (b) information concerning the terms and conditions of any interim or  
43 comprehensive agreement, service contract, lease, partnership, or any agreement of any  
44 kind entered into by the RPE and the private entity;

45  
46 (c) information concerning the terms and conditions of any financing arrangement  
47 that involves the use of any public funds; or

1  
2 (d) information concerning the performance of any private entity developing or  
3 operating a qualifying transportation facility or a qualifying project.  
4

5 However, to the extent that access to any procurement record or other document  
6 or information is compelled or protected by a court order, then the RPE must comply  
7 with such order.  
8

#### 9 **E. Use of Public Funds**

10 Virginia constitutional and statutory requirements as they apply to appropriation  
11 and expenditure of public funds apply to any interim or comprehensive agreement  
12 entered into under the PPEA. Accordingly, the processes and procedural requirements  
13 associated with the expenditure or obligation of public funds shall be incorporated into  
14 planning for any PPEA project or projects.  
15

#### 16 **F. Applicability of Other Laws**

17 Nothing in the PPEA shall affect the duty of the RPE to comply with all other  
18 applicable law not in conflict with the PPEA. The applicability of the Virginia Public  
19 Procurement Act (the "VPPA") is as set forth in the PPEA.  
20  
21

### 22 **II. Solicited Proposals**

23 The RPE may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs),  
24 inviting proposals from private entities to develop or operate qualifying projects. An RPE  
25 may not issue a RFP until it has adopted guidelines to govern the PPEA documentation,  
26 review, and selection process. The RPE may use a two-part proposal process consisting  
27 of an initial conceptual phase and a detailed phase. An RFP may invite proposers to  
28 submit proposals on individual projects identified by the RPE. In such a case the RPE  
29 should set forth in the RFP the format and supporting information that is required to be  
30 submitted, consistent with the provisions of the PPEA. The RPE may establish suggested  
31 timelines for selecting proposals for the review and selection of solicited proposals.  
32  
33

34 The RFP should specify, but not necessarily be limited to, information and  
35 documents that must accompany each proposal and the factors that will be used in  
36 evaluating the submitted proposals. The RFP should be posted in such public areas as are  
37 normally used for posting of the RPE's notices, including the RPE's website. Notices  
38 should also be published in a newspaper or other publications of general circulation and  
39 advertised in *Virginia Business Opportunities* and posted on the Commonwealth's  
40 electronic procurement site. In addition, solicited proposals should be posted pursuant to  
41 Section III.B. The RFP should also contain or incorporate by reference other applicable  
42 terms and conditions, including any unique capabilities or qualifications that will be  
43 required of the private entities submitting proposals. Pre-proposal conferences may be  
44 held as deemed appropriate by the RPE.  
45  
46

1     **III. Unsolicited Proposals**

2  
3             The PPEA permits public entities to receive, evaluate and select for negotiations  
4 | unsolicited proposals from private entities to develop or operate a qualifying project.

5  
6             The RPE may publicize its needs and may encourage interested parties to submit  
7 unsolicited proposals subject to the terms and conditions of the PPEA. When such  
8 proposals are received without issuance of an RFP, the proposal shall be treated as an  
9 unsolicited proposal. The RPE may establish suggested timelines for selecting proposals  
10 for the review and selection of unsolicited proposals.

11  
12             **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

13  
14             1. Upon receipt of any unsolicited proposal or group of proposals and payment of  
15 any required fee by the proposer or proposers, the RPE should determine whether to  
16 accept the unsolicited proposal for the purpose of publication and conceptual-phase  
17 consideration. If the RPE determines not to accept the proposal and proceed to  
18 publication and conceptual-phase consideration, it should return the proposal, together  
19 with all fees and accompanying documentation, to the proposer.

20  
21             2. If the RPE chooses to accept an unsolicited proposal for publication and  
22 conceptual-phase consideration, it shall post a notice in a public area regularly used by  
23 the RPE for posting of public notices for a period of not less than 45 days. The RPE shall  
24 also publish the same notice for a period of not less than 45 days in one or more  
25 newspapers or periodicals of general circulation in the jurisdiction to notify any parties  
26 that may be interested in submitting competing unsolicited proposals. In addition, the  
27 notice should be advertised in *Virginia Business Opportunities* and on the  
28 Commonwealth’s electronic procurement website. The notice shall state that the RPE (i)  
29 has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the  
30 proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer  
31 based on the proposal, and (iv) will receive for simultaneous consideration any  
32 competing proposals that comply with the procedures adopted by the RPE and the PPEA.  
33 The notice also shall summarize the proposed qualifying project or projects, and identify  
34 | their proposed locations.

35  
36             To ensure that sufficient information is available upon which to base the  
37 development of a serious competing proposal, representatives of the RPE familiar with  
38 the unsolicited proposal and the guidelines established by the RPE shall be made  
39 available to respond to inquiries and meet with private entities that are considering the  
40 submission of a competing proposal. The RPE shall conduct an analysis of the  
41 information pertaining to the proposal included in the notice to ensure that such  
42 information sufficiently encourages competing proposals. Further, the RPE shall establish  
43 criteria, including key decision points and approvals to ensure proper consideration of the  
44 extent of competition from available private entities prior to selection.

1                    **B. Posting Requirements**  
2

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

5  
6                    a. For RPEs that are state agencies, departments, and institutions, posting shall be  
7 on the Department of General Service's web-based electronic procurement program  
8 commonly known as "eVA" ; and  
9

10                    b. For RPEs that are local public bodies, posting shall be on the RPEs website or  
11 by publication, in a newspaper of general circulation in the area in which the contract is  
12 to be performed, of a summary of the proposals and the location where copies of the  
13 proposals are available for public inspection. Posting may also be on the Department of  
14 General Service's web-based electronic procurement program commonly known as  
15 "eVA," in the discretion of the local RPE.  
16

17                    2. Nothing shall be construed to prohibit the posting of the conceptual proposals  
18 by additional means deemed appropriate by the RPE so as to provide maximum notice to  
19 the public of the opportunity to inspect the proposals.  
20

21                    3. In addition to the posting requirements, at least one copy of the proposals shall  
22 be made available for public inspection. Trade secrets, financial records, or other records  
23 of the private entity excluded from disclosure under the provisions of subdivision 11 of §  
24 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE  
25 and the private entity. Any inspection of procurement transaction records shall be subject  
26 to reasonable restrictions to ensure the security and integrity of the records.  
27

28                    **C. Initial Review by the Responsible Public Entity at the Conceptual Stage**  
29

30                    1. Only proposals complying with the requirements of the PPEA that contain  
31 sufficient information for a meaningful evaluation and that are provided in an appropriate  
32 format should be considered by the RPE for further review at the conceptual stage.  
33 Formatting suggestions for proposals at the conceptual stage are found in Section I. V. A.  
34

35                    2. The RPE should determine at this initial stage of review whether it will  
36 proceed using:

- 37
- 38                    a. Standard procurement procedures consistent with the VPPA; or
  - 39
  - 40                    b. Guidelines developed by the RPE that are consistent with procurement of  
41 other than professional services through "competitive negotiation" as the  
42 term is defined in § 2.2-4301 of the Code of Virginia. The RPE may  
43 proceed using such guidelines only if it makes a written determination that  
44 doing so is likely to be advantageous to the RPE and the public based  
45 upon either (i) the probable scope, complexity or priority of need; (ii) the  
46 risk sharing including guaranteed cost or completion guarantees, added

1 value or debt, or equity investments proposed by the private entity; or (iii)  
2 the increase in funding, dedicated revenue or other economic benefit that  
3 would otherwise not be available.  
4

5 3. After reviewing the original proposal and any competing proposals submitted  
6 during the notice period, the RPE may determine:  
7

- 8 (i) not to proceed further with any proposa;
- 9
- 10 (ii) to proceed to the detailed phase of review with the original proposal;
- 11
- 12 (iii) to proceed to the detailed phase with a competing proposal;
- 13
- 14 (iv) to proceed to the detailed phase with multiple proposals; or
- 15
- 16 (v) to request modifications or amendments to any proposals.  
17

18 In the event that more than one proposal will be considered in the detailed phase  
19 of review, the RPE should consider whether the unsuccessful proposer should be  
20 reimbursed for costs incurred in the detailed phase of review, and such reasonable costs  
21 may be assessed to the successful proposer in the comprehensive agreement.  
22

23 4. Discussions between RPEs and private entities about the need for  
24 infrastructure improvements shall not limit the ability of a RPE to later determine to use  
25 standard procurement procedures to meet its infrastructure needs. The RPE retains the  
26 right to reject any proposal at any time prior to the execution of an interim or  
27 comprehensive agreement.  
28

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

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

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

##### 41 **1. Qualification and Experience**

- 42
- 43 a. Identify the legal structure of the firm or consortium of firms making the  
44 proposal. Identify the organizational structure for the project, the  
45 management approach and how each partner and major subcontractor in  
46 the structure fits into the overall team.

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

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the RPE.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.

- 1 g. Propose allocation of risk and liability for work completed beyond the  
2 agreement's completion date, and assurances for timely completion of the  
3 project.
- 4
- 5 h. State assumptions related to ownership, legal liability, law enforcement,  
6 and operation of the project and the existence of any restrictions on the  
7 RPE's use of the project.
- 8
- 9 i. Provide information relative to phased or partial openings of the proposed  
10 project prior to completion of the entire work.
- 11
- 12 j. List any other assumptions relied on for the project to be successful.
- 13
- 14 k. List any contingencies that must occur for the project to be successful.
- 15

### 16 3. Project Financing

- 17
- 18 a. Provide a preliminary estimate and estimating methodology of the cost of  
19 the work by phase, segment, or both.
- 20
- 21 b. Submit a plan for the development, financing, and operation of the project  
22 showing the anticipated schedule on which funds will be required.  
23 Describe the anticipated costs of and proposed sources and uses for such  
24 funds including any anticipated debt service costs. The operational plan  
25 should include appropriate staffing levels and associated costs. Include  
26 supporting due diligence studies, analyses, or reports.
- 27
- 28 c. Include a list and discussion of assumptions underlying all major elements  
29 of the plan. Assumptions should include all significant fees associated  
30 with financing given the recommended financing approach. In addition  
31 complete disclosure of interest rate assumptions should be included. Any  
32 ongoing operational fees, if applicable, should also be disclosed as well as  
33 any assumptions with regard to increases in such fees.
- 34
- 35 d. Identify the proposed risk factors and methods for dealing with these  
36 factors.
- 37
- 38 e. Identify any local, state, or federal resources that the proposer  
39 contemplates requesting for the project. Describe the total commitment, if  
40 any, expected from governmental sources and the timing of any  
41 anticipated commitment. Such disclosure should include any direct or  
42 indirect guarantees or pledges of the RPE's credit or revenue.
- 43
- 44 f. Identify the amounts and the terms and conditions for any revenue  
45 sources.
- 46



- 1 g. Identify any aspect of the project that could disqualify the project from  
2 obtaining tax-exempt financing.  
3

4 **4. Project Benefit and Compatibility**  
5

- 6 a. Identify who will benefit from the project, how they will benefit, and how  
7 the project will benefit the overall community, region, or state.  
8  
9 b. Identify any anticipated public support or opposition, as well as any  
10 anticipated government support or opposition, for the project.  
11  
12 c. Explain the strategy and plans that will be carried out to involve and  
13 inform the general public, business community, and governmental  
14 agencies in areas affected by the project.  
15  
16 d. Describe the anticipated significant benefits to the community, region or  
17 state, including anticipated benefits to the economic condition of the RPE  
18 and whether the project is critical to attracting or maintaining competitive  
19 industries and businesses to the RPE or the surrounding region.  
20  
21 e. Describe compatibility with the local comprehensive plan, local  
22 infrastructure development plans, the capital improvements budget, or  
23 other government spending plan.  
24  
25 f. Provide a statement setting forth participation efforts that are intended to  
26 be undertaken in connection with this project with regard to the following  
27 types of businesses: (i) minority-owned businesses, (ii) woman-owned  
28 businesses, and (iii) small businesses.  
29

30 **B. Format for Submissions at Detailed Stage**  
31

32 If the RPE decides to proceed to the detailed phase of review with one or more  
33 proposals, the following information should be provided by the private entity unless  
34 waived by the RPE:  
35

- 36 1. A topographical map (1:2,000 or other appropriate scale) depicting the  
37 location of the proposed project;  
38  
39 2. A list of public utility facilities, if any, that will be crossed by the qualifying  
40 project and a statement of the plans of the proposer to accommodate such  
41 crossings;  
42  
43 3. A statement and strategy setting out the plans for securing all necessary  
44 property;  
45

- 1 4. A detailed listing of all firms that will provide specific design, construction  
2 and completion guarantees and warranties, and a brief description of such  
3 guarantees and warranties;  
4
- 5 5. A total life-cycle cost specifying methodology and assumptions of the project  
6 or projects and the proposed project start date. Include anticipated  
7 commitment of all parties; equity, debt, and other financing mechanisms; and  
8 a schedule of project revenues and project costs. The life-cycle cost analysis  
9 should include, but not be limited to, a detailed analysis of the projected  
10 return, rate of return, or both, expected useful life of facility, and estimated  
11 annual operating expenses;  
12
- 13 6. A detailed discussion of assumptions about user fees or rates, and usage of the  
14 project or projects;  
15
- 16 7. Identification of any known government support or opposition, or general  
17 public support or opposition for the project. Government or public support  
18 should be demonstrated through resolution of official bodies, minutes of  
19 meetings, letters, or other official communications;  
20
- 21 8. Demonstration of consistency with appropriate local comprehensive or  
22 infrastructure development plans or indication of the steps required for  
23 acceptance into such plans;  
24
- 25 9. Explanation of how the proposed project would impact local development  
26 plans of each affected jurisdiction;  
27
- 28 10. Identification of the executive management and the officers and directors of  
29 the firm or firms submitting the proposal. In addition, identification of any  
30 known conflicts of interest or other disabilities that may impact the RPE's  
31 consideration of the proposal, including the identification of any persons  
32 known to the proposer who would be obligated to disqualify themselves from  
33 participation in any transaction arising from or in connection to the project  
34 pursuant to the Virginia State and Local Government Conflict of Interest Act,  
35 Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2;  
36
- 37 11. Additional material and information as the RPE may reasonably request.  
38

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

40  
41 There are several factors that the RPE may wish to consider when  
42 evaluating and selecting a proposal under the PPEA. The following are some of the  
43 factors that may be considered by the RPE in the evaluation and selection of PPEA  
44 proposals.

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**A. Qualifications and Experience**

Factors to be considered in either phase of the RPE’s review to determine whether the proposer possesses the requisite qualifications and experience include:

- 1. Experience with similar projects;
- 2. Demonstration of ability to perform work;
- 3. Leadership structure;
- 4. Project manager's experience;
- 5. Management approach;
- 6. Financial condition; and
- 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           1.     Cost and cost benefit to the RPE;
- 2
- 3           2.     Financing and the impact on the debt burden of the RPE or appropriating
- 4                 body;
- 5
- 6           3.     Financial plan, including the degree to which the proposer has conducted
- 7                 due diligence investigation and analysis of the proposed financial plan and
- 8                 the results of any such inquiries or studies;
- 9
- 10          4.     Opportunity costs assessment;
- 11
- 12          5.     Estimated cost;
- 13
- 14          6.     Life-cycle cost analysis;
- 15
- 16          7.     The identity, credit history, past performance of any third party that will
- 17                 provide financing for the project and the nature and timing of their
- 18                 commitment, as applicable; and
- 19
- 20          8.     Such other items as the RPE deems appropriate.
- 21

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

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

27

28

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

- 31
- 32          1.     Community benefits;
- 33
- 34          2.     Community support or opposition, or both;
- 35
- 36          3.     Public involvement strategy;
- 37
- 38          4.     Compatibility with existing and planned facilities; and
- 39
- 40          5.     Compatibility with local, regional, and state economic development efforts.
- 41

#### 42           **E. Other Factors**

43

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

46

- 1           1.     The proposed cost of the qualifying project;
- 2
- 3           2.     The general reputation, industry experience, and financial capacity of the
- 4           private entity;
- 5
- 6           3.     The proposed design of the qualifying project;
- 7
- 8           4.     The eligibility of the project for accelerated documentation, review, and
- 9           selection;
- 10
- 11          5.     Local citizen and government comments;
- 12
- 13          6.     Benefits to the public, including financial and nonfinancial;
- 14
- 15          7.     The private entity’s compliance with a minority business enterprise
- 16          participation plan or good faith effort to comply with the goals of such
- 17          plan;
- 18
- 19          8.     The private entity’s plans to employ local contractors and residents;
- 20
- 21          9.     The recommendation of a committee of representatives of members of the
- 22          RPE and the appropriating body which may be established to provide
- 23          advisory oversight for the project; and
- 24
- 25          10.    Other criteria that the RPE deems appropriate.
- 26

27   **VI. Additional Review Procedures.**

28

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

30

31       An RPE that is an agency or institution of the Commonwealth shall and all other

32       RPEs may establish criteria to trigger establishment of an advisory committee consisting of

33       representatives of the RPE and the appropriating body to review the terms of the proposed

34       interim or comprehensive agreement. The criteria should include, but not be limited to, the

35       scope, total cost and duration of the proposed project, and whether the project involves or

36       impacts multiple public entities. Timelines for the work of the committee should be

37       developed and made available to proposers.

38

39       **B. Appropriating Body**

40

41       If the RPE for appropriating or authorizing funding to pay for a qualifying project is

42       different from the RPE reviewing or approving the project, then the RPE reviewing or

43       approving the project should establish a mechanism for that appropriating body to review

44       any proposed interim or comprehensive agreement prior to execution. When a school board

45       is the RPE, review by the local governing body shall satisfy this requirement..

46

1 **VII. Interim and Comprehensive Agreements**

2  
3 Prior to developing or operating the qualifying project, the selected private entity  
4 shall enter into a comprehensive agreement with the RPE. Prior to entering a  
5 comprehensive agreement, an interim agreement may be entered into that permits a  
6 private entity to perform compensable activities related to the project. The RPE may  
7 designate a working group to be responsible for negotiating any interim or  
8 comprehensive agreement. Any interim or comprehensive agreement shall define the  
9 rights and obligations of the RPE and the selected proposer with regard to the project.

10  
11 **A. Interim Agreement Terms**

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

- 14  
15 1. Project planning and development;  
16  
17 2. Design and engineering;  
18  
19 3. Environmental analysis and mitigation;  
20  
21 4. Survey;  
22  
23 5. Ascertaining the availability of financing for the proposed facility through  
24 financial and revenue analysis;  
25  
26 6. Establishing a process and timing of the negotiation of the comprehensive  
27 agreement; and  
28  
29 7. Any other provisions related to any aspect of the development or operation of  
30 a qualifying project that the parties may deem appropriate prior to the  
31 execution of a comprehensive agreement.

32  
33 **B. Comprehensive Agreement Terms**

34  
35 The scope of the comprehensive agreement shall include but not be limited to:

- 36  
37 1. The delivery of maintenance, performance and payment bonds or letters of  
38 credit in connection with any acquisition, design, construction, improvement,  
39 renovation, expansion, equipping, maintenance, or operation of the qualifying  
40 project;  
41  
42 2. The review of plans and specifications for the qualifying project by the RPE;  
43  
44 3. The rights of the RPE to inspect the qualifying project to ensure compliance  
45 with the comprehensive agreement;  
46

- 1           4. The maintenance of a policy or policies of liability insurance or self-insurance  
2           reasonably sufficient to insure coverage of the project and the tort liability to  
3           the public and employees and to enable the continued operation of the  
4           qualifying project;
- 5
- 6           5. The monitoring of the practices of the private entity by the RPE to ensure  
7           proper maintenance;
- 8
- 9           6. The terms under which the private entity will reimburse the RPE for services  
10          provided;
- 11
- 12          7. The policy and procedures that will govern the rights and responsibilities of  
13          the RPE and the private entity in the event that the comprehensive agreement  
14          is terminated or there is a material default by the private entity including the  
15          conditions governing assumption of the duties and responsibilities of the  
16          private entity by the RPE and the transfer or purchase of property or other  
17          interests of the private entity by the RPE;
- 18
- 19          8. The terms under which the private entity will file appropriate financial  
20          statements on a periodic basis;
- 21
- 22          9. The mechanism by which user fees, lease payments, or service payments, if  
23          any, may be established from time to time upon agreement of the parties. Any  
24          payments or fees shall be set at a level that is the same for persons using the  
25          facility under like conditions and that will not materially discourage use for  
26          the qualifying project;
- 27
- 28           a. A copy of any service contract shall be filed with the RPE.
- 29
- 30           b. A schedule of the current user fees or lease payments shall be made  
31           available by the private entity to any member of the public upon request.
- 32
- 33           c. Classifications according to reasonable categories for assessment of user  
34           fees may be made.
- 35
- 36          10. The terms and conditions under which the RPE may contribute financial  
37          resources, if any, for the qualifying project;
- 38
- 39          11. The terms and conditions under which existing site conditions will be assessed  
40          and addressed, including identification of the responsible party for conducting  
41          the assessment and taking necessary remedial action;
- 42
- 43          12. The terms and conditions under which the RPE will be required to pay money  
44          to the private entity and the amount of any such payments for the project;
- 45
- 46          13. Other requirements of the PPEA or other applicable law; and

1  
2 14. Such other terms and conditions as the RPE may deem appropriate.  
3

4 Any changes in the terms of the interim or comprehensive agreement as may be  
5 agreed upon by the parties from time to time shall be added to the interim or  
6 comprehensive agreement by written amendment.  
7

8 The comprehensive agreement may provide for the development or operation of  
9 phases or segments of a qualifying project.  
10

11 **C. Notice and Posting requirements**  
12

13 1. In addition to the posting requirements of Section III. B, 30 days prior to  
14 entering into an interim or comprehensive agreement, the RPE shall provide an  
15 opportunity for public comment on the proposals. Such public comment period may  
16 include a public hearing in the sole discretion of the RPE. After the end of the public  
17 comment period, no additional posting shall be required based on any public comment  
18 received.  
19

20 2. Once the negotiation phase for the development of an interim or a  
21 comprehensive agreement is complete and a decision to award has been made by the  
22 RPE, the RPE shall post the proposed agreement in the following manner:  
23

24 a. For RPEs that are state agencies, departments, and institutions, posting shall be  
25 on the Department of General Service's web-based electronic procurement program  
26 commonly known as "eVA"; and  
27

28 b. For RPEs that are local public bodies, posting shall be on the RPEs' website or  
29 by publication, in a newspaper of general circulation in the area in which the contract  
30 work is to be performed, of a summary of the proposals and the location where copies of  
31 the proposals are available for public inspection. Posting may also be on the Department  
32 of General Service's web-based electronic procurement program commonly known as  
33 "eVA," in the discretion of the local RPE.  
34

35 c. In addition to the posting requirements, at least one copy of the proposals shall  
36 be made available for public inspection. Trade secrets, financial records, or other records  
37 of the private entity excluded from disclosure under the provisions of subdivision 11 of §  
38 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the RPE  
39 and the private entity.  
40

41 d. Any studies and analyses considered by the RPE in its review of a proposal  
42 shall be disclosed to the appropriating body at some point prior to the execution of an  
43 interim or comprehensive agreement.  
44



1           3. Once an interim agreement or a comprehensive agreement has been entered  
2 into, the RPE shall make procurement records available for public inspection, upon  
3 | request.

4  
5           a. Such procurement records shall include documents protected from disclosure  
6 during the negotiation phase on the basis that the release of such documents would have  
7 adverse affect on the financial interest or bargaining position of the RPE or private entity  
8 in accordance with Section II.D.3.

9  
10           b. Such procurement records shall not include (i) trade secrets of the private  
11 entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial  
12 records, including balance sheets or financial statements of the private entity that are not  
13 generally available to the public through regulatory disclosure or otherwise.

14  
15 |           To the extent access to procurement records are compelled or protected by a court  
16 order, then the RPE must comply with such order.

17  
18 **VIII. Governing Provisions**

19  
20           In the event of any conflict between these guidelines and the PPEA, the terms of the  
21 PPEA shall control.

## Terms and Definitions

1  
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3  
4 **"Affected jurisdiction"** means any county, city, or town in which all or a portion of a  
5 qualifying project is located.

6  
7 **"Appropriating body"** means the body responsible for appropriating or authorizing  
8 funding to pay for a qualifying project.

9  
10 **"Comprehensive agreement"** means the comprehensive agreement between the private  
11 entity and the responsible public entity that is required prior to the development or  
12 operation of a qualifying project.

13  
14 **"Conceptual stage"** means the initial phase of project evaluation when the public entity  
15 makes a determination whether the proposed project serves a public purpose, meets the  
16 criteria for a qualifying project, assesses the qualifications and experience of a private  
17 entity proposer, reviews the project for financial feasibility, and warrants further pursuit.

18  
19 **"Cost-benefit analysis"** means an analysis that weighs expected costs against expected  
20 benefits in order to choose the best option. For example, a city manager may compare  
21 the costs and benefits of constructing a new office building to those of renovating and  
22 maintaining an existing structure in order to select the most financially advantageous  
23 option.

24  
25 **"Detailed stage"** means the second phase of project evaluation where the public entity  
26 has completed the conceptual stage and accepted the proposal and may request additional  
27 information regarding a proposed project prior to entering into competitive negotiations  
28 with one or more private entities to develop an interim or comprehensive agreement.

29  
30 **"Develop"** or **"development"** means to plan, design, develop, finance, lease, acquire,  
31 install, construct, or expand.

32  
33 **"Interim agreement"** means an agreement between a private entity and a responsible  
34 public entity that provides for phasing of the development or operation, or both, of a  
35 qualifying project. Such phases may include, but are not limited to, design, planning,  
36 engineering, environmental analysis and mitigation, financial and revenue analysis, or  
37 any other phase of the project that constitutes activity on any part of the qualifying  
38 project.

39  
40 **"Lease payment"** means any form of payment, including a land lease, by a public entity  
41 to the private entity for the use of a qualifying project.

42  
43 **"Lifecycle cost analysis"** means an analysis that calculates cost of an asset over its entire  
44 life span and includes the cost of planning, constructing, operating, maintaining,  
45 replacing, and when applicable, salvaging the asset. Although one proposal may have a

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

3  
4 **"Material default"** means any default by the private entity in the performance of its  
5 duties that jeopardizes adequate service to the public from a qualifying project.

6  
7 **"Operate"** means to finance, maintain, improve, equip, modify, repair, or operate.

8  
9 **"Opportunity cost"** means the cost of passing up another choice when making a  
10 decision or the increase in costs due to delays in making a decision.

11  
12 **"Private entity"** means any natural person, corporation, general partnership, limited  
13 liability company, limited partnership, joint venture, business trust, public benefit  
14 corporation, nonprofit entity, or other business entity.

15  
16 **"Public entity"** means the Commonwealth and any agency or authority thereof, any  
17 county, city or town and any other political subdivision of the Commonwealth, any  
18 public body politic and corporate, or any regional entity that serves a public purpose.

19  
20 **"Qualifying project"** means (i) any education facility, including, but not limited to a  
21 school building, any functionally related and subordinate facility and land of a school  
22 building (including any stadium or other facility primarily used for school events), and  
23 any depreciable property provided for use in a school facility that is operated as part of  
24 the public school system or as an institution of higher education; (ii) any building or  
25 facility that meets a public purpose and is developed or operated by or for any public  
26 entity; (iii) any improvements, together with equipment, necessary to enhance public  
27 safety and security of buildings to be principally used by a public entity; (iv) utility and  
28 telecommunications and other communications infrastructure; (v) a recreational facility;  
29 (vi) technology infrastructure and services, including, but not limited to,  
30 telecommunications, automated data processing, word processing and management  
31 information systems, and related information, equipment, goods and services; (vii) any  
32 technology, equipment, or infrastructure designed to deploy wireless broadband services  
33 to schools, businesses, or residential areas; or (viii) any improvements necessary or  
34 desirable to any unimproved locally- or state-owned real estate.

35  
36 **"Responsible public entity"** means a public entity that has the power to develop or  
37 operate the applicable qualifying project.

38  
39 **"Revenues"** means all revenues, income, earnings, user fees, lease payments, or other  
40 service payments arising out of or in connection with supporting the development or  
41 operation of a qualifying project, including without limitation, money received as grants  
42 or otherwise from the United States of America, from any public entity, or from any  
43 agency or instrumentality of the foregoing in aid of such facility.

44  
45 **"Service contract"** means a contract entered into between a public entity and the private  
46 entity pursuant to § 56-575.5.

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**"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.