

# **Virginia Commonwealth University**

## **Guidelines for Projects under the Public- Private Education Facilities and Infrastructure Act of 2002**

**(PPEA)**

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## **I. Introduction**

### **A. Overview**

The Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Projects under the PPEA will bring private funding and may bring private sector expertise and efficiencies to the development and/or operation of Qualifying projects. The PPEA defines “responsible public entity” (RPE) to include any public entity that “has the power to develop or operate the applicable qualifying project.” Individually negotiated interim or comprehensive agreements between a private entity and an RPE will define the respective rights and obligations of the RPE and the private entity. For the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Commonwealth University (the “University”), are deemed a “responsible public entity” (“RPE”) that has the power to develop or operate the applicable qualifying project.

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; qualifying projects include one or more of the following:

1. 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;
2. A building or facility that meets a public purpose and is developed or operated by or for any public entity;
3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
4. Utility and telecommunications and other communications infrastructure;
5. A recreational facility;
6. Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
7. Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
8. Services designed to increase the productivity or efficiency through the use of technology or other means;

9. Any improvements necessary or desirable to any unimproved locally- or state- owned real estate; or
10. A solid waste management facility that produces electric energy from solid waste.

The PPEA establishes requirements that the RPE must follow when reviewing and approving 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 RPE and the private entity.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, the University is able to maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

Although guidance with regard to the application of the PPEA is provided in this document, it is incumbent upon all entities, both public and private, to comply with the provisions of the PPEA and other applicable laws. In the event that the applicable law is amended in a manner that conflicts with these guidelines, then these guidelines shall be interpreted in a manner to conform to the law. The President or his designee may amend these guidelines from time to time consistent with applicable law.

## **B. Guidelines for the review and approval of proposals and projects**

RPEs are required to adopt and make publicly available guidelines that are sufficient to enable the public entity to comply with the requirements of the PPEA. Accordingly, these guidelines have been adopted by the Virginia Commonwealth University Board of Visitors and are available upon request. The University will follow these guidelines in the review and acceptance of proposals.

These guidelines are prepared and made available publicly, upon request, to encourage joint efforts between the University and private entities, to stimulate competition in the private sector and make clear the University's PPEA compliance.

## **II. General Provisions**

### **A. Proposal Submission**

A proposal to provide a qualifying project may either be solicited by the University or delivered to the University by a private entity on an unsolicited basis. In either case, any such proposal shall be clearly identified as a "PPEA Proposal." The requirements for any particular solicited proposal shall be as specified in the solicitation document published by the University for that proposal. Any unsolicited proposal shall be submitted to the University by delivering hard and electronic copies (additional copies may be requested by the University), together with any required review fees, to the Associate Director of Procurement, 912 West Grace Street, 5<sup>th</sup> Floor Richmond, VA 23284.

Whether the private entity submits a solicited proposal or unsolicited proposal, the proposal will follow a two-part process consisting of an initial conceptual phase and a detailed phase. The initial phase should contain information regarding the proposer's 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, namely, project benefits, scope of work and a financial plan that contains enough specificity so that the University may fairly evaluate the financial feasibility of the qualified project (see Section V below for the detailed information on Proposal Preparation and Submission). The cost analysis of a proposal should not be linked solely to the financing plan, as the University may determine to finance the project through other available means.

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 University. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project.

## **B. Affected Jurisdictions**

An Affected Jurisdiction is any county, city, or town in which all or a portion of a Qualifying Project is located (See Va.Code §56-575.1). It is important that Affected Jurisdictions are part of process and have input in potential Qualifying Projects. The private entity should consider the qualifying project's compatibility with any Affected Jurisdiction's comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.

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

## **C. Proposal Review Fee for Unsolicited Proposals**

The University may charge a fee to the private entity submitting an unsolicited proposal to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including but not limited to, University staff time, cost of materials or supplies expended, a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal will be reasonable in comparison to the level of expertise 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 (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

The proposal fee may cover all or part of the initial review process. The University may require a proposal fee in an amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or may require a smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

(i) *Initial fee:* Private Entities interested in submitting an Unsolicited Proposal are required to pay a, non-negotiable Proposal Review Fee at the time of submitting the Unsolicited Proposal to the University. The Proposal Review Fee is \$25,000.00 for all Unsolicited Proposals submitted with a total proposed and conceptual value of under \$50M. For Unsolicited Proposals submitted with a total proposed and conceptual value of \$50M and greater, the Proposal Review Fee will be \$50,000.00. The form and manner of the Proposal Review Fee payment submission shall be determined and specified by the RPE. Proposers submitting multiple Proposals for unrelated projects will be required to submit a Proposal Review Fee for each Unsolicited Proposal submission. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the University in order for the University to proceed with its review.

(ii) *Additional fees.* Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the University reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The University will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the University will continue to process, review, and evaluate the proposal.

(iii) *Reimbursement of excess fees paid.* In the event the total fees paid by the private entity exceed the University's total costs incurred in processing, reviewing, and evaluating the proposal, the University shall reimburse the difference. Otherwise, the University shall retain all fees paid.

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

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

1. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);
2. 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
3. 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.

In order to prevent the release of any confidential and proprietary information



that otherwise could be held in confidence pursuant to § 56-575.4(G) of the PPEA, the private entity submitting the information must do the following:

- (i) invoke the exclusion from FOIA in writing when the data or materials are submitted to the University or before such submission; and
- (ii) identify with specificity the data and materials for which protection from disclosure is sought; and
- (iii) state why the exclusion from disclosure is necessary.

A private entity may request and receive a determination from the University as to the anticipated scope of protection prior to submitting the proposal. The University is authorized and obligated to protect only confidential, proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and nonproprietary information contained therein.

Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the University shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection and shall communicate its determination to the private entity in writing.

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

Proposals should avoid the creation of state-supported debt; however, should a proposal include such debt, procedures to secure specific approval by the Governor, General Assembly, the Department of Planning and Budget, the Department of the Treasury, and any other appropriate entities must be included in the proposal. In addition, a clear and detailed alternative if such approval is not achieved must be provided.

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

Nothing in the PPEA shall affect the duty of the University to comply with all other applicable law not in conflict with the PPEA.

### **III. Solicited Proposals**

The University may issue Statements of Interest and Qualifications (SIQs) and then a Request for Proposals (RFPs) inviting proposals from private entities to develop or operate qualifying projects. The University may use a two-part proposal process consisting of an initial conceptual phase (Part one) and a detailed phase (Part two). An RFP may invite proposers to submit proposals on individual projects identified by the University. In such a case, the University will set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The University may establish suggested timelines for the review and selection of solicited proposals.

The RPE may choose to issue the RFP documents in draft format to shortlisted proposers and hold proprietary one-on-one meetings to solicit feedback on the proposed draft RFP including a draft cost analysis. Once consideration has been given to the proposers feedback, the RPE will issue the final RFP documents to the short-listed proposers.

The RFP will specify the information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP will be posted in such public areas as are normally used for posting of the University's notices. Notices will also be published as required by law. In addition, solicited proposals should be posted pursuant to Section IV.B. below.

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

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

The University 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 an RFP, the proposal shall be treated as an unsolicited proposal.

The University shall be afforded sufficient time as it deems necessary for complete review and evaluation of all proposals submitted; proposals shall remain valid and not revised, other than by the stated procedure, during this period. However, the University may, at its sole discretion, discontinue its evaluation of any proposal at any time. Furthermore, if the University determines that it is in the University's interest to do so with respect to any Unsolicited Proposal, the University may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage. All Unsolicited Proposals must comply with Section IV. A. Format for Submissions at Conceptual Stage.

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

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

2. If the University chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice on the Commonwealth's electronic procurement website, on the University's website and as otherwise required by law or deemed appropriate by the University. The notice shall state that the University (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 University and the PPEA.
3. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.
4. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the University familiar with the unsolicited proposal and the guidelines established by the University shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The University 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 University shall establish criteria, including key decision points and approvals to ensure proper consideration of competing proposals from other private entities prior to selection.

## **B. Posting Requirements**

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the University within 10 working days after acceptance of such proposals in the following manner:
  - a. On the Department of General Service's web-based electronic procurement program commonly known as "eVA"
2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the University so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. In addition to the posting requirements, 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 FOIA, subdivision 11 of Va. Code §2.2-3705.6 shall not be posted, except as otherwise agreed to by the University 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.

### **C. Initial Review by the University 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 University for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found below in Section V. A.
2. The University will determine at this initial stage of review whether it will proceed using:
  - a. Standard procurement procedures consistent with the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia and the Commonwealth of Virginia Procurement Manual for Institutions of Higher Education and their Vendors; or
  - b. Guidelines developed by the University that are consistent with procurement of other than professional services through “competitive negotiation” as the term is defined in the Rules Governing Procurement of Goods, Services, Insurance and Construction by a Public Institution of Higher Education of the Commonwealth of Virginia and the Commonwealth of Virginia Procurement Manual for Institutions of Higher Education and their Vendors. The University may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the University 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) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.
  - c. After reviewing the original proposal and any competing proposals submitted during the notice period, the University 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.
3. In the event that more than one proposal will be considered in the detailed

phase of review, the University will consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review. Such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

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

## **V. Proposal Preparation and Submission**

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

The University may require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility, and (vi) any additional information as the University 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 that the University may request:

#### **1. Qualification 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 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 University.
- 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 impact of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, 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 University's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.
- k. List any contingencies that must occur for the project to be successful.

### 3. Project Financing

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

### 4. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental

agencies in areas affected by the project.

- d. Describe the anticipated significant benefits to the community, region or state, including anticipated economic benefits to the University and whether the project is critical to attracting or maintaining competitive industries and businesses to the University or the surrounding region.
- e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

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

If the University 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 University:

1. A vicinity and/or topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;



7. 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;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the University'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 (§ 2.2-3100 et seq.) of Title 2.2; and
11. Additional material and information as the University may reasonably request.

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

There are several factors that the University may wish to consider when evaluating and selecting a proposal under the PPEA, including but not limited to the following:

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

Factors to be considered in either phase of the University'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;
7. Project ownership;
8. Conformance with applicable laws, codes, standards and regulations on past projects;
9. Demonstrated record of successful past performance, including timeliness, compliance with plans and specifications, quality, cost control and project safety; and
10. SWaM usage.

### **B. Project Characteristics**

Factors to be considered in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology & technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

### **C. Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the University;
2. Financing and the impact on the debt burden of the University or appropriating body;
3. Financial plan, including the degree to which the proposer has conducted due

diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;

4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. The identity, credit history, 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 University deems appropriate.

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

#### **D. Public Benefit and Compatibility**

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

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

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

Other factors that may be considered by the University 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 financial and nonfinancial;
7. The private entity's compliance with a SWaM 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. The recommendation of a committee of representatives of members of the University and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the University deems appropriate.

## **VII. Additional Review Procedures**

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

The University may, at its discretion, assemble an advisory committee or establish criteria to trigger the establishment of an advisory committee for the purpose of reviewing the terms of a proposed interim or comprehensive agreement. If the University forms a committee or establishes such criteria, the members will consist of representatives from the University. The criteria will include the scope, total cost and duration of the proposed project and whether the project involves or impacts multiple public entities. Timelines for the work of the committee will be developed and made available to proposers.

### **B. Appropriating Body**

The PPEA Model Guidelines state that if the RPE for appropriating or authorizing funding to pay for a qualifying project is different from the RPE reviewing or approving the project, then the RPE reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. The University shall follow this procedure when applicable.

### **C. Public-Private Partnership Oversight Commission**

Prior to entering into negotiations with any private entity for an interim or comprehensive agreement, the Agency shall submit copies of the detailed proposals to the Public-Private Partnership Advisory Commission if required by Va. Code §30-278 et seq.

## **VIII. Interim and Comprehensive Agreements**

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the University. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The University may designate a working group to be responsible for negotiating

any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the University and the selected proposer with regard to the project.

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

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

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. Establishing 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 scope of the comprehensive agreement shall include but not be limited to the following:

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 of plans and specifications for the qualifying project by the University;
3. The rights of the University 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 University to ensure proper maintenance;
6. The terms under which the private entity will reimburse the University for services

provided;

7. The policy and procedures that will govern the rights and responsibilities of the University 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 University and the transfer or purchase of property or other interests of the private entity by the University;
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 set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
  - a. A copy of any service contract shall be filed with the University.
  - 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 University may contribute financial resources, if any, for the qualifying project;
11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
12. The terms and conditions under which the University will be required to pay money to the private entity and the amount of any such payments for the project;
13. Other requirements of the PPEA or other applicable law; and
14. Such other terms and conditions as the University may deem appropriate.

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

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

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

Active public engagement is important to ensure transparency, accountability and the successful delivery of the Qualifying Project. No later than 30 days prior to entering an interim or comprehensive agreement, the University shall hold a public hearing on the proposal(s).

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the University, the University shall post the proposed agreement in the following manner:
  - a. Posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA"; and
  - b. 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 § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the University and the private entity.
2. Any studies and analyses considered by the University in its review of proposal shall be disclosed to the appropriating body at some point prior to the execution of an interim or comprehensive agreement.
3. Once an interim agreement or a comprehensive agreement has been finalized and executed, the University shall make procurement records available for public inspection, upon request.
4. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse effect on the financial interest or bargaining position of the University or private entity in accordance with Section II.D.3.
5. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 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.
6. To the extent access to procurement records are compelled or protected by a court order, then the University must comply with such order.

### **IX. Governing Provisions**

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

## **TERMS AND DEFINITIONS**

“**Affected jurisdiction**” means any county, city, or town in which all or a portion of a qualifying project is located.

“**Appropriating body**” means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

“**Comprehensive agreement**” means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

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

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

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

“**Develop**” or “**development**” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

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

“**Lease payment**” means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

“**Lifecycle cost analysis**” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

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



**“Operate”** means to finance, maintain, improve, equip, modify, repair, or operate.

**“Opportunity cost”** means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

**“Private entity”** means any natural person, corporation, general partnership, limited liability Company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

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

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

**“Responsible public entity”** means a public entity that has the power to develop or operate the applicable qualifying project.

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

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

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

**“State”** means the Commonwealth of Virginia.

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