

School Board of the City of Richmond, Virginia

Procedures for Implementation of the

Public-Private Education Facilities

and Infrastructure Act of 2002

**SCHOOL BOARD OF THE CITY OF RICHMOND,
VIRGINIA**

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

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**Procedures 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”)¹ grants the School Board of the City of Richmond, Virginia (the School 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 School 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 comprehensive agreements between an operator, as defined in the PPEA, and the School Board will define the respective rights and obligations of the School Board and the private operator. Although guidance with regard to the application of the PPEA is provided herein, the School Board and all private entities must 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) Any education facility, including, but not limited to a school building, any functionally-related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) Any building or facility for principal use by 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; or
- (vi) Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

¹ Chapter 571, 2002 Va. Acts; Va. Code § 56-575.1 through § 56-575.16.

The PPEA establishes requirements that the School 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 comprehensive agreement detailing the relationship between the Board and the private entity.

The School Board adopted these procedures (the Procedures) to implement the PPEA. The Superintendent and officers and employees of the School Board will follow the Procedures to receive and evaluate any proposal submitted to the School Board under the provisions of the PPEA. The School Board must adopt any amendments to the Procedures.

II. General Provisions

A. Proposal Submission

A proposal may be either solicited by the School 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 proposal should contain specified information on 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.

The Procurement Agent is designated to serve as the point of contact to receive proposals, whether solicited or unsolicited, under the PPEA and to respond to inquiries regarding the PPEA or the Procedures. The Assistant Superintendent for Finance and Operations, or a designee thereof, may designate a review committee(s) to be responsible for evaluating proposals and negotiating the comprehensive agreement.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal and other financing arrangements permitted by the PPEA. Proposals shall include, 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.

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 School 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 comprehensive scope of work and a financial plan for the project, containing

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

enough detail to allow an analysis by the School Board of the financial feasibility of the proposed project, including, but not limited to, (i) the identity of any parties expected to provide financing for the project and (ii) a statement indicating whether the proposer intends to request that the School Board provide resources for financing the project and the nature and extent of any resources. The School Board may require the proposer to provide additional information and clarification to the submission.

The School Board is committed to providing contracting and subcontracting opportunities for minority business enterprises. The School Boards policies related to participation by minority business enterprises shall be applied fully to all proposals, solicited or unsolicited, received by the School Board pursuant to the Procedures and the PPEA.

B. Affected Jurisdictions

Any private entity submitting a conceptual or detailed proposal to the School 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 School Board. Any affected jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the School Board and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) 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 School Board, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. However, the School 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 School Board may seek an independent analysis regarding the specifics, advantages, disadvantages, and the long-term costs of any request by a private entity for approval of a qualifying project.³ Alternatively, the School Board may seek the advice of internal staff with relevant experience in determining whether to enter into an agreement with the private entity. The School Board may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, engineers, consultants (technical), 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 School 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 School Board may

³ 2004 amendment to the statute.

require an initial processing fee with an additional fee to be charged should the project proceed beyond the initial review.

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

The School Board may charge the proposal review fee in two parts. The first part of the proposal review fee shall be in the amount of two and one-half percent (2.5%) of the value of the qualifying project under the submitted proposal, except that, notwithstanding the preceding, this initial fee shall be no less than two thousand five hundred dollars (\$2,500.00) and no more than fifty thousand dollars (\$50,000.00), and shall be included by the private entity as part of its submitted proposal. The second part of the proposal fee shall consist of the remaining direct costs not covered by the first part of the proposal review fee and shall be imposed by the School Board throughout the processing, review and evaluation of the proposal if and as the School Board reasonably anticipates incurring costs in excess of the first part of the proposed review fee. The School Board shall notify the proposer of the amount of such additional direct costs as and when it anticipates incurring the costs. Prompt payment of such costs shall be required before the School Board will continue to process, review and evaluate the proposal.

The School Board shall refund all fees submitted by a private entity in connection with an unsolicited proposal if the School Board decides not to proceed to publication and conceptual-phase review of the unsolicited proposal. The School Board shall refund any portion of fees paid in excess of its direct costs associated with evaluating a proposal. In the event the School Board chooses to consider more than one proposal in the detailed phase of review, the School Board shall not refund the fees paid by an unsuccessful proposer for costs incurred during the detailed phase of review.

D. Virginia Freedom of Information Act

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“FOIA”).⁴ In accordance with § 2.2-3705 A 56 of FOIA, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the School Board under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the School Board or the private entity or the bargaining position of either party.

Subsection 56-575.4 G of the PPEA imposes an obligation on the School Board and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator when the School Board and affected jurisdictions have agreed to do so. When the private entity requests that the School Board not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the Board or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from

⁴ Virginia Code § 2.2-3700 et seq.

disclosure is necessary. A private entity may request and receive a determination from the School Board as to the anticipated scope of protection prior to submitting the proposal. The School Board 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 proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the School Board 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 proposer. If the determination regarding protection or the scope thereof differs from the proposer's request, then the School Board will accord the proposer a reasonable opportunity to clarify and justify its request. Upon a final determination by the School Board to accord less protection than requested by the proposer, the proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided in section IV.A.[2] below.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any 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 School Board's fiscal policies.

F. Ethics in Public Contracting

By signing this comprehensive agreement, the bidder/offeror certifies that he has not violated any provisions of Federal law, the Code of Virginia, or the Richmond City Code. The bidder/offeror certifies that his bid/proposal is made without collusion or fraud and that he has not offered or received any kickbacks or inducements from any other bidder/offeror, supplier, manufacturer or subcontractor in connection with his bid/proposal and that he has not conferred on any public employee having official responsibility for this procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value was exchanged. The bidder/offeror agrees that if such warranty is in any respect breached, he will pay to the School Board the full price agreed by the School Board to be paid for the supplies, materials, equipment or services to be furnished under his bid or proposal.

G. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the School 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 School Board may invite bids or proposals from private entities to acquire, design, equip, construct, improve, renovate, expand, maintain, operate, implement or install qualifying projects or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated. The School Board may use a two-part process consisting of a conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the public entity. The School 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 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 School Board's notices, including the School Board's website. Notices should also be published in a newspaper or other publications of general circulation, advertised in *Virginia Business Opportunities* and posting on the Commonwealth's electronic procurement website (www.eva.state.va.us). 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 School Board.

IV. Unsolicited Proposals

The PPEA permits the School Board to receive and evaluate unsolicited proposals from private entities to acquire, design, equip, construct, improve, renovate, expand, maintain, operate, implement or install a qualifying project.

The School Board may publicize its needs and may encourage or notify interested parties to submit 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.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The School Board reserves the right to reject any and all proposals at any time.

2. Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the School Board will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the School 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 School Board chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the School Board for posting of public notices for a period of not less than 45 days. The School Board shall also publish the same notice in one or more newspapers or periodicals of general circulation in the area, in *Virginia Business Opportunities* and by posting a notice on the Commonwealth's electronic procurement website (www.eva.state.va.us)⁵ to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have 45 days from the date the notice is first published to submit competing unsolicited proposals.⁶ The notice shall state that the School Board (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the School Board and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

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 School Board for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section V A.

2. The School 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. Procedures developed by the School 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 School Board may proceed using competitive negotiation procedures only if it makes a written determination that doing so is likely to be advantageous to the School Board and the public based upon either (i) the probable scope, complexity or urgency of need, or (ii) the risk sharing,

⁵ 2004 amendment to the statute.

⁶ 2003 amendment to the statute.

added value, increase in funding or economic benefit from the project would otherwise not be available.

3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the School 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, or
 - (iv) to proceed to the detailed phase with multiple proposals.

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

V. Proposal Preparation and Submission

A. Format for Submissions at the Conceptual Stage

The School 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) project benefit and compatibility and (5) any additional information as the School 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:

1. 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 three (3) years and contact information for those clients, including names, addresses, and telephone number. If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (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, implementation, installation 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 (20%) 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. For each firm or major subcontractor that will perform installation, implementation, 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:

- (A) bankruptcy filings;
- (B) liquidated damages;
- (C) fines, assessments or penalties;
- (D) judgments or awards in contract disputes;
- (E) contract defaults or terminations;
- (F) license revocations, suspension, disciplinary actions;
- (G) prior debarments or suspensions by a governmental entity;
- (H) denials of prequalification, findings on non-responsibility;
- (I) safety past performance data including fatality; incidents, "Experience Modification Rating," "Total Recordable Injury Rate," and "Total Lost Workday Incidence Rate;"
- (J) violations of any federal, state, or local criminal or civil law;
- (K) criminal indictments or investigations; and
- (L) legal claims filed by or against the firm.

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. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying projects to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entities.
- b. Identify and fully describe any work to be performed by the School 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 School Board's

comprehensive land use plan 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 School Board's comprehensive land use plan and applicable ordinances and design standards.
- f. Identify the proposed schedule for the work on the project, including sufficient time for the School 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 School 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.

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 implementation, installation, 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 School Board's adopted operational standards.
- 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 need, if any, for the School 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 School Board may require the use of credit enhancements.
- g. 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?
- h. Outline the financial penalties, if any, that would result should the School 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.
- i. 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.

4. 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 School Board, including anticipated benefits to the economic, social,

environmental, transportation, etc., condition of the School 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 School 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.
5. Any additional information as the School Board may reasonably request.

B. Format for Submissions at the Detailed Stage

If the School 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 School 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 operation, installation, implementation, 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 School 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 School 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 School Board's or affected jurisdiction's development plans.
11. Identification of any known conflicts of interest or other factors that may impact the School 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 School Board may request.

VI. Proposal Evaluation and Selection Criteria

Some or all of the following matters, along with the specified information required under V.A and V.B above, may be considered in the evaluation and selection of PPEA proposals. The School 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 School Board's review to determine whether the proposer possesses the requisite qualifications and experience shall include, along with the specified information required under V.A and V.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 shall include, along with the specified information required under V.A and V.B above, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;

4. Technology; technical feasibility;
5. Conformity to State, School 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 V.A and V.B above, the following:

1. Cost and cost benefit to the School Board;
2. Financing and the impact on the debt or debt burden of the School Board;
3. Financial plan including default implications;
4. Estimated cost, including debt source, operating costs, etc. and
5. Life-cycle cost analysis.

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 V.A and V.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 School Board, regional, and state economic development efforts; and
6. Compatibility with School Board's and affected jurisdiction's land use and transportation plans,

VII. Comprehensive Agreement

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, operating, implementing or installing the qualifying project, the selected proposer shall enter into a comprehensive agreement with the School Board. Each comprehensive agreement shall define the rights and obligations of the School Board and the selected proposer with regard to the project.

A school board may enter into a comprehensive agreement under the PPEA only with the approval of the local governing body.

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, operation, implementation, or installation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 of the PPA for those components that involve construction;⁷
2. The review and approval of plans and specifications for the qualifying project by the School Board;
3. The rights of the School 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 operator by the School Board to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the operator will reimburse the School Board for services provided;

⁷ 2004 amendment to the statute.

7. The policy and procedures that will govern the rights and responsibilities of the School Board and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the School Board and the transfer or purchase of property or other interests of the operator by the School Board;
8. The terms under which the operator 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 School Board.
 - b. A schedule of the current user fees or lease payments shall be made available by the operator 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 School Board will contribute financial resources, if any, for the qualifying project; and
11. Other requirements of the PPEA or provisions that the School Board determines serve the public purpose of the PPEA.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals plays a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the School Board. Accordingly, as part of the 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 comprehensive agreement and any amendments thereto shall be approved and entered into in writing by the School Board.