

# **City of Virginia Beach**

## **Guidelines Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, as amended Va. Code § 56-575.1, *et seq.***

[Note: The procedural portion of the document is the following seven pages. The appendices are provided for assistance in the form of template or reference to applicable sections of the PPEA.]

Adopted by the City Council 6/19/2018

## **I. Introduction**

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1, *et. seq.* (the “PPEA”), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The definition of “public entity” in § 56-575.1 of the PPEA includes, *inter alia*, any political subdivision of the Commonwealth such as the City of Virginia Beach (the “City”).

The PPEA is a method of project delivery, and as such, it should be viewed in the context of other methods by which the City procures items that are defined as “qualifying project” by the PPEA. For reference, a complete list of the PPEA Definitions is attached hereto as Appendix 1. The PPEA incorporates certain requirements from the Virginia Public Procurement Act (the “VPPA”), and for items not incorporated or referenced, the PPEA is exempted from the requirements of the VPPA.

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains broad definitions of “qualifying project.”

The PPEA defines “responsible public entity” as “a public entity that has the power to develop or operate the applicable qualifying project.” Typically, the City will be the “responsible public entity” under the PPEA for any project, but it is possible for a qualifying project to include the Virginia Beach City Public Schools or the City of Virginia Beach Development Authority. Proposals may be made that are for a “mixed” project (for example, projects including both public parks and a school), where, for certain components, the City may be the responsible public entity, and for certain components, the School Board may be the responsible public entity.

The City Manager and all officers and employees of the City shall follow the PPEA and this policy in any PPEA procurement in which they are involved. The City Manager may delegate his or her duties under this policy to members of staff. The City Manager may designate a working group to review and evaluate any proposal submitted pursuant to these guidelines.

The City Manager shall require as a condition of accepting any proposal for consideration that the proposer agree to be bound by all the terms and conditions of these Guidelines.

## **II. Project Delivery**

The PPEA allows receipt of unsolicited proposals for a qualifying project. The PPEA also allows solicited proposals. For purposes of outlining project delivery steps, a process initiated by an unsolicited proposal will have an additional step at the beginning, which is the receipt of an unsolicited proposal and decision to accept that unsolicited proposal. Accordingly, the following steps shall apply for any PPEA project.

## **A. Unsolicited Proposal an Initiating Step**

The PPEA permits the City to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, finance, or operate a qualifying project. The City's general policy is to reserve acceptance of unsolicited proposals for cases of truly innovative ideas, because, in other cases, traditional procurement processes are generally viewed as more likely to achieve full and open competition from the bidding community. Additionally, the City discourages unsolicited proposals for capital projects when the City has already paid for design of the qualifying project because such a proposal will duplicate work. Accordingly, the City will likely reject an unsolicited proposal that lacks truly innovative ideas or are for a project wherein the design is underway or completed.

To be considered, one original and nine (9) copies of any unsolicited proposal must be submitted to the City's Purchasing Agent, at 2388 Liberty Way, Virginia Beach, Virginia, 23456. While the City reserves the right to charge a review fee as permitted by the PPEA, these Guidelines do not require a fee at this time. The unsolicited proposal shall take the form of a conceptual proposal, which is described in detail in Appendix 2.

The City Manager, in his sole discretion, may accept an unsolicited proposal. The City Manager is strongly encouraged to consult the City Council prior to acceptance of an unsolicited proposal to allow the Council to appoint liaisons for the project or provide guidance. Alternatively, the City Council may direct the City Manager to accept an unsolicited proposal. For a qualifying project that is within the purview of a Constitutional Officer, the Purchasing Agent and the Constitutional Officer shall consult prior to acceptance of an unsolicited proposal, but the decision to accept such a proposal will be with the Constitutional Officer.

If the City Manager determines not to accept an unsolicited proposal,<sup>1</sup> the proposal shall be returned to the proposer, together with accompanying documentation or copies. For an unsolicited proposal that purports to develop specific cost savings, the City Manager shall specify the basis for the rejection in writing.

If the City Manager accepts an unsolicited proposal, the City shall establish a place upon its website for the project (the "Project Page"), and this website will serve as the place for postings, notices, and related materials for such project. Upon acceptance, the City shall post the proposal and publish the notice requesting competing proposals. The Purchasing Agent shall create a summary of the proposed project and the accepted proposal, which does not divulge proprietary portions of the accepted proposal. Prior to posting, the Office of the City Attorney shall review any request to protect information in the proposal that the proposer sought to withhold from posting. Any potential proposer is encouraged to seek review of such information prior to submission of a proposal. The posting shall occur within 10 business days of the decision to accept the proposal. The posting shall include a contact person to receive public input on the concept. Additionally, at least one copy of the nonproprietary unsolicited proposal will be made available for public inspection.

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<sup>1</sup> Proposers should be mindful of Va FOIA Advisory Opinion, AO-07-17, issued October 19, 2017, which provides that the nonproprietary portion of unsolicited proposal is subject to disclosure pursuant to FOIA while it is in the possession of the City and prior to action by the City to accept or reject such proposal.

## **B. Solicitation of Conceptual Proposals or Notice of Acceptance of Unsolicited Proposal**

The City may solicit proposals for any qualifying project by means of a solicited PPEA, which usually is initiated by a Request for Proposals (the “RFP”). Alternatively, if the City Manager has accepted an unsolicited proposal, the City will publish a notice of acceptance of an unsolicited proposal that requests competing conceptual proposals.

The Notice or the RFP shall:

- Identify the qualifying project specifically or conceptually;
- Provide a deadline for the submission of competing proposals, which shall be at least 60 days from the notice or solicitation;
- Provide any other conditions for the submission of competing proposals;
- Provide additional information regarding the project, as needed, and to whom questions regarding the notice or solicitation may be directed.

The notice or RFP shall be posted on the Project Page and in a manner consistent with the posting of other City procurement solicitations. Any changes of deadline or clarifying question(s) and answer(s) shall be posted on the Project Page, and the posting of such additional information or extensions shall not require additional newspaper advertisements. The costs of completion of proposals shall be the sole responsibility of the proposer(s).

Contemporaneous with the notice or solicitation, the City Manager shall document in writing the decision to proceed with either competitive sealed bidding or competitive negotiation as described by the VPPA. The use of competitive negotiation requires a determination, in writing, that doing so is likely to be advantageous to the City and the public based upon either (i) the probable scope, complexity or priority of the project; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit from the project would not otherwise be available. The scoring methodology need not be completed at this time, but the methodology will be disseminated prior to or contemporaneously with the request for detailed proposals.

## **C. Conceptual Proposal Stage**

Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described herein, will be considered by the City for further review at the conceptual stage. At least one copy of the nonproprietary proposal shall be made available for public inspection. A scan of the nonproprietary portions of the conceptual proposals will be posted on the Project Page within 10 business days of initiation of review. If the City Attorney has issued a written determination regarding nonproprietary portions, that letter shall be posted with the proposal. The posting shall include a contact person to receive public input on the concept. The Purchasing Agent shall create a summary of each proposal, which does not divulge proprietary portions of the accepted proposal.

After reviewing an unsolicited proposal and any competing proposals submitted, the City Manager may determine:

- (a) not to proceed further with any proposal;
- (b) to proceed to the detailed phase of review of one or more of the proposers; or

(c) to request modifications or amendments to any proposals.

However, the City Manager may not proceed to the detailed phase with only one proposer unless the Manager has determined in writing that only one proposer is qualified or that the only proposer to be considered is clearly more highly qualified than any other proposer.

#### **D. Detailed Proposal Stage**

The decision to proceed to the detailed phase shall include sending a request for detailed proposals to the chosen proposers. The costs of completion of such proposal shall be the sole responsibility of the proposer(s).

Unless otherwise provided in its request, the required components of a detailed proposal are provided in Appendix 3. The complexity of the request will vary substantially depending on the nature of the project and whether the project includes financing, long-term operations, acquisition of real property, or other complicated components. The decision as to whether to use the financing plan contained in any proposal is at the City's sole discretion.

If the project is principally the design and construction of a facility, the City may include the form contract utilized in other City construction projects. Similarly, the City may include a form lease or similar document to allow proposers to comment upon such form agreement.

Only detailed proposals complying with the request for detailed proposals will be considered by the City. The request for detailed proposals shall provide the method of evaluation, including specifying the factors that will be used in evaluating the proposals and whether numerical scoring will be used in evaluating the proposals. A demonstrative list of evaluation criteria is provided in Appendix 4.

If the City proceeds to the detailed phase with only one proposer, the detailed phase may, at the sole discretion of the City, be the initiation of negotiation of an interim or comprehensive agreement.

If expressly approved by the City Council, the City Manager may include a proposal payment in a fixed amount as an enticement for proposers to submit a detailed proposal. Such proposal payment would be paid to unsuccessful proposers that submit a detailed proposal, and the payment is conditioned upon the City retaining the right to use technical solutions, design concepts, and any other proprietary information contained in the unsuccessful detailed proposal.

After review of the detailed proposals and at least 30 days prior to execution of any interim or comprehensive agreement, the City shall hold a public hearing to allow public comment upon the proposals.

#### **E. Agreement Negotiation Stage**

If the review of the detailed proposals provides a preferred proposer or multiple preferred proposers or if the project includes severable components, the City Manager may begin negotiation of a comprehensive agreement. Alternatively, if negotiation is required with one or more proposers to ascertain a meaningful evaluation of the total cost of the project, the City Manager may negotiate deal terms with more than one proposer in an effort to ascertain a preferred proposer.

If there are work items required before a determination of the preferred proposer for a comprehensive agreement, the Manager may negotiate an interim agreement. Alternatively, an interim agreement may take the form of a term sheet if such a document is necessary and proper for the private party to secure or obtain a commitment for financing. The work items in an interim agreement may include: project planning and development; design and engineering; environmental analysis and mitigation; survey; ascertainment of financing through financial and revenue analysis; establishment of a process and timing of the negotiation of a comprehensive agreement. Because of the required approvals and its tendency to limit competition, the use of an interim agreement may not be applicable or desirable for certain projects.

The PPEA legislation includes items provided for in a comprehensive agreement in §56-575.9. This list is reproduced in Appendix 5.

Once an interim or comprehensive agreement's material terms have been identified and agreed to in principle between the City and the private entity, the City Manager shall brief the City Council and provide a recommendation. If the Council concurs with such recommendation, the City Attorney shall prepare a resolution for the Council to consider.

After an interim or comprehensive agreement has been negotiated in substantially completed form, a copy of the agreement shall be posted on the Project Page. This posting of the agreement should occur at least 30 days prior to the execution of the agreement, and non-material changes to the posted agreement do not require renewing the aforementioned 30-day posting period. The posting shall include a contact person for submission of public input. The public input shall be gathered and transmitted to the City Council prior to the requested action to approve an interim or comprehensive agreement. While the posting of the agreement is to occur at least 30 days prior to execution, nothing herein shall restrain the Council from approving an interim or comprehensive agreement at the formal meeting immediately prior to the end of the 30 day period.

#### **F. Required Approvals**

A resolution authorizing the City Manager to execute an interim agreement or a comprehensive agreement shall follow the normal Council agenda process. An example of the form of an authorizing resolution for a comprehensive agreement is provided in Appendix 6. Additional approvals may be required if the project requires the transfer of land, the lease of real property for a period of more than five years, or other actions for which specific action by the Council is required.

As required by Va. Code § 56-575.9.F., when the City Council enters into an agreement pursuant to the PPEA, a copy should be submitted to the Auditor of Public Accounts within 30 days. Additionally, executed agreements shall be posted on the Project Page.

### **III. Additional Considerations**

#### **A. Protests**

A protest of a PPEA award may be initiated after the City Council authorizes the execution of a comprehensive agreement. Prior to such authorization, there is no award from which a protest may be made. The timelines and procedure for any such protest shall follow the VPPA procedure applicable to City procurement awards.

## **B. Governing Provisions**

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

## **C. Participation of Small and Minority-Owned Businesses**

The City Council's policy is to facilitate participation of small businesses and businesses owned by women and minorities in its procurement transactions, including procurement transactions under the PPEA. Private entities making proposals to the City Council pursuant to the PPEA should ensure that efforts are made to facilitate participation of small businesses and businesses owned by women and minorities as part of their proposals. Subcontracting plans in accordance with the City's Small Business Enhancement Program shall be included with a detailed proposal.

## **D. Use of Public Funds**

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim agreement 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.

## **E. The Virginia Freedom of Information Act.**

1. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act ("FOIA") except as provided by § 56-575.4(G) of the PPEA.

2. To prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to § 56-575.4(G) of the PPEA, the private entity submitting the information must (i) invoke the exclusion from FOIA when the data or materials are submitted to the CITY or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the Office of the City Attorney ("City Attorney") as to the anticipated scope of protection prior to submitting the proposal in accordance with § 2.2-3705.6(11). 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 may be subject to disclosure under FOIA of posting of proposals.

3. Proposers should be aware that the Virginia Freedom of Information Advisory Council has opined that the nonproprietary portions of an unaccepted unsolicited proposal are subject to disclosure pursuant to FOIA.

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

determination regarding protection or the scope thereof differs from the private entity's request, then the City shall afford the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the City Attorney to provide less protection than requested by the private entity, the private entity shall be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted.

5. The City may withhold from disclosure memoranda, staff evaluations, or other records prepared by the City, 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 City would be adversely affected, and (ii) the basis for the determination is documented in writing by the City. Cost estimates relating to a proposed procurement transaction prepared by or for the City shall not be open to public inspection.

6. The City may not withhold from public access: (a) procurement records other than those subject to the written determination of the City; (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 City and the private entity; (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected as required by law, then the City shall comply with such order.

#### **F. Timelines for Selecting Proposals and Negotiating Agreements and Accelerated Timelines for Priority Qualifying Facilities**

Normal expected timelines for selecting proposals and negotiating an interim agreement or comprehensive agreement are set out in Appendix 7. There is a separate timeline for unsolicited proposals that takes into account the additional time required by that process.

For projects deemed a priority by the City, the portion of timelines related to selection, review, and documentation may be accelerated. The City should generally adhere to these timelines in PPEA procurements, but the City may deviate from them when it is in its interests to do so.

## **APPENDIX 1: DEFINITIONS**

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

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

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

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

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

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

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

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

"Private entity" means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or other business entity.

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

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land 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 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, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in § 10.1-1400 that produces electric energy derived from solid waste.

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

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

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

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

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

## **APPENDIX 2: CONCEPTUAL PROPOSAL SUBMISSION**

### **Conceptual Proposal Preparation and Submission**

The City requires that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, but only if public financing is unavailable or potentially less advantageous, (4) project benefit and compatibility. The City may reasonably request additional information from any proposer.

All potential proposers should be mindful that there is a legal requirement to post conceptual proposals. As such, any protections sought pursuant to Va. Code § 2.2-3705.6(11) should be undertaken prior to posting. An unsolicited proposal shall include an executive summary not designated as "Confidential-Not Releasable under VaFOIA" that describes the proposed qualifying project sufficiently so that potential competitors can reasonably formulate meaningful competing proposals from a review of the summary and publicly-available information.

Unless otherwise indicated in the solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, conceptual-phase proposals should contain the information indicated below in the format indicated below:

#### **TAB 1: Qualifications and Experience**

- Identify the legal structure of the private entity making the proposal. Identify the organizational structure for the project, the management approach, and how each participant in the structure fits into the overall team. If the private entity that would be signing any comprehensive agreement would be a corporation, limited liability company, limited partnership, or an entity formed especially for the project, and if the proposer is relying at all on the past experience, name, or financial statements of any other person or entity to show the private entities' capabilities and responsibility, state what guaranty of performance will be provided by such other persons or entities.
- Describe the experience of the entities 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 past safety performance and current safety capabilities. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims relating to such projects. Describe the length of time in business, business experience, public sector experience, and other engagements. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
- For each firm or major subcontractor that will be utilized in the project, provide a statement listing the firm's prior projects and clients for the past 3 years and contact information for same (name, address, telephone number, e-mail address). 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 first include all projects similar in scope and size to the proposed project and, second, it 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 performance during the preceding three years in terms of cost, quality, schedule maintenance, claims, change orders, lawsuits, safety and other matters relevant to the successful project development, operation, and completion.

- Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or who will be directly involved in the project or who may be contacted for further information.

- Provide the current or most recent financial statements of the firm (audited financial statements to the extent available), and if the firm is a joint venture, limited liability company, partnership or entity formed specifically for this project, provide financial statements (audited if available) for the firm's principal venturers, members, partners, or stockholders that show that the firm or its constituents have appropriate financial resources and operating histories for the project.

- Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Va. Code § 2.2-3100, et seq.).

- Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

- For each firm or major subcontractor that will perform construction and/or design activities, provide an accurately completed Commonwealth of Virginia Department of General Services (DGS) Form 30-168, or successor form.

- Describe efforts to facilitate participation of small businesses and businesses owned by women and minorities and the success of those efforts for the project.

## **TAB 2: Project Characteristics**

- 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.

- Identify and fully describe any work to be performed by the City or any other public entity.

- 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.

- Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the City's or other affected jurisdiction's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental and archaeological assessment has been completed.

- Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the City's or other affected jurisdiction's comprehensive land use plan and applicable ordinances and design standards.
- Identify the proposed schedule for the work on the project, including sufficient time for the City's review and the estimated time for completion.
- Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- Propose allocation of risk and liability, and assurances for timely completion of the project.
- State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the City's use of the project.
- Provide information relative to phased openings of the proposed project.
- Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

### **TAB 3: Project Financing**

- Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment (e.g., design, construction, and operation), or both.
- Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
- Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach, including but not limited to, underwriter's discount, placement agent, legal, rating agency, consultants, feasibility study and other related fees. A complete discussion or interest rate assumptions should be included given current market conditions. Any ongoing operational fees should also be disclosed, as well as any assumptions with regard to increases in such fees and escalator provision to be required in the Comprehensive Agreement.
- Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- 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.
- Clearly describe the underlying support and commitment required by the City under your recommended plan of finance. Include your expectation with regard to the City providing its general obligation or moral obligation backing.

- Identify any dedicated revenue, source or proposed debt or equity investment on behalf of the private entity submitting the proposal.

#### **TAB 4: Project Benefit and Compatibility**

- Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the City or other affected jurisdiction, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.

- 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.

- 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.

- Describe any anticipated significant benefits to the community and the City, including anticipated benefits to the economic, social, environmental, transportation, Comprehensive Plan, etc., condition of the City and whether the project is critical to attracting or maintaining competitive industries and businesses to the City or other affected jurisdiction.

- Describe the project's compatibility with the City'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.

#### **TAB 5: Any additional information as the City may reasonably request and certifications**

The City may reasonably request additional information from any proposer. Additionally, the proposal shall provide the following certification and distribution of the proposal:

- 1. Certification:** Representations, information and data supplied in, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the City. Accordingly, as part of any proposal, the proposer shall certify that all material representations, information and data provided in support of, or in connection with, its proposal are true and correct. Such certification shall be made by authorized individuals who are principals of the proposer and who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the proposer shall immediately notify the City of the same.
- 2. Distribution to Affected Jurisdictions:** Any private entity submitting a conceptual or detailed proposal to the City must provide any affected jurisdiction with a copy of the private entity's proposal by certified mail, express delivery or hand delivery. In the case of solicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt at the time proposals are due to be submitted to the City. In the case of

unsolicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt within 5 business days after receiving notice from the City that the City has decided to accept the proposal pursuant to Section 6.1.1 hereof. Any affected jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the City and to indicate whether the proposed qualifying project is compatible with the jurisdiction's (i) comprehensive plan, (ii) infrastructure development plans, and (iii) capital improvements budget or other government spending plan. The City shall give consideration to comments received in writing within the 60-day period, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The City may begin or continue its evaluation of any such proposal during the 60-day period for affected jurisdictions to submit comments.

## **APPENDIX 3: DETAILED PROPOSAL SUBMISSION**

If the City decides to proceed to the detailed phase of review with one or more proposals, the following information, along with an executive summary of the proposal at its beginning, should be provided by the private entity unless waived by the City Manager:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site;
3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
4. Detailed description of the proposed participation, use and financial involvement of the City. Include the proposed terms and conditions for the project,
5. 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.
6. Information relating to the current plans for development of facilities that are similar to the qualifying project being proposed by the private entity in any affected jurisdiction;
7. 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 City or affected jurisdiction to condemn.
8. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
9. 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 City adopted service levels and standards.
10. 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.

11. Identification of any known government support or opposition, or general public support or opposition for the project or financing thereof. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
12. Demonstration of consistency with appropriate City 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.
13. Explanation of how the proposed project would impact the City's or affected jurisdictions' development plans.
14. 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.
15. Identification of any known conflicts of interest or other factors that may impact the City'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.).
16. Acknowledge conformance with Sections 2.2-4367 through 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act.
17. Additional material and information as the City may reasonably request.

Additionally and in furtherance of anticipated contract negotiations, the City Manager may distribute the City's typical contract document and request the proposer identify any exception to the proposed contract.

## **APPENDIX 4: EVALUATION CRITERIA**

The following is a demonstrative list of evaluation criteria. The City will develop evaluation criteria specific to the applicable project, and such criteria will be clearly provided to the proposers in the request for detailed proposals.

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

Factors to be considered in either phase of the City's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience with similar projects of comparable scope and value;
2. Demonstration of ability to perform work at the appropriate level of quality standards;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

### **B. Project Characteristics**

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

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

### **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 may include but are not necessarily limited to:

1. Cost and cost benefit to the City;
2. Financing and the impact on the debt or debt burden of the City;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Estimated cost;
5. Life-cycle cost analysis;

6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment;
7. Comparable costs of other project delivery methods; and
8. Opportunity costs assessment.

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

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.
6. Fiscal impact to the City in terms of revenues and expenditures.
7. Economic output of the project in terms of jobs and total economic impact on the local economy.
8. Submission of required statement regarding participation efforts that is to be undertaken with regard to minority-owned businesses, woman-owned businesses, and small businesses. Failure to submit this statement shall constitute grounds to reject any proposal.

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

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The inclusion of environmentally sustainable practices in the design, construction and ultimate operation of the project; and
8. Other criteria that the City deems appropriate.

## **APPENDIX 5: COMPREHENSIVE AGREEMENT**

### **Comprehensive Agreement (from Va. Code § 56-575.9)**

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

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, including, without limitation, bonds or letters of credit that comply with Virginia Code § 2.2-4337 for components of the qualifying project that include construction;
2. The review and approval of plans and specifications for the qualifying project by the City;
3. The rights of the City to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the City to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the private entity will reimburse the City for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the City and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including without limitation, the conditions governing assumption of the duties and responsibilities of the private entity by the City and the transfer or purchase of property or other interests of the private entity by the City;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis.
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
10. A copy of any service contract shall be filed with the City.
11. 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.

12. Classifications according to reasonable categories for assessment of user fees may be made.
13. The terms and conditions under which the City will contribute financial resources, if any, for the qualifying project;
14. If the private entity is a limited purpose or "shell" entity, such as a limited liability company, limited partnership, or corporation, that lacks its own substantial resources and operating history and that will depend on its members, partners, shareholders or others for resources to perform, then guarantees of performance by such operator's principal members, etc., or other similar arrangements that adequately assure performance.
15. Other requirements of the PPEA or provisions that the City determines serve the public purpose of the PPEA.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

## APPENDIX 6: ADOPTING RESOLUTION

A RESOLUTION MAKING A PUBLIC PURPOSE DETERMINATION UNDER THE PPEA, AUTHORIZING THE CITY MANAGER TO EXECUTE A COMPREHENSIVE AGREEMENT FOR \_\_\_\_\_, AND SETTING AN APPROXIMATE START DATE

WHEREAS, on \_\_\_\_\_, the City (the "City") received an unsolicited proposal pursuant to the Virginia Public-Private Education Facilities and Infrastructure Act ("PPEA") from \_\_\_\_\_ for \_\_\_\_\_ (the "Project"); and

WHEREAS, on \_\_\_\_\_, the City posted a public notice requesting conceptual proposals pursuant to the PPEA for the Project; and

WHEREAS, the City received \_\_\_\_ conceptual proposals for the Project; and

WHEREAS, on \_\_\_\_\_, the City requested detailed proposals pursuant to the PPEA for the Project; and

WHEREAS, the City received \_\_\_\_ detailed proposals for the Project; and

WHEREAS, on \_\_\_\_\_, the City was briefed on the responses to the detailed proposals and, after reviewing the information provided by staff and the staff's recommendation, the City Council directed the City Manager to continue negotiations with \_\_\_\_\_; and

WHEREAS, on \_\_\_\_\_, the City held a public hearing to allow public comment on the Project; and

WHEREAS, on \_\_\_\_\_, a copy of the Comprehensive Agreement in substantially completed form was posted on the City website; and

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL FOR THE CITY OF VIRGINIA BEACH, VIRGINIA, THAT:

1. Based upon the review of the proposals received and information and advice provided by the City Manager, the City Council hereby determines that entering into a comprehensive agreement for the \_\_\_\_\_ with \_\_\_\_\_ will serve the public purpose because (i) there is a public need and benefit to be derived from such agreement, (ii) the price of \_\_\_\_\_ is reasonable in relation to similar facilities, and (iii) the agreement will result in the timely development of the \_\_\_\_\_.
2. The City Manager or his designee is hereby directed to execute, after approval for legal sufficiency by the City Attorney or his designee, the comprehensive agreement with \_\_\_\_\_.
3. The approximate start date for the comprehensive agreement is \_\_\_\_\_.

## APPENDIX 7: ANTICIPATED TIMELINES

### Projected Procurement Timeline for City PPEA Procurement Initiated By Unsolicited Proposal

Activity Number	Date	Activity	Guidelines Reference
1	D	Receipt of Unsolicited Proposal	Page 2
2	D+30	Decide whether to accept Unsolicited Proposal, whether to use competitive negotiation, what conditions to impose, and whether the proposer's request to exclude information from disclosure is necessary	Page 2
3	D+35	Prepare Notice of Unsolicited Proposal, Receipt of Unsolicited Proposal, and Post and Publish	Page 3
4	D+95	Receive Competing Conceptual-Phase Proposals	Page 3
5	D+100	Determine whether proposers' requests to exclude information from disclosure are necessary. Post proposals.	Page 6-7
6	D+130	Evaluate Conceptual-Phase Proposals, decide whether to proceed. If proceeding, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals	Page 3
7	D+200	Receive and evaluate Detailed-Phase Proposals, conduct interviews, and select proposer(s) for negotiation of agreement, schedule public hearing	Page 4
8	D+260	Negotiate Interim Agreement or Comprehensive Agreement; finalize awardee	Page 4-5
9	D+270	Post agreement for public	Page 5
10	D+330	Obtain approval by City Council; if approved, execute agreement	Page 5

**Projected Procurement Timeline for  
PPEA Procurement Solicited By City  
Request for Proposals (“RFP”)**

<b>Activity Number</b>	<b>Date</b>	<b>Activity</b>	<b>Guidelines Reference</b>
1	D	Initiate procurement under PPEA. Decide whether to use competitive negotiation and issue RFP.	Page 3
2	D+60	Receive Conceptual-Phase Proposals	Page 3
3	D+65	Determine whether proposers' requests to exclude information from disclosure are necessary. Post proposals.	Page 6-7
4	D+95	Evaluate Conceptual-Phase Proposals and decide whether to proceed. If proceeding, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals	Page 3
5	D+165	Receive and evaluate Detailed- Phase Proposals, conduct interviews, and select proposer(s) for negotiation of agreement, schedule public hearing	Page 4
6	D+225	Negotiate Interim Agreement or Comprehensive Agreement; finalize awardee	Page 4-5
7	D+235	Post agreement for public	Page 5
8	D+295	Obtain approval by City Council; execute agreement	Page 5

Note: Considerable planning before **Activity 1** is required to determine the City's needs for a project and to state them in an RFP.