

## PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE GUIDELINES

**Section 1. PURPOSE**

- A. The Bedford Regional Water Authority (“Authority”) has determined to adopt these guidelines under the authority of the Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”), Va. Code § 56-575.1 through § 56-575.18, as amended, which 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 entity determines 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.

**Section 2. INTRODUCTION**

- A. The PPEA defines “Responsible Public Entity” to include any Public Entity that “has the power to Develop or Operate the applicable Qualifying Project,” and the Authority is a Responsible Public Entity under the PPEA. Individually negotiated Interim and Comprehensive Agreements will define the respective rights and obligations of the Authority and the private operator or developer entity.
- B. 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 Projects that includes water and sewer utility and technology infrastructure and any building or facility that meets a public purpose and is Developed or Operated by or for any Public Entity, including the Authority.
- C. The PPEA establishes requirements that the Authority must adhere to 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 Authority and the Private Entity.
- D. Capitalized terms used in these Guidelines shall have the meanings given in § 56-575.1 of the PPEA as well as in the “Terms and Definitions” section in this Policy.
- E. The Authority has designated the Executive Director to serve as the primary point of contact for receiving proposals submitted under the PPEA and to ensure a responds to inquiries regarding the PPEA or the guidelines.

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**Section 3. GENERAL PROVISIONS**

## A. Proposal Submission:

1. A proposal may be either solicited by the Authority or delivered by a Private Entity on an unsolicited basis. Any proposer will be required to follow a two (2) part proposal submission process consisting of a Conceptual Stage and a Detailed Stage as detailed in this policy.
2. The PPEA is a flexible development tool that allows private entities to include innovative financing methods and techniques in their proposal; this can include the imposition of User Fees, Service Payments, or connection fee credits. Such financing arrangements may include the issuance of debt instruments, equity, or other securities or obligations. Depending on the Authority's determination and the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, property exchanges, development agreements, prepayment agreements, conduit financing and other methods allowed by law.
3. Proposals should be prepared simply and economically, providing a concise description of the proposers' capabilities to complete the proposed Qualifying Project and the benefits to be derived from the project by the Authority. 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 enough detail to allow an analysis by the Authority of the financial feasibility of the proposed project. The Authority may require additional information from the proposer in order to provide clarification to the submission, as long as the same information is required from all proposers. The cost analysis of a proposal may not be linked solely to the financing plan as the Authority may determine to finance the project through other available means.
4. In the event of a Private Entity's request for approval of a Qualifying Project, the Authority will post and publish a public notice of the Private Entity's request for approval of a Qualifying Project, including (i) specific information and documentation to be released regarding the nature, timing, and scope of the Qualifying Project pursuant to subsection A of § 56-575.4; and (ii) a reasonable time period of at least forty-five (45) days during which the Authority shall receive competing proposals pursuant to subsection A of §56-575.4. Such notice shall be advertised in the Virginia Business Opportunities publication and posted on the Commonwealth of Virginia's electronic procurement website.
5. The Authority will engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the Authority, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long and short-term costs of any request by a

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Private Entity for approval of a Qualifying Project unless the Board of Directors of the Authority determines that such analysis of a request by a Private Entity for approval of a Qualifying Project shall be performed by Authority employees.

**B. Affected Local Jurisdictions:**

1. Any Private Entity requesting approval from or submitting a conceptual or Detailed Proposal to the Authority must provide Bedford County, Virginia and any other Affected Local Jurisdiction with a copy of the Private Entity's request or proposal by certified mail, express delivery, or hand delivery. Affected Local Jurisdictions shall have sixty (60) days from the receipt of the request or proposal to submit written comments to the Authority 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 sixty (60) day period shall be given consideration by the Authority and no negative inference shall be drawn from the absence of comment by an Affected Local Jurisdiction.

**C. Proposal Review Fee:**

1. The Authority shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the Private Entity. The Authority may charge a reasonable Review Fee up to \$20,000 from the Private Entity to cover the "Direct Costs" which may include (i) the cost of staff time required to process, evaluate, review, and respond to the proposal and (ii) any out-of-pocket cost which includes the costs of attorneys, consultants, financial advisors and qualified professionals hired pursuant to this policy. In the event the Authority's Direct Costs are greater than the Review Fee, it may assess additional Direct Costs against the Private Entity. The amount of the fee that is assessed for any given project will be the same fee that is charged to each of the private entities that submits a proposal. The Authority may, at its sole discretion, waive its Review Fees.
2. The Authority's Review Fees have been established so as not to be greater than the Direct Costs. Any Review Fee in excess of Direct Costs shall be promptly refunded to the proposer.
3. All Review Fees will be refunded if the Authority decides not to proceed to publication and conceptual

**D. Freedom Of Information Act:**

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("FOIA"), Va. Code § 2.2-3700 et seq. except that subdivision 11 of § 2.2-3705.6 exempts certain documents from public

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- disclosure. FOIA exemptions, however, are discretionary, and the Authority may elect to release some or all of documents except to the extent the documents are:
- a. Trade secrets of the Private Entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);
  - b. Financial records of the Private Entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
  - c. Other information submitted by a Private Entity, where if the record or document were made public prior to the execution of an interim or Comprehensive Agreement the financial interest or bargaining position of the public or Private Entity would be adversely affected.
2. Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the Authority must comply with the provisions of such order.
  3. Before a document of a Private Entity may be withheld from disclosure, the Private Entity must make a written request to the Authority at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in this policy.
  4. Upon the receipt of a written request for protection of documents, the Authority shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the Authority or Private Entity in accordance with this policy. The Authority shall make a written determination of the nature and scope of the protection to be afforded by the Authority under this subdivision. If the written determination provides less protection than requested by the Private Entity, the Private Entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in this policy.
  5. Once a written determination has been made by the Authority, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the Authority or any Affected Local Jurisdiction to which such documents are provided.
  6. If a Private Entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.
  7. The Authority may withhold from disclosure memoranda, staff evaluations, or other records prepared by the Authority, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a Comprehensive Agreement, the financial interest or bargaining position of the Authority would be

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- adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the Authority.
8. Cost estimates relating to a proposed procurement transaction prepared by or for the Authority shall not be open to public inspection.
  9. The Authority may not withhold from public access:
    - a. procurement records other than those subject to the written determination of the Authority;
    - b. information concerning the terms and conditions of any interim or Comprehensive Agreement, Service Contract, lease, partnership, or any agreement of any kind entered into by the Authority and Private Entity;
    - c. information concerning the terms and conditions of any financing arrangement that involved the use of any public funds; or
    - d. information concerning the performance of any Private Entity developing or operating a qualifying transportation facility or a Qualifying Project.
  10. However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the Authority must comply with such order.
  11. Once an Interim Agreement or a Comprehensive Agreement has been entered into, the Authority shall make procurement records available for public inspection, upon request.
    - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of the Authority or Private Entity.
    - b. 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.
  12. To the extent access to procurement records are compelled or protected by a court order, then the Authority must comply with such order.
- E. Use of Public Funds: Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or Comprehensive Agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.
- F. Applicability of Other Laws: Nothing in the PPEA shall affect the duty of the Authority to comply with all other applicable law not in conflict with the PPEA. The applicability

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of the Virginia Public Procurement Act, Va. Code §2.2-4300 through §2.2-4377, as amended, (“VPPA”) is as set forth in the PPEA.

**Section 4. SOLICITED PROPOSALS**

- A. The Authority may issue Requests for Qualifications (“RFQs”), Requests for Proposals (“RFPs”) or invitations for Bids (“IFBs”), inviting proposals from private entities to develop or operate Qualifying Projects or to design or equip projects so constructed, improved, renovated, expanded, maintained, or operated. The Authority may use a two (2) part proposal process consisting of an initial conceptual phase and a detailed phase. The Authority may invite proposers to submit proposals on individual projects identified by the Authority. In such a case the Authority should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.
- B. The RFQ, RFP, or IFB should 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 RFQ, RFP, or IFB should be posted in such public areas as are normally used for posting of the Authority’s notices, including the Authority’s website. Notices should also be published in a newspaper or other publications of general circulation and advertised in the Virginia Business Opportunities publication and at Virginia’s Statewide e-procurement application (“eVa”) located at <http://www.eva.State.va.us> and posted on the Commonwealth of Virginia’s electronic procurement website. In addition, solicited proposals should be posted pursuant to this policy. The RFQ, RFP, or IFB should 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 Authority.

**Section 5. UNSOLICITED PROPOSALS**

- A. The PPEA permits public entities to receive, evaluate, and select for negotiations unsolicited proposals from private entities to Develop or Operate a Qualifying Project.
- B. The Authority 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 RFQ, RFP, or IFB the proposal shall be treated as an unsolicited proposal.
  - 1. Decision to Accept and Consider Unsolicited Proposal; Notice:
    - a. Upon receipt of any unsolicited proposal or group of proposals and payment of any required, unwaived fee by the proposer or proposers, the Authority will

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promptly determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the Authority determines not to accept the proposal and proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the proposer.

- b. If the Authority chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the Authority for posting of public notices for a period of not less than forty-five (45) days. The Authority shall also publish the same notice for a period of not less than forty-five (45) days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing proposals. In addition, the notice should be advertised in the Virginia Business Opportunities publication and the Commonwealth of Virginia's statewide e-procurement application ("eVa") located at <http://www.eva.state.va.us>. The notice shall state that the Authority (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or a Comprehensive Agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the guidelines adopted by the Authority and the PPEA. The notice also shall summarize the proposed Qualifying Project or projects and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA.
  - c. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the Authority familiar with the unsolicited proposal and the guidelines established by the Authority shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The Authority 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 Authority shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.
- C. Posting Requirements:
1. Conceptual Proposals, whether solicited or unsolicited, shall be posted by the Authority within ten (10) working days after acceptance of such proposals on the Authority's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, or a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting

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- may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the Authority.
2. Nothing shall be construed to prohibit the posting of the Conceptual Proposals by additional means deemed appropriate by the Authority 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 subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Authority 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.
- D. Initial Review by the Authority at the Conceptual Stage:
1. While 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 should be considered by the Authority for further review at the Conceptual Stage, the Authority may determine to evaluate any proposal it so chooses. Formatting suggestions for proposals at the Conceptual Stage are found under the "Proposal Preparation and Submission" Section of this policy. If, after publishing notice of acceptance of an unsolicited proposal in accordance with this policy, other, competing proposals are received, the Authority will require all private entities to submit uniform Conceptual Proposals.
  2. The Authority should determine at this initial State of review whether it will proceed using:
    - a. Standard procurement procedures consistent with the VPPA; or
    - b. These guidelines developed by the Authority that are consistent with procurement of other than professional services through "competitive negotiation" as the term is set forth in § 2.2-4302.2 of the Code of Virginia. The Authority may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the Authority and the public based upon either (i) the probable scope, complexity or priority of need, (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the Private Entity, or (iii) increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.
  3. After reviewing the original proposal and any competing proposals submitted during the notice period, the Authority may determine:
    - a. Not to proceed further with any proposal,
    - b. To proceed to the detailed phase of review with the original proposal,
    - c. To proceed to the detailed phase with a competing proposal,
    - d. To proceed to the detailed phase with multiple proposals,

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- e. To request modifications or amendments to any proposals.
4. In the event that more than one proposal will be considered in the detailed phase of review, the Authority will consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review and such reasonable costs may be assessed to the successful proposer in the Comprehensive Agreement.
5. The Authority reserves the right to reject any proposal at any time prior to the execution of an interim or Comprehensive Agreement and proceed by standard procurement procedures.

**Section 6. PROPOSAL PREPARATION AND SUBMISSION**

- A. Format for Submissions at Conceptual Stage (Phase 1 Submittal):
  1. The Authority may consider and approve a Conceptual Stage (Phase 1) proposal with whatever information it deems to be informative and consistent with its needs. This Phase 1 submittal may be primarily qualifications based, as may be solicited through a request for qualifications (“RFQ”). It may also require that proposals at the Conceptual Stage contain information in the following areas:
    - a. qualifications and experience,
    - b. project characteristics,
    - c. project financing,
    - d. anticipated public support or opposition, or both,
    - e. project benefit and compatibility, and,
    - f. any additional information as the Authority may reasonably request to comply with the requirements of the PPEA.
  2. All Phase 1 proposal submissions must include the requested number of bound hard copies of the submittal, preferably in 3-ring binders, and one digital copy which contains a single Adobe Portable Document Format (PDF) file containing the entire contents in the same layout and format as the hard copies. If the number of bound hard copies is not otherwise specified, six (6) copies each of public and proprietary submissions must be provided.
  3. Suggestions for formatting information to be included in proposals at this stage include the following to the extent each is applicable:
    - a. Qualification and Experience:
      - i. 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.
      - ii. 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

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- other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction, completion guarantees and warranties, and a description of such guarantees and warranties.
- iii. Provide the names, mailing addresses, physical addresses, email addresses, and telephone numbers of all persons within the firm or consortium of firms who may be contacted for further information,
  - iv. 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.
  - v. 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, Va. Code §2.2-3100 through §2.2-3132, as amended (“VSLGICIA”).
- b. Project Characteristics:
- i. 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.
  - ii. Provide drawings and/or mapping which shows the location of the project, a site plan of the project (if applicable), the conceptual layout of the project, and any other plans that are needed to adequately show the scope of the project.
  - iii. Identify and fully describe any work to be performed by the Authority.
  - iv. 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.
  - v. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
  - vi. Identify the projected positive social, economic, and environmental impacts of the project.
  - vii. Identify the proposed schedule for the work on the project, including the estimated time for completion.
  - viii. Propose allocation of risk and liability for work completed beyond the agreements, completion date, and assurances for timely completion of the project.
  - ix. State assumptions related to ownership, legal liability, law enforcement, operation of the project, and the existence of any restrictions on the Authority’s use of the project.
  - x. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
  - xi. List any other assumptions relied on for the project to be successful.
  - xii. List any contingencies that must occur for the project to be successful.

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- c. Project Financing:
  - i. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
  - ii. Submit a plan for the Development, financing, and Operation of the project showing the anticipated schedule on which funds will be required. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports. Describe the anticipated costs of and proposed sources and uses for such funds.
  - iii. 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.
  - iv. Identify the proposed risk factors and methods for dealing with these factors.
  - v. 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 Authority's credit or revenue.
  - vi. Identify the amounts and terms and conditions for any revenue sources.
  - vii. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- d. Public Support and/or Opposition; Project Benefit and Compatibility:
  - i. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
  - ii. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
  - iii. 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.
  - iv. Describe the anticipated significant benefits to the community, region, or state including anticipated benefits to the economic condition of the Authority and whether the project is critical to attracting or maintaining competitive industries and businesses to the Authority or the surrounding region.
  - v. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
  - vi. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types

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of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

B. Format for Submissions at Detailed Stage (Phase 2 submittal):

1. If the Authority decides to proceed to the detailed phase of review with one or more proposals, the Authority will notify the Private Entity or entities that provided the Conceptual Stage (Phase 1) proposal(s) that the Authority has reviewed and accepted their Phase 1 proposal and would like for them to proceed with the preparation of the Detailed Stage (Phase 2) proposal. This request may be considered a Request for Proposals (“RFP”).
2. All Phase 2 proposal submissions must include the specified number of bound hard copies of the submittal, preferably in 3-ring binders, and one (1) compact disc (CD) or digital video disc - data format (DVD-R) which contains a single Adobe Portable Document Format (PDF) file containing the entire contents in the same layout and format as the hard copies. If the number of bound hard copies is not otherwise specified, twelve (12) copies must be provided.
3. The following information should be provided by the Private Entity unless waived by the Authority:
  - a. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
  - b. 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 Project to include the proposed major responsibilities and timeline for activities to be performed by both the public and Private Entity;
  - c. Information relating to the current plans for Development of facilities or technology infrastructure 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 Local Jurisdiction;
  - d. A list of all permits and approvals required for the Qualifying Project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
  - e. A statement setting forth the Private Entity's general plans for financing the Qualifying Project including the sources of the Private Entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the Private Entity;
  - f. The names and addresses of the persons who may be contacted for further information concerning the request;
  - g. Provide drawings and/or mapping, a detailed site plan of the project (if applicable), a preliminary design layout of the project, and any other plans that are needed to adequately show the detailed scope of the project;

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- h. 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;
- i. A statement and strategy setting out the plans for securing all necessary property and easements;
- j. A detailed listing of all firms that will provide specific design, construction, operations and maintenance, and completion guarantees and warranties, and a brief description of such guarantees and warranties;
- k. 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;
- l. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § [56-575.9](#) or [56-575.9:1](#) and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time;
- m. 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;
- n. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- o. Explanation of how the proposed project would impact local development plans of each Affected Local Jurisdiction;
- p. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In additions, identification of any known conflicts of interest or other disabilities that may impact the Authority'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 VSLGCIA;
- q. Description of the types of sureties proposed to insure completion of the project.
- r. A project schedule showing all the anticipated major milestones of the various stages of the permitting, public meetings, design, construction, startup, and operation of the project; and,
- s. Additional material and information as the Authority may reasonably request.

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- C. Any Private Entity requesting approval from, or submitting a proposal to the Authority shall notify each Affected Local Jurisdiction by furnishing a copy of its request or proposal to each Affected Local Jurisdiction.

**Section 7. PROPOSAL EVALUATION AND SELECTION CRITERIA**

- A. Once the advertisement, as stated in this policy, has been made, and if competing proposals have been received, once the Authority has required each proposer to provide substantially the same information, selection shall be made of two (2) or more proposers deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the notice, including price if so stated in the notice. Negotiations shall then be conducted with each of the selected proposers to determine the successful proposer based on the sole discretion of the Authority; the successful proposer will be the one that the Authority deems to be the most qualified, best value, or some combination thereof.
- B. Cost elements shall be considered, but need not be the sole or primary determining factor. These elements may include, but are not limited to, any or all of the following:
1. Design Fees
  2. Preconstruction Fees
  3. Design-Builder Fee
  4. Construction Costs
  5. General Conditions Fees
  6. Subcontractor Markup
  7. Labor Rate with Markup
    - a. Raw Hourly
    - b. Lump Sum
  8. Total Project Costs
  9. Guaranteed Maximum Price (“GMP”)
- C. Other factors that may be considered include:
1. the general reputation, industry experience, and financial capacity of the Private Entity;
  2. the proposed design of the Qualifying Project;
  3. the eligibility of the facility for accelerated selection, review, and documentation of timelines under the Authority’s guidelines;
  4. local citizen and government comments;
  5. benefits to the public;
  6. the Private Entity’s compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;

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7. the Private Entity's plans to employ local contractors and residents or self perform;  
and,
  8. other criteria that the Authority deems appropriate.
- D. After negotiations have been conducted with proposer so selected, the public body shall select the proposer which, in its opinion, has made the best proposal, and shall award the contract to that proposer. Should the Authority determine in its sole discretion that only one proposer is fully qualified, or that one proposer is clearly more highly qualified than the others under consideration, it must document this in writing and a contract may be negotiated and awarded to that proposer.
- E. The Authority hereby declares its policy to facilitate the participation of small businesses and businesses owned by women and minorities in PPEA transactions. This policy includes cooperation with the Department of Minority Business Enterprise, the United States Small Business Administration, and other public or private agencies.
- F. The following items shall be considered in the evaluation and selection of PPEA proposals:
1. Qualifications and Experience:
    - a. Factors to be considered in either phase of the Authority's review to determine whether the proposer possesses the requisite qualifications and experience should include:
      - i. Experience with similar projects;
      - ii. Demonstration of ability to perform work;
      - iii. Leadership structure;
      - iv. Project Managers' experience;
      - v. Management approach;
      - vi. Financial condition; and
      - vii. Project ownership.
  2. Project Characteristics:
    - a. Factors to be considered in determining the project characteristics include:
      - i. Project definition;
      - ii. Proposed project schedule;
      - iii. Operation of the project;
      - iv. Technology; technical feasibility;
      - v. Conformity to laws, regulations, and standards;
      - vi. Environmental impacts;
      - vii. Condemnation impacts;
      - viii. State and local permits; and
      - ix. Maintenance of the project.
  3. Project Financing:

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- a. Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:
    - i. Cost and cost benefit to the Authority;
    - ii. Financing and the impact on the debt or debt burden of the Authority;
    - iii. Financial plan;
    - iv. Estimated cost;
    - v. 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;
    - vi. Such other items as the Authority deems appropriate; and
    - vii. Life-cycle cost analysis.
  - b. In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the Authority, or if financing such a project may impact the Authority's debt rating or financial position, the Authority may select its own finance team, source, and financing vehicle.
4. Project Benefit and Compatibility:
- a. Factors to be considered in determining the proposed projects compatibility with the appropriate local or regional comprehensive or development plans include:
    - i. Community benefits;
    - ii. Community support or opposition, or both;
    - iii. Public involvement strategy;
    - iv. Compatibility with existing and planned facilities; and
    - v. Compatibility with local, regional, and states economic development efforts.
5. Other Factors:
- a. Other facts that may be considered by the Authority in the evaluation and selection of PPEA proposals include:
    - i. The proposed cost of the Qualifying Project;
    - ii. The general reputation, industry experience, and financial capacity of the Private Entity;
    - iii. The proposed design of the Qualifying Project;
    - iv. The eligibility of the project for accelerated documentation, review, and selection;
    - v. Local citizen and government comments;
    - vi. Benefits to the public;
    - vii. The Private Entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
    - viii. The Private Entity's plans to employ local contractors and residents; and
    - ix. Other criteria that the Authority deems appropriate.

**Section 8. INTERIM AND COMPREHENSIVE AGREEMENTS**

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- A. Prior to developing or operating the Qualifying Project, the selected Private Entity shall enter into a Comprehensive Agreement with the Authority. 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 Authority may designate a working group responsible for negotiating any interim or Comprehensive Agreement. Any interim or Comprehensive Agreement shall define the rights and obligations of the Authority and the selected proposer with regard to the project.
1. Interim Agreement Terms:
    - a. The scope of an Interim Agreement may include, but not limited to:
      - i. Project planning and Development;
      - ii. Design and engineering;
      - iii. Environmental analysis and mitigation;
      - iv. Survey;
      - v. Property and easement acquisition;
      - vi. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
      - vii. Establish a process and timing of the negotiation of the Comprehensive Agreement;
      - viii. 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; and
      - ix. The Interim Agreement and supporting documents shall be sent in electronic form to the State Auditor for Public Accounts within thirty (30) days of its execution, pursuant to Virginia Code § 56-575.18.
  2. Comprehensive Agreement Terms:
    - a. The scope of the Comprehensive Agreement shall include, but not be limited to:
      - i. 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;
      - ii. The review of plans and specifications for the Qualifying Project by the Authority;
      - iii. The rights of the Authority to inspect the Qualifying Project to ensure compliance with the Comprehensive Agreement;
      - iv. 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;
      - v. The monitoring of the practices of the Private Entity by the Authority to ensure proper maintenance;

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- vi. The terms under which the Private Entity will reimburse the Authority for services provided;
  - vii. The policy and procedures that will govern the rights and responsibilities of the Authority 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 Authority and the transfer or purchase of property or other interests of the Private Entity by the Authority;
  - viii. The terms under which the Private Entity will file appropriate financial statements on a periodic basis;
  - ix. 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 are 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 Authority.
    - 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.
  - x. The terms and conditions under which the Authority may contribute resources, if any, for the Qualifying Project;
  - xi. 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;
  - xii. The terms and conditions under which the Authority will be required to pay money to the Private Entity and the amount of any such payments for the project; and
  - xiii. Other requirements of the PPEA.
- b. 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.
  - c. The Comprehensive Agreement may provide for the Development or Operation of phases or segments of a Qualifying Project. The Comprehensive Agreement and supporting documents shall be sent in electronic form to the State Auditor for Public Accounts within thirty (30) days of its execution, pursuant to Virginia Code §§ 56-575.9(F) and 56-575.18.
3. Public Hearing during proposal review process; notice and posting requirements.
    - a. At least thirty (30) days prior to entering into an interim or Comprehensive Agreement, the Authority shall hold a public hearing on the proposals that have been received.

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- b. 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 Authority, the Authority shall post the proposed agreement in the following manner:
  - c. Posting shall be on the Authority's website or by publication, in a newspaper of general circulation in the area which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Services web-based electronic procurement program commonly known as "eVA," in the discretion of the Authority.
  - d. 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 Authority and the Private Entity.
  - e. Any such studies and analyses considered by the Authority in its review of a proposal shall be disclosed to the Appropriating Body at some point prior to the execution of an interim or Comprehensive Agreement.
- B. The Authority shall submit any interim or Comprehensive Agreement to the Appropriating Body to review a proposed interim or Comprehensive Agreement at least sixty (60) days prior to execution.

**Section 9. GOVERNING PROVISIONS**

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

**Section 10. TERMS AND DEFINITIONS**

- A. "Affected Local Jurisdiction" means any county, city, or town in which all or a portion of a Qualifying Project is located.
- B. "Appropriating Body" means the body responsible for appropriating or authorizing funding to pay for a Qualifying Project.
- C. "Comprehensive Agreement" means the Comprehensive Agreement between the Private Entity and the Authority that is required prior to the Development or operation of a Qualifying Project.
- D. "Conceptual Proposal" means the proposal submitted at the Conceptual Stage.
- E. "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

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- 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.
- F. "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.
- G. "Detailed Proposal" means the proposal submitted at the Detailed Stage.
- H. "Detailed Stage" means the second phase of project evaluation where the Public Entity
- I. 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.
- J. "Develop" or "Development" means to plan, design, develop, finance, lease, acquire, install, construct, or expand.
- K. "Interim Agreement" means an agreement between a Private Entity and the Authority 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.
- L. "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.
- M. "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.
- N. "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.
- O. "Operate" means to finance, maintain, improve, equip, modify, repair, or operate.
- P. "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.
- Q. "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.
- R. "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.
- S. "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

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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,

- T. 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.
- U. "Responsible Public Entity" means a Public Entity that has the power to develop or Operate the applicable Qualifying Project. The Authority is such an Entity.
- V. "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
- W. "Service Contract" means a contract entered into between a Public Entity and the Private Entity pursuant to § 56-575.5.
- X. "Service Payments" means payments to the Private Entity of a Qualifying Project pursuant to a Service Contract.
- Y. "State" means the Commonwealth of Virginia.
- Z. "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.

**Section 11. REVISIONS**

- A. This policy was approved and adopted by the Authority's Board of Directors on April 23, 2013.
- B. The policy was modified with an approval date of May 28, 2013 and an effective date of May 29, 2013.
- C. July 17, 2013: This policy number was changed from 4.45 to 10.45.
- D. This policy was modified as follows:
  - 1. Approved August 18, 2020, effective August 19, 2020:
    - a. Virginia Code Section references were updated in Sections 5 and 6.

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- b. Section 6 was modified to update digital and paper submission requirements.