

MEMORANDUM

**TO: RIVANNA WATER & SEWER AUTHORITY
BOARD OF DIRECTORS**

FROM: THOMAS L. FREDERICK, EXECUTIVE DIRECTOR

SUBJECT: DRAFT GUIDELINES FOR PPEA

DATE: MARCH 22, 2011

Attached is a copy of a draft of Guidelines for the Rivanna Water and Sewer Authority to use the Commonwealth of Virginia Public-Private Partnership in Education and Infrastructure Act (PPEA) prepared by McGuireWoods. PPEA is an alternative to the Virginia Public Procurement Act (VPPA) that can be used as a basis for Requests for Proposals from private companies for types of work where public-private partnerships may be advantageous. The Guidelines will permit RWSA to solicit RFPs under this process and also allow private companies to submit unsolicited proposals. The Guidelines have been carefully crafted to permit RWSA maximum allowed flexibility in reviewing such proposals, either solicited (by an RFP) or unsolicited, including the right to reject any proposal. The Guidelines also allow RWSA to assess a fee from proposers to cover the cost to review the merits of proposals.

Public-Private Partnerships can provide an opportunity for private firms to develop creative responses to a need when that flexibility is more important than the traditional approach of Plan-Design-Bid-Build under the VPPA. As an example, the Board has asked for a more flexible approach on dredging the South Fork Rivanna Reservoir to canvass the variety of creative ideas that are in the private sector before specifying or adopting a budget or specific scope of work to be accomplished. As a general rule, RWSA staff believes that the PPEA and VPPA processed both have their advantages and disadvantages, as described in a Pros and Cons list provided to the Board in November. Generally RWSA has greater authority to direct the means of accomplishing a project to reflect public comment in the VPPA process, and there is greater up-front administrative processing with the PPEA process, but the PPEA process allows for more flexibility and creativity.

RWSA has made contact with HDR Inc. regarding the development of an RFP for dredging the South Fork Rivanna Reservoir, but before HDR can develop a specific scope of work and fee, they need confirmation as to which procurement process will be used. In order to select the PPEA process, the Board must first formally adopt Guidelines for RWSA. The attached Guidelines are recommended by staff for this purpose.

With respect to dredging the South Fork Rivanna Reservoir, it is important to continue to advise that the Board has not adopted a budget for this purpose, and because our financing and resource planning as an organization is based upon our budget, we have not developed wholesale rates or provided for staffing needs to administer the addition of this project on top of other current heavy

workload demands. Any further guidelines the Board can offer through discussion that frames its objectives and extent of effort with respect to dredging would be very helpful. As we obtain proposals on how dredging can be accomplished, the Board may realize, depending upon the scope of proposals, that broader community goals can be served, such as enhancement of recreational opportunities or further sustained use of rowing on the reservoir, which may merit discussion of financial participation from sources other than the urban citizen through higher water rates. As a general observation, based upon my past water and wastewater experience with multiple organizations, RWSA is presently relaxing its strategic focus and taking on a broader role than most utilities at a time when we have many competing funding needs, mostly regulated and beyond our control, to include higher expectations for wastewater treatment and a need to “catch up” on past years of deferred infrastructure maintenance. It is a legitimate policy choice for the Board to take a broader role than most utilities we might benchmark against, but we should be aware in doing so that it will commit urban citizens in our community to pay more for water and wastewater services.

Board Action Requested:

Staff respectfully recommends the Board of Directors adopt the attached PPEA Guidelines. Further, staff requests direction of the Board with respect to obtaining a fee for consulting engineering work related to developing an RFP for dredging the South Fork Rivanna Reservoir.

Attachment

Public-Private Education Facilities and Infrastructure

Act of 2002

Guidelines for Rivanna Water and Sewer Authority

Adopted

_____, 2011

**Public-Private Education Facilities and Infrastructure Act of 2002
Guidelines for the Rivanna Water and Sewer Authority**

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Introduction

Overview

The Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) of the Commonwealth of Virginia grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA defines “responsible public entity” (RPE) to include any public entity that “has the power to develop or operate the applicable qualifying project.” Rivanna Water and Sewer Authority (“RWSA”) qualifies as an RPE and has determined to adopt these Guidelines, under the authority of the PPEA. Individually negotiated interim or comprehensive agreements between a private entity and RWSA will define the respective rights and obligations of RWSA and the private entity.

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project” as set forth in Article IX below.

The PPEA establishes requirements that RWSA 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 RWSA and the private entity.

Guidelines for the review and approval of proposals and projects

Responsible public entities are required to adopt and make publicly available guidelines that are sufficient to enable the public entity to comply with the requirements of the PPEA. The guidelines are to be reasonable and structured to encourage competition. These Guidelines meet those objectives. In addition, to facilitate communication, RWSA has designated an individual to serve as the point of contact for receiving proposals submitted under the PPEA and responding to inquiries regarding the PPEA or these Guidelines. RWSA has designated its Executive Director to serve in this capacity.

RWSA retains all rights granted to it as an RPE under the PPEA, as amended from time to time, including but not limited to the following, which it may exercise in its sole discretion:

- Reject any and all bids/proposals at any time;
- Terminate consideration or evaluation of any and all bids/proposals at any time;
- Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties;
- Suspend or eliminate conceptual phase review and proceed directly to detailed phase review;

- Negotiate with a proposer without being bound by any provision in its bid/proposal;
- Negotiate with fewer than all proposers at any given time;
- Request and/or receive additional information regarding any bid/proposal;
- Issue addenda to and/or cancel any request for proposals or invitation for bid;
- Revise, supplement or withdraw all or any part of these Guidelines;
- Assess, retain and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines; and/or
- Request revisions to conceptual or detailed phase bids/proposals.

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

Terms used in these Guidelines shall have the meanings given in the PPEA, and as defined herein. A list of defined terms is included at the end of these Guidelines.

All citations to code sections are to the Virginia Code.

I. General Provisions

A. Proposal Submission

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

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on RWSA's authority 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, conduit financing and other methods allowed by law. However, RWSA is not obligated to accept any financing method a private entity may propose.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by RWSA. 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 should also include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by RWSA of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as RWSA may determine if it accepts the project to finance it through other available means.

To assist in its analysis of any submission, RWSA shall either (i) engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, or other professional with relevant experience, not otherwise employed by RWSA, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project or (ii) by determination of its governing body, designate employee(s) of RWSA to perform such analysis. RWSA shall make this determination on a case by case basis.

B. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to RWSA must provide each affected political jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery, or hand delivery. Affected jurisdictions that are not RPEs under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to RWSA and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government

spending plan. Comments received within the 60-day period shall be given consideration by RWSA, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction.

C. Proposal Review Fee

RWSA 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. RWSA may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal shall be reasonable in comparison to the level of expertise required to review the proposal and shall not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include (i) the direct and indirect costs of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

Review fees shall be charged to any private entity that submits an unsolicited, competing unsolicited, or solicited bid or proposal. The fees shall be based on the following schedule:

1. Initial or Conceptual Phase Review Fee: The initial or conceptual phase review fee shall be Five Thousand Dollars (\$5,000.00) and must be submitted with each initial or conceptual phase proposal.

2. Detailed Phase Review Fees: Upon RWSA's decision to proceed with a detailed phase proposal, the proposer shall pay, at the time of the submittal of the detailed phase proposal, an additional review fee calculated at the rate of two and one-half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not less than Five Thousand Dollars (\$5,000.00) and not more than Fifty Thousand Dollars (\$50,000.00). Additional fees may be imposed on and payable by the proposer throughout the processing, review and evaluation of the detailed phase proposal if and as RWSA reasonably anticipates incurring costs in excess of the initial detailed phase review fee. RWSA shall notify the proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before RWSA will continue the process, review and evaluation of the proposal.

3. Reimbursement of Excess Fees Paid: In the event the total fees paid by the proposer exceed RWSA's reasonably estimated total costs incurred in processing, reviewing and evaluating the proposal, RWSA shall reimburse the difference to the proposer. Otherwise, RWSA shall retain all fees paid.

As noted in Section III. below, fees shall be refunded entirely if RWSA decides not to proceed to publication and conceptual-phase review of an unsolicited proposal.

D. Freedom of Information Act

1. General applicability of disclosure provisions.

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (“FOIA”) except that subdivision 11 of § 2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and RWSA 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.

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

The Freedom of Information Act Council (FOIAC) may be contacted regarding the applicability of the access provisions of FOIA:

**General Assembly Building, 2nd Floor
910 Capitol Street Richmond, VA 23219
E-mail: foiacouncil@leg.state.va.us**

**Telephone: 804/225-3056
Toll-Free: 1-866-448-4100
Fax: 804/371-8705**

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

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to RWSA 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 Section I.D.1. The information requested to be withheld from disclosure shall be on separate sheets of the document from information not to be withheld, and each such separate sheet shall be marked at the top “Confidential”.

Upon the receipt of a written request for protection of documents, RWSA 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 RWSA or the private entity in accordance with Section I.D.1. RWSA shall make a written determination of the nature and scope of the protection to be afforded by RWSA under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity

shall 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 Section I.D.1.

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

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.

3. Protection from mandatory disclosure for certain documents produced by RWSA.

RWSA may withhold from disclosure memoranda, staff evaluations, or other records prepared by RWSA, 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 RWSA would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by RWSA.

Cost estimates relating to a proposed procurement transaction prepared by or for RWSA shall not be open to public inspection.

4. RWSA may not withhold from public access:

(a) procurement records other than those subject to the written determination of RWSA;

(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 RWSA 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 project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then RWSA 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 RWSA to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the “VPPA”) is as set forth in the PPEA.

II. Solicited Proposals

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

The RFP shall 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 RFP shall be posted in such public areas as are normally used for posting of RWSA’s notices, including RWSA’s website. Notices shall also be published in a newspaper or other publications of general circulation and may be advertised in *Virginia Business Opportunities* and posted on the Commonwealth’s electronic procurement site and other forums RWSA deems appropriate, in its discretion. The RFP shall 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 RWSA.

III. Unsolicited Proposals

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

RWSA may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal. RWSA may establish suggested timelines for selecting proposals for the review and selection of unsolicited proposals.

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

If RWSA chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by RWSA for posting of public notices, including but not limited to RWSA's website, www.rivanna.org, for a period of not less than 45 days. RWSA shall also publish the same notice on the first day of the posting period in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice may be advertised in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website, and other forums RWSA deems appropriate, in its discretion. The notice shall state that RWSA (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by RWSA and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. During the time for receiving competing unsolicited proposals, RWSA may continue to evaluate the original unsolicited proposal.

To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of RWSA familiar with the unsolicited proposal and these Guidelines shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. RWSA 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, RWSA 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.

IV. Requirements Applicable to all Accepted Conceptual Phase Proposals

A. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by RWSA within 10 working days after acceptance for publication of such proposals (i) on RWSA's website, www.rivanna.org, or (ii) by publication, in a newspaper of general circulation in the area in which the project is to be developed or operated, including a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of RWSA.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by RWSA 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 RWSA 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.

B. Initial Review by RWSA at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format shall be considered by RWSA for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found in Section V. A.

2. RWSA shall determine at this initial stage of review whether it will proceed using:

a. Standard procurement procedures consistent with the VPPA; or

b. These Guidelines developed by RWSA, which are consistent with procurement of other than professional services through “competitive negotiation” as the term is defined in § 2.2-4301 of the Code of Virginia. RWSA may proceed using these Guidelines only if it makes a written determination that doing so is likely to be advantageous to RWSA and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

3. After reviewing the original proposal(s) and any competing proposals submitted during the notice period, following receipt of an unsolicited proposal, RWSA may determine:

a. not to proceed further with any proposal;

b. to proceed to the detailed phase of review with an original unsolicited proposal or any one solicited proposal;

c. to proceed to the detailed phase with a competing proposal;

d. to proceed to the detailed phase with multiple proposals; or

e. to request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed phase of review, RWSA may consider whether the unsuccessful proposer(s) 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.

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

V. Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

RWSA may consider any and all information relevant to its needs in the review of a conceptual phase proposal. To provide the most complete information possible, RWSA requests that, except as otherwise provided in an RFP, proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as RWSA may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that RWSA may request:

1. Qualification and Experience
 - a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
 - b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector contracting experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
 - c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
 - d. Provide a current or most recently audited financial statement of the firm or firms and each partner or member with an equity interest of twenty percent or greater.
 - e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
2. Project Characteristics
 - a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
 - b. Identify and fully describe any work to be performed by RWSA.

- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
 - d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
 - e. Identify the projected positive social, economic, and environmental impacts of the project.
 - f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
 - g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
 - h. State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on RWSA's use of the project.
 - i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
 - j. List any other assumptions relied on for the project to be successful.
 - k. List any contingencies that must occur for the project to be successful.
3. Project Financing
- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
 - c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
 - d. Identify the proposed risk factors and methods for dealing with these factors.

- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of RWSA's credit or revenue.
 - f. Identify the amounts and the terms and conditions for any revenue sources.
 - g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
4. Project Benefit and Compatibility
- a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
 - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
 - c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
 - d. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of RWSA and whether the project is critical to attracting or maintaining competitive industries and businesses to RWSA or the surrounding region.
 - e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
 - f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

B. Format for Submissions at Detailed Stage

If RWSA decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by RWSA:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;

3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact RWSA's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2;
11. A statement and strategy setting out the plans for securing all required federal, state, and local regulatory permits required to perform the project; and
12. Additional material and information as RWSA may reasonably request.

VI. Proposal Evaluation and Selection Criteria

There are several factors that RWSA may wish to consider when evaluating and selecting a proposal under the PPEA. The following are some of the factors that may be considered by RWSA in the evaluation and selection of PPEA proposals. An RFP soliciting proposals may set forth more particularly the factors to be considered for that particular project.

A. Qualifications and Experience

Factors to be considered in either phase of RWSA's review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition;
7. Project ownership; and
8. Past claims experience.

B. Project Characteristics

Factors to be considered in either phase of review in determining the project characteristics include:

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

C. Project Financing

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

1. Cost and cost benefit to RWSA;
2. Financing and the impact on the debt burden of RWSA or appropriating body;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
8. Such other items as RWSA deems appropriate.

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

D. Project Benefit and Compatibility

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

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

E. Other Factors

Other factors that may be considered by RWSA in either phase of review in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;

2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of RWSA and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that RWSA deems appropriate.

VII. Additional Review Procedures.

If the RPE for appropriating or authorizing funding to pay for a qualifying project is not RWSA, then RWSA shall provide an opportunity for that appropriating body to review any proposed interim or comprehensive agreement prior to execution.

VIII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with RWSA. 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. RWSA may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of RWSA and the selected proposer with regard to the project.

A. Interim Agreement Terms

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

1. Project planning and development;
2. Design and engineering;
3. Regulatory permitting;
4. Environmental analysis and mitigation;

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

B. Comprehensive Agreement Terms

The scope of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by RWSA;
3. The rights of RWSA 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 RWSA to ensure proper maintenance;
6. The terms under which the private entity will reimburse RWSA for services provided;
7. The policy and procedures that will govern the rights and responsibilities of RWSA 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 RWSA and the transfer or purchase of property or other interests of the private entity by RWSA;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any

payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;

- a. A copy of any service contract shall be filed with RWSA.
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which RWSA may contribute financial resources, if any, for the qualifying project;
 11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
 12. The terms and conditions under which RWSA will be required to pay money to the private entity and the amount of any such payments for the project;
 13. Other requirements of the PPEA or other applicable law; and
 14. Such other terms and conditions as RWSA may deem appropriate.

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

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

C. Public hearing during proposal review process; notice and posting requirements.

1. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, RWSA shall hold a public hearing on the proposals that have been received.

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete but before such agreement has been entered into, RWSA shall post the proposed agreement in the following manner:

a. Posting shall be on RWSA's website or by publication, in a newspaper of general circulation in the area in 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 Service's web-based electronic procurement program commonly known as "eVA," in the discretion of RWSA.

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

c. Any studies and analyses considered by RWSA 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.

3. Once an interim agreement or a comprehensive agreement has been entered into, RWSA 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 RWSA or private entity in accordance with Section I.D.3.

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.

To the extent access to procurement records are compelled or protected by a court order, then RWSA must comply with such order.

4. RWSA shall file a copy (either on paper or in electronic format) of all interim and comprehensive agreement and any supporting documents with the Auditor of Public Accounts. Such agreements and supporting documents shall be provided within 30 days of the execution of the interim or comprehensive agreement.

IX. Governing Provisions

As of the initial adoption of these Guidelines, they are consistent with the PPEA. RWSA will make every effort to amend these Guidelines as necessary to address changes in the PPEA; however, in the event of any conflict between these Guidelines and the PPEA, the terms of the PPEA shall control and these Guidelines shall be interpreted in a manner to conform to the new law.

Terms and Definitions

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

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

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

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

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

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

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

“Interim agreement” means an agreement between a private entity and RWSA 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 RWSA to the private entity for the use of a qualifying project.

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

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

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

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

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

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

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

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

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

“Service contract” means a contract entered into between RWSA 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.