

**Bristol City Public Schools  
Public-Private Education Facilities and  
Infrastructure Act of 2002**

**Model Guidelines**

**As revised**

**September 2008;**

**Adopted by Bristol Virginia School Board on June 5, 2017**

## **BRISTOL VIRGINIA SCHOOL BOARD**

# **GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002**

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Guidelines for Implementation of the  
Public-Private Education Facilities and Infrastructure Act of 2002

**I. Introduction**

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA")<sup>1</sup> grants the Bristol Virginia School Board (the Board), a responsible public entity as defined in the PPEA, the authority to create public-private partnerships for the development of a wide range of projects for public use (qualifying projects) if the Board determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated interim or comprehensive agreements between a private entity and the Board will define the respective rights and obligations of the Board and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the Board and all private entities to comply with the provisions of the PPEA.

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, services, and applications including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (vii) Any services designed to increase productivity or efficiency through the direct or indirect use of technology;

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<sup>1</sup> Va. Code § 56-575.1 through § 56-575.18.

- (viii) Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or
- (ix) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

The PPEA establishes requirements that the Board must adhere to when considering proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between the Board and the private entity.

The Bristol Virginia School Board (the Board) adopted these Procedures on June 5, 2017 to implement the PPEA. Therefore, the Board, the Superintendent and employees of the Board will follow these procedures to receive and evaluate any proposal submitted to the Board under the provisions of the PPEA. The Board must adopt any amendments to these procedures. The Board hereby designates the Superintendent as the contact person to receive PPEA proposals and to respond to inquiries regarding the PPEA or these guidelines. The guidelines are available to the public.

The Board may designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.

In the event that the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by the Guidelines, the Board will amend the Guidelines. If the Guidelines are not amended prior to the effective date of the new law, the Guidelines will be interpreted in a manner to conform to the new law.

The Board will engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the Board, to provide independent analysis regarding the specifics, advantages, disadvantages and long- and short-term costs of any request by a private entity for approval of a qualified project unless the Board determines that such analysis shall be performed by employees of the Board.

The Board will provide opportunities for competition through public notice and the availability of its representatives to meet with private entities considering a proposal.

The Board will establish reasonable criteria for choosing among competing proposals.

The Board will establish suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement. The Board may authorize accelerated selection and review and documentation timelines for proposals involving a qualifying project that it deems a priority.

The Board will establish financial review and analysis procedures that include, at a minimum, a cost-benefit analysis, an assessment of opportunity cost, and consideration of

the results of all studies and analyses related to the proposed qualifying project. Those procedures will include requirements for the disclosure of such analysis to the appropriating body for review prior to execution of an interim or comprehensive agreement.

The Board will consider the nonfinancial benefits of a proposed qualifying project.

The Board will establish a mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution.

The Board will establish criteria for the establishment of an advisory committee consisting of representatives from it and the appropriating body to review the terms of the proposed interim or comprehensive agreement. Those criteria may include the scope, costs, and duration of the qualifying project and whether the project involves or impacts multiple public entities.

The Board will analyze the adequacy of the information released when seeking competing proposals and providing for the enhancement of that information, if it deems such enhancement necessary to encourage competition.

The Board will establish criteria, key decision points, and approvals required to ensure that it considers the extent of competition before selecting proposals and negotiating an interim or comprehensive agreement.

The Board shall require the posting and publishing of public notice of a private entity's request for approval of a qualifying project, including (i) specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of Va. Code § 56-575.4; and (ii) a reasonable time period, of at least 45 days, as determined by the Board, to encourage competition and public-private partnerships in accordance with the goals of the PPEA, during which time the Board shall receive competing proposals pursuant to subsection A of Va. Code § 56-575.4.

## **II. General Provisions**

### **A. Proposal Submission**

A proposal may be either solicited by the Board or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein. The initial phase of the proposals should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 20012 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the Board. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the Board of the financial feasibility of the proposed project. The Board may require the proposer to provide additional information and clarification to the submission. The cost analysis of a proposal should not be linked solely to the financing plan; the Board may determine to finance the project through other available means.

The PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private operator, but also offer benefits to the operator through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health, safety, and welfare. Accordingly, the Board shall continue to exercise full and proper due diligence in the evaluation and selection of operators for these projects. In this regard, the qualifications, capabilities, and resources and other attributes of a prospective operator and its whole team will be carefully examined for every project. In addition, operators proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience or other contents of their proposals, including all specific aspects of proposed plans to be performed by the operator.

## **B. Affected Jurisdictions**

Any private entity submitting a conceptual or detailed proposal to the Board must provide any affected jurisdiction with a copy of the private entity's proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the Board. Any affected jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the Board and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii)

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<sup>2</sup> Public Law 107-16; Section 142(k)(5) of the Internal Revenue Code of 1986, as amended.

jurisdiction's infrastructure development plans, and (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the Board, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. However, the Board may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

### **C. Proposal Review Fee**

The Board will receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants, or any combination thereof, with relevant experience in determining whether to enter into an agreement with the private entity.

The Board may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, engineers, consultants, and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise deemed necessary by the Board and required to review the proposal and will not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include, but are not limited to, (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the costs to hire attorneys, engineers, consultants and financial advisors. The Board may require an initial processing fee with an additional fee to be charged should the project proceed beyond the initial review.

The Board will refund any portion of fees paid in excess of its direct costs associated with evaluating the proposal.

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

#### 1. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that Va. Code § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the Board may elect to release some or all of documents except to the extent that the documents are;

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 et seq.);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- c. Other information submitted by a private entity, where, if the record or document were made public prior to the execution of an interim or comprehensive



agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

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

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

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

Upon the receipt of a written request for protection of documents, the Board will determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the Board or private entity in accordance with Section D.1. The Board will make a written determination of the nature and scope of the protection to be afforded by the Board under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. Nothing will prohibit further negotiation of the documents to be protected from release although what may be protected must be limited to the categories of records identified in Section D.1.

Once a written determination has been made by the Board, the documents afforded protection under this subdivision will continue to be protected from disclosure while in the possession of the Board or any affected jurisdiction to which such documents are provided.

If a private entity fails to designate with specificity trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents will be subject to disclosure under FOIA.

3. Protection from mandatory disclosure for certain documents produced by the Board.

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

Cost estimates relating to a proposed procurement transaction prepared by or for the Board will not be open to public inspection.

4. The Board will not withhold from public access:
  - a) procurement records other than those subject to the written determination of the Board;
  - b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the Board and the private entity;
  - c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
  - d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

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

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

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with the Board's fiscal policies.

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

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

### **III. Solicited Proposals**

The Board may invite bids or proposals from private entities to develop or operate qualifying projects. The Board may use a two-part process consisting of an initial or conceptual phase and a detailed phase. The Board will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The Board may establish suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the

submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the Board's notices, including the Board's website. Notice may also be posted in a newspaper or other general circulation publication, advertised in Virginia Business Opportunities or posted on the Commonwealth's electronic procurement website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the Board.

#### **IV. Unsolicited Proposals**

The PPEA permits the Board to receive and evaluate unsolicited proposals from private entities to develop or operate a qualifying project.

The Board may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal. The Board may establish suggested timelines for selecting proposals and negotiating an interim or comprehensive agreement.

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

1. The Board reserves the right to reject any and all proposals at any time prior to the execution of an interim or comprehensive agreement.
2. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the Board will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the Board determines not to accept the proposal and not proceed to publication and conceptual-phase consideration, it will return the proposal, together with all fees and accompanying documentation, to the proposer.
3. If the Board chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by the Board for posting of public notices for a period of not less than 45 days. The Board shall also publish the same notice for at least 45 days in one or more newspapers or periodicals of general circulation in the area to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice will also be advertised in Virginia Business Opportunities and on the Commonwealth's electronic procurement website. Interested parties shall have 45 days from the date the notice is first published to submit competing unsolicited proposals. The notice shall state that the Board (i) has received an

unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the Board and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

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

## **B. Initial Review at the Conceptual Stage**

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the Board for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section VI. A.
2. The Board will determine at this initial stage of review whether it will proceed using:
  - a. Standard "competitive sealed bidding" procurement procedures consistent with the VPPA; or
  - b. Guidelines developed by the Board that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The Board may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the Board and the public based upon either (i) the probable scope, complexity or priority of need, (ii) the risk sharing, including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) increase in funding, dedicated revenue, or other economic benefit that would otherwise not be available.
3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the Board may determine:

- (i) not to proceed further with any proposal,
  - (ii) to proceed to the detailed phase of review with the original proposal,
  - (iii) to proceed to the detailed phase with a competing proposal,
  - (iv) to proceed to the detailed phase with multiple proposals, or
  - (v) to request modifications or amendments to any proposals.
4. In the event that more than one proposal will be considered in the detailed phase of review, the Board will consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

Discussions between the Board and private entities about the need for infrastructure improvements shall not limit the Board's ability to later determine to use standard procurement procedures to meet its infrastructure needs.

The Board at all times retains the right to reject any proposal at any time for any reason whatsoever.

## **V. Posting Requirements**

- A. Conceptual proposals, whether solicited or unsolicited, shall be posted by the Board within 10 working days after acceptance of such proposals in the following manner: the proposals shall be posted on the Board's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the Board.
- B. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the Board so as to provide maximum notice to the public of the opportunity to inspect the proposals.
- C. In addition to the posting requirements noted above, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Va. Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Board and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

## **VI. Proposal Preparation and Submission**

### **FORMAT FOR SUBMISSIONS AT THE CONCEPTUAL STAGE**

The Board will require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, (4) anticipated public support or opposition, or both, (5) project benefit and compatibility and (6) any additional information as the Board may reasonably request to comply with the requirements of the PPEA. 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 Board may request:

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

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. 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. Provide resumes of the key individuals who will be involved in the project.
- c. For each firm or major subcontractor that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years and contact information for those clients, including names, addresses, and telephone number. If a firm has worked on more than 10 projects during this period, it may limit its prior project list to 10, but shall include all projects similar in scope and size to the proposed project and shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents which are in its possession evaluating the firm's performances during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project developments, operation, and completion.

- d. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
- e. 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.
- f. 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 Interests Act (Va. Code § 2.2-3100 et seq.).
- g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Identify the proposed plan for complying with Va. Code § 22.1-296.1, if applicable, or explain why the requirements of that statute are inapplicable.
- i. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
  - 1) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
  - 2) A statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to bonding capacities, insurance coverage and firm equipment. This statement shall also include a disclosure for the past three years of any of the following conduct by the firm or its principal shareholders:
    - i. bankruptcy filings;
    - ii. liquidated damages;
    - iii. fines, assessments or penalties;
    - iv. judgments or awards in contract disputes;
    - v. contract defaults or terminations;
    - vi. license revocations, suspension, disciplinary actions;
    - vii. prior debarments or suspensions by a governmental entity;
    - viii. denials of prequalification, findings of non-responsibility;
    - ix. safety past performance data including fatality; incidents, "Experience Modification Rating," "Total Recordable Injury Rate," and "Total Lost Workday Incidence Rate;"
    - x. violations of any federal, state, or local criminal or civil law;
    - xi. criminal indictments or investigations; and
    - xii. legal claims filed by or against the firm.

## **B. Project Characteristics**

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that the 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 Board or any other public entity.
- 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, environmental and transportation impacts of the project measured against the comprehensive land use plan of any affected jurisdiction and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the comprehensive land use plan of any affected jurisdiction and applicable ordinances and design standards.
- f. Identify the proposed schedule for the work on the project, including sufficient time for the Board's review, and the estimated time for completion.
- g. Propose allocation of risk and liability, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the Board's use of the project.
- i. Provide information relative to phased openings of the proposed project.
- j. Identify contingency plans for meeting public needs in the event that all or some of the project is not completed according to the projected schedule.
- k. Describe any architectural, building, engineering or other applicable standards that the proposed project will meet.

## **C. 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 based upon the Board's adopted operational standards. Include supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
- f. Identify the amounts and the terms and conditions for any revenue source.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- h. Identify the need, if any, for the Board to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement," for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is not investment grade, the Board may require the use of credit enhancements.
- i. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or does the firm only receive benefit of this potential?
- j. Outline the financial penalties, if any, that would result should the Board wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
- k. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

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

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the Board and the overall community.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- c. Explain the strategy and plans, including the anticipated timeline, that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe any anticipated significant benefits to the community and the Board, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the Board and whether the project is critical to attracting or maintaining competitive industries and businesses to the area.
- e. Describe the project's compatibility with the Board's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital 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: (1) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

## **E. Any Additional Information As the Board May Reasonably Request**

### **FORMAT FOR SUBMISSIONS AT THE DETAILED STAGE**

If the Board 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 Board:

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. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction;
4. A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the Board or affected jurisdiction to condemn.
5. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
6. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), 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 using Board adopted service levels and standards.
7. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
8. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
9. Demonstration of consistency with appropriate Board and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
10. Explanation of how the proposed project would impact the Board's or affected jurisdiction's development plans.

11. Identification of any known conflicts of interest or other factors that may impact the Board's consideration of the proposal, including the identification of 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 (Va. Code § 2.2-3100 et seq).
12. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.
13. Additional material and information as the Board may request.

## **VII. Proposal Evaluation and Selection Criteria**

There are several factors that the Board may wish to consider when evaluating and selecting a proposal under the PPEA. The following, along with the specified information required under VI.A and VI.B above, are factors that the Board may consider in the evaluation and selection of PPEA proposals. The Board retains the right at all times to reject any proposal at any time for any reason whatever.

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

Factors to be considered in either phase of the Board's review to determine whether the proposer possesses the requisite qualifications and experience may include, along with the specified information required under VI.A and VI.B above, the following:

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;
7. Project ownership;
8. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;

9. Demonstrated conformance with applicable laws, codes, standards, regulations, policies, and agreements on past projects; and
10. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project.

## **B. Project Characteristics**

Factors to be considered in determining the project characteristics may include, along with the specified information required under VI.A and VI.B above, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to State, Board or affected jurisdiction laws, regulations, and policies;
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, along with the specified information required under VI.A and VI.B above, the following:

1. Cost and cost benefit to the Board;
2. Financing and the impact on the debt or debt burden of the Board or the appropriating body;
3. Financial plan including default implications;

4. Opportunity costs assessments;
5. Estimated cost, including debt source, operating costs, etc.;
6. Life-cycle cost analysis;
7. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable, and;
8. Such other items as the Board deems appropriate.

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

Factors to be considered in determining the proposed project's compatibility with the Board's, affected jurisdiction's or regional comprehensive or development plans may include, along with the specified information required under VI.A and VI.B above, the following:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with Board, regional, and state economic development efforts; and
6. Compatibility with Board's and affected jurisdiction's land use and transportation plans.

### **E. Other Factors**

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;

4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including both financial and non-financial benefits;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. Other criteria that the Board deems appropriate.

### **VIII. Review by Appropriating Body**

The Board shall establish a mechanism for the appropriating body to review a proposed interim or comprehensive contract prior to execution.

### **IX. Interim and Comprehensive Agreements**

Prior to developing or operating the qualifying project, the selected proposer shall enter into a comprehensive agreement with the Board. Prior to entering a comprehensive contract an interim contract may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of the Board and the selected proposer with regard to the project.

Any interim or comprehensive agreement shall provide that the proposer does not, and will not during the performance of the agreement, knowingly employ an unauthorized alien as defined in the federal Immigration Reform and Control Act of 1986.

The Board may enter into an interim or comprehensive agreement under the PPEA only with the approval of its local appropriating body.

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

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

1. Project planning and development;
2. Design and engineering;

3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establish a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

## **B. Comprehensive Agreement Terms**

The terms of the comprehensive agreement shall be tailored to address the specifics of the project and shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review and approval of plans and specifications for the qualifying project by the Board;
3. The rights of the Board to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the Board to ensure proper maintenance, safety, use, and management of the qualifying project;
6. The terms under which the private entity will reimburse the Board for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the Board and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private



- entity by the Board and the transfer or purchase of property or other interests of the private entity by the Board;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis.
  9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
    - a. A copy of any service contract shall be filed with the Board.
    - 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 Board will 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; and
  12. Other requirements of the PPEA or provisions that the Board determines serve the public purpose of the PPEA;

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

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Board. Accordingly, as part of any interim or comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct

The interim or comprehensive agreement and any amendments thereto shall be approved and entered into in writing by the Board.

### **C. Notice and Posting Requirements**

1. In addition to the posting requirements of Section V., at least 30 days prior to entering into an interim or comprehensive agreement, the Board shall hold a public hearing on the proposals. After the public hearing is held, no additional posting shall be required based on any public comment 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, but before an interim or comprehensive agreement is entered into, the Board shall post the proposed agreement on its website or publish, in a newspaper of general circulation in the area in which the contract is to be performed, a summary of the proposal and the location where copies of the proposal are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the Board.

In addition, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Va. Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Board and the private entity.

3. Once an interim agreement or a comprehensive agreement has been entered into, the Board shall make procurement records available for public inspection, upon request.
  - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adversely affected the financial interest or bargaining position of the Board or private entity in accordance with Section II.D.2.
  - b. Such procurement records available to the public shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 et seq.) or (ii) financial records including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.
  - c. To the extent access to procurement records is compelled or protected by a court order, the Board must comply with such order.
4. Within 30 days after entering into a comprehensive agreement, the Board shall provide a copy of the comprehensive agreement to the Auditor of Public Accounts.

**X. Governing Provisions**

In the event of any conflict between these provisions and the PPEA, the terms of the PPEA shall control.