

George Mason University

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

Adopted by the
Board of Visitors
of George Mason University on
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I. OVERVIEW

The Public-Private Education Facilities and Infrastructure Act of 2002 (the “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 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 George Mason University (the “University”), is a “responsible public entity” (“RPE”) that has the power to develop or operate the applicable qualifying project. Individually negotiated interim or comprehensive agreements between a private entity and an RPE will define the respective rights and obligations of the RPE and the private entity.

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

- (i) 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 and land 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;
- (ii) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (iii) 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) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- (viii) 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) A solid waste management facility that produces electric energy from solid waste.

The PPEA establishes requirements that the RPE must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between the RPE and the private entity.

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. Accordingly, these guidelines have been adopted by the George Mason University Board of Visitors. The University shall follow these guidelines in its review and acceptance of proposals.

II. GENERAL PROVISIONS

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

A. Proposal Submission

A proposal to provide a qualifying project may either be solicited by the University (a "Solicited Proposal") or delivered to the University 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 for that particular proposal and shall be consistent with all applicable provisions of the PPEA. Any Unsolicited Proposal shall be submitted to the University by delivering ten (10) complete copies, together with the required initial review fee as provided below in § IV(C), to:

Senior Vice President for Administration and Finance
George Mason University
4400 University Drive, MSN 3B2
Fairfax, VA 22030

If an RFP does not designate a contact person for the University, the Senior Vice President for Administration and Finance ("SVP") 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 maybe directed. Other requirements for an Unsolicited Proposal are as set forth below in § IV.

Whether the private entity submits a Solicited Proposal or Unsolicited Proposal, it will follow a two-part process consisting of an initial conceptual phase and a detailed phase. The initial conceptual phase should contain specified information regarding the proposer's qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables, namely, project benefits, scope of work and a financial plan that contains enough specificity so that that University may fairly evaluate the financial feasibility of the qualified project. The cost analysis of a proposal should not be linked solely to the proposer's financing plan, as the University 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.

B. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to the University 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 county, city, or town in which all or a portion of a qualifying project is located. Affected local jurisdictions of the University under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to the University 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 the University, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. However, the University may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Freedom of Information Act

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. 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 do the following:

- (i) invoke the exclusion from FOIA when the data or materials are submitted to the University or before such submission; and
- (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 nonproprietary 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 the University may elect to release some or all documents except to the extent the documents are:

- (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1336 et seq.); or
- (ii) 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
- (iii) 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 § IV(A).

The University 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 the University.

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

D. Use of Public Funds

Departments, agencies and institutions of the Commonwealth of Virginia are constitutionally prohibited from expending funds that are not appropriated by the Virginia General Assembly. Therefore, expenditure of state funds in support of an interim or comprehensive agreement requires and must be conditioned upon such appropriation of funds.

Proposals should avoid the creation of state-supported debt; however, should a proposal include such debt, procedures to secure specific approval by the Governor, General Assembly, the Department of Planning and Budget, the Department of the Treasury, and any other appropriate entities must be included in the proposal. In addition, a clear and detailed alternative if such approval is not achieved must be provided.

E. 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 (“VPPA”) is set forth in the PPEA. The Restructured Higher Education Financial and Administrative Operations Act, § 23.1-1000, et seq. is also applicable.

III. SOLICITED PROPOSALS

The University may solicit for qualifying project after approval by its Board of Visitors. 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 bids.

All such solicitations shall be made by issuance of a written Request for Proposal (“RFP”). The RFP shall be posted in such public areas as are normally used for posting of the University's notices, including the University's website. Notices will also be published as required by law. The RFP should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the University.

IV. UNSOLICITED PROPOSALS

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.

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

The University shall be afforded sufficient time as it deems necessary for complete review and evaluation of all proposals submitted; proposals shall remain valid and not revised, other than by the stated procedure, during this period. However, the University may, at its sole discretion, 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. All Unsolicited Proposals must comply with the § V(A), Format for Submissions at Conceptual Stage below.

A. Decision to Accept and Consider Unsolicited Proposal

Upon receipt of any Unsolicited Proposal accompanied by payment of any required fee, the University will determine whether to accept the unsolicited proposal for the purpose of publication and conceptual-phase consideration, as described below. If the University determines not to accept the proposal at this stage, it will return the proposal and the accompanying initial review fee to the proposer.

If the University chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice on the Commonwealth's electronic procurement website, on the University's website and as otherwise required by law or deemed appropriate by the University. The notice shall state that the University (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 the University 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 a serious competing proposal, representatives of the University familiar with the unsolicited proposal and the guidelines established by the University shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The

University shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the University 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.

B. Posting Requirements

Conceptual proposals, whether solicited or unsolicited, shall be posted by the University within 10 working days after acceptance of such proposals on the Department of General Service's web-based electronic procurement program commonly known as "eVA"; and on the University's website.

At least one copy of the proposals 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.

The University shall post notice on eVa and its website announcing a private entity's request for approval of a qualifying project. Such notice shall include the following:

- (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 of no less than 45 days during which time the University shall receive competing proposals pursuant to subsection A of § 56-575.4.

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

A review fee will be charged to any private entity submitting an Unsolicited Proposal to the University, to cover the University's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to University staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the University in its sole discretion. The uses and expenditures for these resources is the sole discretion of the University. Such fees generally shall be in the amount necessary to completely cover all of the University's costs.

Such fees shall be imposed based on the reasonably anticipated costs to the University in accordance with the following schedule:

- (i) Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the University in order for the University to proceed with its review. The initial fee shall be two and one half percent (2.5%) of the reasonably

anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 or more than \$50,000, regardless of the anticipated total cost.

(ii) Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited 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.

(iii) Reimbursement of excess fees paid. 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 the University 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.

The University will determine at this initial stage of review whether it will proceed using:

- (i) Standard procurement procedures consistent with the VPPA; or
- (ii) Guidelines developed by the University that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The University may proceed using such guidelines only if it makes 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.

After reviewing the original proposal and any competing proposals submitted during the notice period, the University may determine:

- (i) not to proceed further with any proposal;
- (ii) to proceed to the detailed phase of review with the original proposal;
- (iii) to proceed to the detailed phase with a competing proposal;

- (iv) to proceed to the detailed phase with multiple proposals; or
- (v) to request modifications or amendments to any proposals.

Discussions between the University and private entities about the need for infrastructure improvements shall not limit the ability of the University to later determine to use standard procurement procedures to meet its infrastructure needs. The University retains the right to reject any proposal at any time.

V. PROPOSAL PREPARATION AND SUBMISSION

A. Format for Submissions at Conceptual Stage

The University may require that 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 the University 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 the University 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 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 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 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 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 economic benefits to 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 the University 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. Project Specifics

- a. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
- b. 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;

- c. A statement and strategy setting out the plans for securing all necessary property;
- d. 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;
- e. 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;
- f. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
- g. 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;
- h. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
- i. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
- j. 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;
- k. Additional material and information as the University may reasonably request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

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

A. Qualifications and Experience

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

- (i) Experience with similar projects of comparable scope and value;
- (ii) Demonstration of ability to perform work at the appropriate level of quality standards;
- (iii) Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
- (iv) Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
- (v) Leadership structure;
- (vi) Project manager's experience;
- (vii) Management approach;
- (viii) Financial condition; and
- (ix) Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics include:

- (i) Project definition;
- (ii) Proposed project schedule;
- (iii) Operation of the project;
- (iv) Technology; technical feasibility;

- (v) Conformity to laws, regulations, and standards;
- (vi) Environmental impacts;
- (vii) Condemnation impacts;
- (viii) Quality standards to meet proposed project quality;
- (ix) State and local permits; and
- (x) Maintenance of the project.

C. Financial

Factors to be considered in determining the Project's cost to the University include

- (i) Estimated cost of the project;
- (ii) Estimated annual operating expenses;
- (iii) Cost-benefit analysis;
- (iv) Opportunity costs assessment;
- (v) Life-cycle cost analysis;
- (vi) Comparable costs of other project delivery methods; and
- (vii) 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:

- a. An overview of the financing: terms, structure, interest rate, security arrangements, collateral, fees and expenses, repayment schedule, documentation and timeline to close the financing.
- b. The impact the financing will have on the debt burden of the University and/or on the rating on any outstanding debt of the University or its component units;
- c. 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;

d. The financing 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;

e. The financing team, including roles, responsibilities, fees and experience with this type of financing.

In the event that any project is financed through the issuance of obligations that are deemed to or implied to be debt supported by 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 include:

- (i) Community benefits;
- (ii) Community support or opposition, or both;
- (iii) Public involvement strategy;
- (iv.) Compatibility with existing and planned facilities; and
- (v.) Compatibility with local, regional, and 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:

- (i) The general reputation, industry experience, and financial capacity of the private entity;
- (ii) The proposed design of the qualifying project;
- (iii) The eligibility of the project for accelerated documentation, review, and selection;
- (iv) Local citizen and government comments;
- (v) Benefits to the public, including financial and nonfinancial;
- (vi) The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;

- (vii) The private entity's plans to employ local contractors and residents;
- (viii) 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
- (ix) Other criteria that the University deems appropriate.

VII. ADDITIONAL REVIEW PROCEDURES.

A. Public Private Partnership Review Committee

The University may, at its discretion, establish an advisory committee consisting of representatives of the University to recommend to the Board of Visitors which proposer, if any, to select for negotiation of an Interim or Comprehensive Agreement and to review the terms of a proposed Interim or Comprehensive Agreement. The criteria 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 will be developed and made available to proposers. Prior approval of the Board of Visitors of a proposer is required before the University may move forward with negotiating an Interim or Comprehensive Agreement with a proposer.

For proposals that include new construction or renovation to existing facilities the Committee may include but is not limited to the following individuals: project manager; planner; Virginia construction contracting officer (VCCO); the university architect; and one or more representatives of the eventual end users of the facility.

B. Review Timelines

Guidelines for determining applicable timelines are as follows:

- (i) 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.
- (ii) 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.
- (iii) Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the University deems a priority.

C. Public-Private Partnership Oversight Commission

Prior to entering into negotiations with any private entity for an interim or comprehensive agreement, the Agency shall submit copies of the detailed proposals to the Public-Private Partnership Advisory Commission if required by § 30-278 et seq.

VIII. INTERIM AND COMPREHENSIVE AGREEMENTS

A. Interim Agreement Terms

Prior to or in connection with the negotiation of a comprehensive agreement, the University may enter into an interim agreement with the private entity. Any such interim 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. The scope and content of an interim agreement may include but is not limited to:

- (i) Project planning and development;
- (ii) Design and engineering;
- (iii) Environmental analysis and mitigation;
- (iv) Survey;
- (v) Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
- (vi) Establishing a process and timing of the negotiation of the comprehensive agreement; and
- (vii) 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 qualified project, a selected private entity shall enter into a comprehensive agreement with the University. 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:

- (i) The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
- (ii) The review of plans and specifications for the qualifying project by the Authority having Jurisdiction;
- (iii) The rights of the University to inspect the qualifying project to ensure compliance with the comprehensive agreement;

- (iv) The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
- (v) The monitoring of the practices of the private entity by the University to ensure proper maintenance;
- (vi) Reimbursement to be paid to the University for services provided by the University;
- (vii) 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 private entity by the University and the transfer or purchase of property or other interests of the private entity by the University;
- (viii) The terms under which the private entity will fill appropriate financial statements on a periodic basis;
- (ix) The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that 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 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;
- (x) The terms and conditions under which the University may contribute financial resources, if any, for the qualifying project;
- (xi) The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
- (xii) The terms and conditions under which the University will be required to pay money to the private entity and the amount of any such payments for the project;
- (xiii) Other requirements of the PPEA or other applicable law; and
- (xiv) 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. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

C. Notice and Posting Requirements.

No later than 30 days prior to entering an interim or comprehensive agreement, the University shall hold a public hearing on the proposals.

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 in 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 an adverse effect on the financial interest or bargaining position of the University or private entity in accordance with § II(C). 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.

D. Representations

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Commonwealth. Accordingly, as part of the Comprehensive Agreement, the private entity and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information, or data provided for a proposal, the private entity shall immediately notify the University of same. Any violation of this section of the Comprehensive Agreement shall give the University the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

IX. GOVERNING PROVISIONS

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