

## **Resolution for Amendment of Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002**

The Committee will consider for approval a resolution revising the Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act ("PPEA") of 2002. These revisions provide process clarification for instances where competing unsolicited PPEA proposal(s) are received in response to an initial proposal as well as update titles and format consistency.

## **Resolution for Amendment of Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002**

**WHEREAS**, the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion; and

**WHEREAS**, for the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Polytechnic Institute and State University (Virginia Tech), is a “responsible public entity” that has the power to develop or operate the applicable qualifying project; and

**WHEREAS**, pursuant to the *Code of Virginia*, the governing board of the university must adopt guidelines in compliance with the PPEA in order to pursue any qualifying project; and

**WHEREAS**, in December 2007 on behalf of the full Board, the Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University adopted the “Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002”; and

**WHEREAS**, in November 2012 and March 2016, the Virginia Tech Board of Visitors approved amendments to the “Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002”; and

**WHEREAS**, the university wishes to amend the guidelines as attached to provide process clarification for instances where competing unsolicited PPEA proposal(s) are received in response to an initial proposal as well as to update titles and format consistency; and

**NOW, THEREFORE, BE IT RESOLVED**, that the Virginia Tech Board of Visitors approves amending the “Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002.”

### **RECOMMENDATION:**

That the above resolution amending the “Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002” be approved.

August 26, 2019

# **Virginia Polytechnic Institute and State University**

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

**(PPEA)**

Approved by the Board of Visitors ~~March 21,~~  
~~2016~~ August 26, 2019

## Table of Contents

Public-Private Education Facilities and Infrastructure Act of 2002 .....	<u>333</u>
Guidelines for the review and approval of proposals and projects .....	<u>444</u>
I. General Provisions.....	<u>444</u>
A. Proposal Submission.....	<u>444</u>
II. Solicited Proposals .....	<u>777</u>
III. Unsolicited Proposals.....	<u>888</u>
A. Decision to Accept and Consider Unsolicited Proposal; Notice .....	<u>888</u>
B. Posting Requirements .....	<u>999</u>
C. Review Fees.....	<u>999</u>
D. Initial Review by Virginia Tech at the Conceptual Stage.....	<u>101010</u>
IV. Proposal Preparation and Submission.....	<u>101010</u>
A. Format for Submissions at Conceptual Stage .....	<u>101010</u>
B. Format for Submissions at Detailed Stage.....	<u>131313</u>
V. Proposal Evaluation and Selection Criteria .....	<u>141413</u>
A. Qualifications and Experience .....	<u>141414</u>
B. Project Characteristics .....	<u>141414</u>
C. Project Financing .....	<u>141414</u>
D. Project Benefit and Compatibility .....	<u>151515</u>
E. Other Factors.....	<u>151515</u>
VI. Additional Review Procedures .....	<u>161616</u>
A. Public Private Partnership Oversight Advisory Committee .....	<u>161616</u>
B. Timelines.....	<u>161616</u>
VII. Interim and Comprehensive Agreements.....	<u>161616</u>
A. Interim Agreement Terms.....	<u>161616</u>
B. Comprehensive Agreement Terms .....	<u>171717</u>
C. Notice and Posting requirements .....	<u>181818</u>
VIII. Governing Provisions.....	<u>191919</u>



## **Public-Private Education Facilities and Infrastructure Act of 2002**

The Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion. For the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Polytechnic Institute and State University (“Virginia Tech” or “the University”), is a “responsible public entity” (“RPE”) that “has the power to develop or operate the applicable qualifying project.”

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of “qualifying project” that includes public buildings and facilities of all types; for example:

- (1) An education facility, including but not limited to a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (2) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (3) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be used principally by a public entity;
- (4) Utility and telecommunications and other communications infrastructure;
- (5) A recreational facility;
- (6) Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (7) Any services designated to increase the productivity or efficiency of the responsible public entity through use of technology or other means;
- (8) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- (9) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or
- (10) Any solid waste management facility as defined in Section 10.1-1400 of the Code of Virginia that produces electric energy derived from solid waste.

An RPE may not consider any proposal by a private entity for approval of the qualifying project until the RPE has adopted and made publically available guidelines in compliance with the PPEA. Accordingly, these guidelines were adopted by the Board of Visitors of Virginia Tech by resolution, dated November 5, 2012, and revised by resolution, dated March 21, 2016. Virginia Tech will follow these guidelines in the review and acceptance of proposals.

# Guidelines for the review and approval of proposals and projects

## I. General Provisions

These guidelines are prepared and made available publically to encourage joint efforts between Virginia Tech and private entities, as well as stimulate competition in the private sector and to make clear Virginia Tech's compliance with the PPEA.

### A. **Proposal Submission**

- i. Pursuant to Virginia Code Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited by Virginia Tech (a "Solicited Proposal") or delivered to Virginia Tech by a private entity on an unsolicited basis (an "Unsolicited Proposal"). In either case, any such proposal shall be clearly identified as a "PPEA Proposal." The requirements for any particular Solicited Proposal shall be as specified in the solicitation by the University within the Request for Proposal and shall be consistent with all applicable provisions of the PPEA. Any Unsolicited Proposal shall be submitted to the University at the listed address below: **One (1) original and one (1) copy** of the entire proposal. Any proprietary information should be clearly marked. In addition, **one (1) electronic copy in WORD format or searchable PDF (CD or flash drive)** of the entire proposal. Any proprietary information should be clearly marked. Should the proposal contain **proprietary information**, provide **one (1) redacted hard copy** of the proposal and attachments **with proprietary portions removed or blacked out**. This copy should be clearly marked "*Redacted Copy*" on the front cover. Virginia Tech shall not be responsible for the private entity's failure to exclude proprietary information from this redacted copy.

Deliver Unsolicited Proposals to:

Vice President for ~~Administration~~Operations  
Virginia Tech  
201 Burruss Hall  
800 Drillfield Drive  
Blacksburg, VA 24061

The Vice President for ~~Administration~~Operations is designated as the University's contact person for all submissions, questions, and concerns regarding the proposal process under the PPEA. Likewise, any proposal should designate a contact person from the private entity to whom questions and clarifications may be directed. Other requirements for an Unsolicited Proposal are as set forth below in § III.

Whether the private entity submits a Solicited Proposal or an Unsolicited Proposal, it will follow a two-part process, consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information regarding the proposer's



qualifications and experience, project characteristics, project financing,<sup>1</sup> anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables, namely, project benefits, scope of work, and a financial plan that contains enough specificity so that the University may fairly evaluate the financial feasibility of the qualified project. The cost analysis of a proposal should not be linked solely to the financing plan, as Virginia Tech may determine to finance the project through other available means.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the University. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project.

## ii. Posting

Under the PPEA, Virginia Tech is required to make provisions for posting and publishing public notice announcing a private entity's request for approval of a qualifying project. Such notices will contain: (i) specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of § 56-575.4; (ii) a reasonable time period of at least 45 days during which Virginia Tech shall receive competing proposals conforming to subsection A of § 56-575.4; and (iii) an advertisement of the public notice on the Commonwealth's electronic procurement website.

In instances where any competing unsolicited PPEA proposal(s) are received in response to an initial public notice, Procurement will assist with updating the original posting on the Commonwealth's electronic procurement website to reflect the new information. This update serves as the public notice for the competing proposal(s).

## iii. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to Virginia Tech must provide each affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery, or hand delivery. The term "affected local jurisdiction" includes any University, county, city, or town in which all or a portion of a qualifying project is located. 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 Virginia Tech, directed to the Vice President for Administration, and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plan, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by Virginia Tech before entering into an interim or comprehensive agreement with a private entity, and no negative inference shall be drawn from the absence of

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<sup>1</sup> The PPEA provides for innovative and flexible financing options. Each suggested financing arrangement will be evaluated on a case-by-case basis.

comment by an affected jurisdiction. Nothing above shall prevent Virginia Tech from proceeding with or continuing the evaluation process during the 60-day period.

iv. Virginia FOIA

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") (§ 2.2-3700 et seq.) except as provided by § 56-575.4(G) of the PPEA. In order to prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to § 56-575.4(G) of the PPEA, the private entity submitting the information must (i) invoke the exclusion from FOIA when the data or materials are submitted to the University or before such submission, (ii) identify with specificity the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the University as to the anticipated scope of protection prior to submitting the proposal. The University is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the University shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection and shall communicate its determination to the private entity in writing. FOIA exemptions are discretionary, and Virginia Tech may elect to release some or all documents except to the extent the documents are:

1. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.);
2. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to balance sheets and financial statements; or
3. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

If the determination regarding protection or the scope thereof differs from the private entity's request, then the University will afford the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the University to afford less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual phase consideration as provided below in § III(A).

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

To the extent that access to any procurement record or other document or other information is compelled or protected by a court order, Virginia Tech shall comply with such order.

v. 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.

vi. Contributions and Gifts

No private entity that submits a Proposal to Virginia Tech and is seeking to develop or operate a qualifying project, and no individual who is an officer or director of such private entity, shall knowingly provide a contribution, gift, or other item with value greater than \$50 or make an express or implied promise to make such a contribution or gift to the Governor, his political action committee, or the Governor's Secretaries, if the Secretary is responsible to the Governor for an executive branch with jurisdiction over the matters at issue, following the submission of a proposal until the execution of the comprehensive agreement. This shall apply only for any proposal or an interim or comprehensive agreement where the stated or expected value of the contract is over \$5 million dollars.

vii. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the University to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is set forth in the PPEA, § 56-575.16. The Restructured Higher Education Financial and Administrative Operations Act, §§ 23-38.88, 23-38.109, is also applicable.

## **II. Solicited Proposals**

The procedures applicable to any particular Solicited Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA, these Guidelines, and any other applicable law. The solicitation will list any documents and information that must accompany each proposal and outline the factors that will be used in evaluating submitted proposals, as well as any unique capabilities or qualifications required of private entities submitting Proposals.

All such solicitations shall be made by issuance of a written Request for Proposal (“RFP”). Any proposal submitted pursuant to the PPEA that is not received in response to an RFP shall be an Unsolicited Proposal under these Guidelines, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal and (b) proposals received in response to publicity by the University concerning particular needs when the University has not issued a corresponding RFP, even if the University otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

### **III. Unsolicited Proposals**

Virginia Tech 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 a RFP, the proposal shall be treated as an Unsolicited Proposal. The University reserves the right to accept or to reject any and all proposals at any time.

The process for evaluating an Unsolicited Proposal, which is described in detail below in § V, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the University’s first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the University will give public notice of the Unsolicited Proposal. In step three the University will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The University may discontinue its evaluation of any proposal at any time. Furthermore, if the University determines that it is in the University’s interest to do so with respect to any Unsolicited Proposal, the University may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage, provided that the public notice is made. If the University rejects a proposal initiated by a private entity that purports to develop specific cost savings, the University shall specify the basis for the rejection.

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

Upon receipt of any Unsolicited Proposals and payment of any required fee by the private entity making the proposal, Virginia Tech will determine whether to accept the Unsolicited Proposal for the purpose of publication and conceptual-phase consideration. If the University decides not to accept the proposal and proceed to publication and conceptual-phase consideration, it will return the proposal, together with all unused or excess fees and accompanying documentation, to the private entity.

If Virginia Tech chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice on the Commonwealth’s electronic procurement website (eVA), on Virginia Tech Procurement’s website and as otherwise required by law or deemed appropriate by the University. The notice shall state that Virginia Tech (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 Virginia Tech and the PPEA.

The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

To ensure that sufficient information is available upon which to base the development of serious competing proposals, the notice issued by Virginia Tech may include language related to any critical or desired services, functionality, or elements an ideal proposal would deliver to the university. Further, the notice may document any limitations or constraints to which the proposal could be required to adhere during vetting and approval processes or to ensure full consideration of the extent of competition prior to selection.

In instances where any competing unsolicited PPEA proposal(s) are received in response to an initial public notice, Procurement will assist with updating the original posting on the Commonwealth's electronic procurement website to reflect the new information. This update serves as the public notice for the competing proposal(s).

#### **B. Posting Requirements**

Conceptual proposals, whether solicited or unsolicited, shall be posted by the University on “eVA” within ten (10) working days after acceptance of such proposals. The University will post the notice for a period of not less than forty-five (45) days, on the Commonwealth’s electronic procurement site (“eVA”) ([www.eva.state.va.us](http://www.eva.state.va.us)). 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 posted, except as otherwise agreed to by Virginia Tech and the proposing private entity. At least one copy of the proposal shall be made available for public inspection. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the University so as to provide maximum notice to the public of the opportunity to inspect the proposals.

#### **C. Review Fees**

The University shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The University may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, financial advisors and any other necessary advisors or consultants. Any fee charged for such review of a proposal will be reasonable in comparison to the level of expertise required to review the proposal and will not be greater than the direct costs associated with evaluating the proposed qualifying project. “Direct costs” may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of attorneys, consultants, and financial advisors.

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

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

#### **D. Initial Review by Virginia Tech at the Conceptual Stage**

Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the University for further review at the conceptual stage. Virginia Tech will determine at this stage whether it will proceed by using standard university procurement procedures consistent with the VPPA, those it has developed under the authority of the Restructured Higher Education Financial and Administrative Operations Act, §§ 23-38.88, 23-38.109, or guidelines it develops consistent with § 2.2-4301.<sup>2</sup>

After reviewing the original proposal and any competing proposal submitted, the University will determine: (i) not to proceed further with any proposal; (ii) to proceed to the detailed phase of review with the original proposal; (iii) to proceed to the detailed phase with a competing proposal; (iv) to proceed to the detailed phase with multiple proposals; or (v) to request modifications or amendments to any proposals. If more than one proposal is considered in the detailed phase of review, Virginia Tech may reimburse the unsuccessful proposer(s) for reasonable costs. Such costs will be agreed to in advance and assessed to the successful proposer in the comprehensive agreement.

### **IV. Proposal Preparation and Submission**

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

Unsolicited proposals must contain the following information in the following format, as well as any further information the University may request:

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<sup>2</sup> If the University chooses to develop its own guidelines other than those developed under the authority of the Restructured Higher Education Financial and Administrative Operations Act, §23-38.109, it must make a written determination that doing so is likely to be advantageous to the University and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.



1. Qualification and Experience

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

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent to the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the University.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, and environmental 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 the University's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.

- k. List any contingencies that must occur for the project to be successful.

### 3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the University's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the private entity 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 the University and whether the project is critical to attracting or maintaining competitive industries and businesses to the University or the surrounding region.
- e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types



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

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

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

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the University's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§2.2-3100 et seq) of Title 2.2;
11. Additional material and information as the University might reasonably request.

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

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. Virginia Tech retains the right at all times to reject any proposal at any time for any reason.

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

The University will consider the following factors in either phase of its review to determine whether the proposer possesses the requisite qualifications and experience:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Financial condition; and
9. Project ownership.

### **B. Project Characteristics**

The University will consider the following factors in determining the project characteristics:

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. Quality standards to meet proposed project quality;
9. State and local permits; and
10. Maintenance of the project.

### **C. Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the University;
2. Financing and the impact on the debt or debt burden of the University;
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 assessments;
5. Estimated cost;
6. Life-cycle cost analysis;
7. 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; and
8. Such other items as the University deems appropriate.

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

#### **D. 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.

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

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and unfinancial;
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 the University and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that Virginia Tech deems appropriate.

## **VI. Additional Review Procedures**

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

Virginia Tech may, at its discretion, assemble an advisory committee or establish criteria to trigger the establishment of an advisory committee for the purpose of reviewing the terms of a proposed interim or comprehensive agreement. If the University forms a committee or establishes such criteria, the members will consist of representatives from the University and its Board of Visitors. The criteria, if formally established, should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

### **B. Timelines**

Guidelines for determining applicable timelines are as follows:

1. For Solicited Proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For Unsolicited Proposals, an estimated timeline will be developed and distributed within 60 days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the University deems a priority.

## **VII. Interim and Comprehensive Agreements**

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

Prior to or in connection with the negotiation of the comprehensive agreement, the University may enter into an interim agreement with the private entity. Execution of any interim agreement in no way obligates the university to engage in a comprehensive agreement. The scope and content of an interim agreement may include but is not limited to:

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

5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement;
7. Granting permission to the private entity to commence activities for which it may be compensated relating to the qualifying project; 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**

Prior to developing or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the University as provided by the PPEA. Any such comprehensive agreement and any amendment thereto, must be approved by the University's Board of Visitors before it is entered into on behalf of the University. As provided by the PPEA, the terms 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 the University;
3. The rights of the University to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of insurance appropriate for the proposed activity either through a program of commercial or self-insurance reasonably sufficient to ensure coverage of the project and the liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the University to ensure proper maintenance;
6. The terms under which the private entity will reimburse the University for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the University and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the operator by the University and the transfer or purchase of property or other interests of the private entity by the University;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
  - a. A copy of any service contract shall be filed with the University.
  - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.



- c. Classifications according to reasonable categories for assessment of user fees may be made.
- 10. The terms and conditions under which the University may contribute financial resources, if any, for the qualifying project;
- 11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
- 12. The terms and conditions under which the University will be required to pay money to the private entity and the amount of any such payments for the project;
- 13. Other requirements of the PPEA or other applicable law; and
- 14. Such other terms and conditions as the University may deem appropriate.

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

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

#### **C. Notice and Posting requirements**

In addition to the posting requirements of Section III (B), 30 days prior to entering into an interim or comprehensive agreement, the University shall provide an opportunity for public comment on the proposals. Such public comment period may include a public hearing at the sole discretion of the University. After the end of the public comment period, no additional posting shall be required based on any public comment received.

Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the University, the University shall post the proposed agreement on the Department of General Service's web-based electronic procurement program ("eVA"). At least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the University and the private entity. Any studies and analyses considered by the University 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.

Once an interim agreement or a comprehensive agreement has been entered into, the University shall make procurement records available for public inspection, upon request. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of the University or private entity in accordance with Section II.D.3. 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 the University must comply with such order.

### **VIII. Governing Provisions**

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