

**GUIDELINES
FOR PROJECTS PROPOSED PURSUANT TO
THE PUBLIC-PRIVATE EDUCATION FACILITIES AND
INFRASTRUCTURE ACT OF 2002**



SOUTHEASTERN PUBLIC SERVICE AUTHORITY

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I. Introduction.

A. The PPEA.

The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) 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: (i) that there is a public need for the project; (ii) that the estimated cost of the project is reasonable in relation to similar projects; and (iii) that the plans of the public-private partnership will result in the timely development or operation of the project.

B. SPSA as a Responsible Public Entity.

The PPEA defines “responsible public entity” to mean any public entity, including an authority, that has the power to develop or operate a qualifying project. SPSA is a public body politic and corporate organized under the laws of the Commonwealth of Virginia and is a “responsible public entity” as that term is defined in the PPEA. SPSA’s Governing Body has adopted these guidelines in accordance with the provisions of the PPEA.

C. Guidelines.

The PPEA requires a responsible public entity to adopt guidelines to enable the responsible public entity to comply with the provisions of the PPEA and to respond to proposals submitted to the responsible public entity. SPSA has adopted these Guidelines and made them publicly available in accordance with the provisions of the PPEA. SPSA has designed these Guidelines to be reasonable and to encourage competition with respect to Qualifying Projects.

D. Submissions.

SPSA has designated the SPSA Purchasing Administrator as SPSA’s primary point of contact for information about these Guidelines and for submission of solicited and unsolicited proposals in accordance with the PPEA. Proposers shall submit solicited and unsolicited proposals to the SPSA Purchasing Administrator at 723 Woodlake Drive, Chesapeake, VA 23320. In the event that the PPEA or other applicable State law is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, SPSA will amend these Guidelines accordingly. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines shall nonetheless be interpreted in a manner to conform to the new State law.

E. Reservation of SPSA’s Rights.

SPSA reserves all rights available to it under State law in administering these Guidelines including, without limitation, the right in its sole discretion to:

1. Reject any and all proposals at any time, subject to applicable State law.

2. Terminate consideration or evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties.
4. Suspend or eliminate conceptual phase review and proceed directly to detailed phase review.
5. Negotiate with a proposer without being bound by any provision in its proposal.
6. Negotiate with fewer than all proposers at any given time.
7. Request and/or receive additional information regarding any proposal.
8. Issue addenda to and/or cancel any IFB or any RFP at any time.
9. Revise, supplement or withdraw at any time all or any part of these Guidelines.
10. Assess, retain and/or waive on a case by case basis any and all fees required to be paid by proposers in accordance with these Guidelines.
11. Request revisions to conceptual phase or detailed phase proposals.

F. Definitions.

The following definitions are applicable to projects proposed pursuant to the PPEA unless otherwise specified:

1. “Affected jurisdiction”: any county, city or town in which all or a portion of a qualifying project is located.
2. “Bid”: a proposal submitted to SPSA by a private entity in response to an IFB.
3. “Comprehensive agreement”: the comprehensive agreement between the private entity and SPSA required by Section 56-575.9 of the PPEA.
4. “Conceptual phase”: the first phase of project evaluation where SPSA makes a determination whether the proposed project serves a public purpose and meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and determines whether the project warrants further pursuit.
5. “Cost-benefit analysis”: an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, SPSA may compare the costs and benefits of constructing a new building to those of renovating and maintaining an existing building in order to select the most financially advantageous option.

6. “Detailed phase”: the second phase of project evaluation where SPSA, after completing the conceptual phase and accepting a proposal for detailed phase review, may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.
7. “Develop” or “development”: to plan, design, develop, finance, lease, acquire, install, construct, or expand.
8. “FOIA”: the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*).
9. “Governing body”: the Board of Directors of SPSA.
10. “Guidelines”: these guidelines adopted by SPSA in accordance with the provisions of the PPEA.
11. “IFB”: an invitation for bids under the PPEA published by SPSA.
12. “Interim agreement”: an agreement between a private entity and SPSA that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.
13. “Lease payment”: any form of payment, including a land lease, by SPSA to the private entity for the use of a qualifying project.
14. “Lifecycle cost analysis”: an analysis that calculates the cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value are considered.
15. “Material default”: any default by the private entity in the performance of its duties under Virginia Code Section 56-575.8.E. that jeopardizes adequate service to the public from a qualifying project.
16. “Operate” or “operation”: to finance, maintain improve, equip, modify, repair, or operate.
17. “Opportunity cost”: means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.
18. “PPEA”: the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*).

19. “Private entity”: any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.
20. “Proposal”: a bid submitted by a private entity in response to an IFB or a proposal submitted by a private entity in response to an RFP, as the context may require; for purposes of convenience, bids and proposals are referred to herein as proposals.
21. “Public entity”: the Commonwealth of Virginia and any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth. Under the PPEA, “public entity” also includes any public body politic and corporate, or any regional entity that serves a public purpose.
22. “Qualifying project”:
 - (a) any education facility, including, but not limited to, a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
 - (b) any building or facility that meets a public purpose and is developed or operated by or for any public entity;
 - (c) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
 - (d) any utility and telecommunications and other communications infrastructure;
 - (e) a recreational facility;
 - (f) technology infrastructure, services, and applications including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
 - (g) any services designed to increase the productivity or efficiency of SPSA through the use of technology or other means;
 - (h) any technology, equipment or infrastructure designed to deploy wireless broadband services to schools, businesses or residential areas;
 - (i) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or

- (j) any solid waste management facility defined in Virginia Code Section 10.1-1400 that produces electric energy derived from solid waste.
- 23. “Responsible public entity”: a public entity that has the power to develop and/or operate the applicable qualifying project.
- 24. “Revenues”: all revenues, including, but not limited to, income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying project, including, without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such project.
- 25. “RFP”: a request for proposals under the PPEA published by SPSA.
- 26. “Service contract”: a contract entered into between a public entity and the private entity pursuant to Virginia Code Section 56-575.5.
- 27. “Service payments”: payments to the private entity in connection with the development and/or operation of a qualifying project pursuant to a service contract.
- 28. “Solicited proposal”: a bid submitted to SPSA in response to an IFB or a proposal submitted to SPSA in response to an RFP.
- 29. “SPSA”: the Southeastern Public Service Authority of Virginia.
- 30. “State”: the Commonwealth of Virginia.
- 31. “Unsolicited proposal”: a bid submitted to SPSA that is not in response to an IFB or a proposal submitted to SPSA that is not in response to an RFP.
- 32. “User fees”: the rates, fees or other charges imposed by a private entity for the use of all or a portion of a qualifying project pursuant to a comprehensive agreement.

II. General Provisions.

A. Proposal Submission to SPSA.

- 1. Proposals may be submitted by private entities to SPSA either (i) in response to an IFB or RFP published by SPSA or (ii) on an unsolicited basis.
- 2. SPSA may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.

3. In accordance with the provisions of the PPEA, SPSA will engage the services of qualified professionals to provide independent analysis regarding the specifics, advantages, disadvantages, and the long-term and short-term costs of any proposal, unless SPSA's Governing Body determines that SPSA will perform such analysis with SPSA employees. Such qualified professionals may include an architect, professional engineer, certified public accountant or other consultants, not otherwise employed by SPSA.

B. Duty to Provide Copy to Affected Jurisdictions.

Any private entity submitting a proposal to SPSA must provide any other affected jurisdiction with a copy of its proposal by certified mail, express delivery, or hand delivery within five (5) business days following submission of the proposal to SPSA. Any such other jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to SPSA (to the attention of the SPSA Purchasing Administrator). The copy provided to an affected jurisdiction shall include a notice of the deadline for comments. Under the PPEA, such written comments shall indicate whether the proposed project is compatible with the affected jurisdiction's (i) local comprehensive plan; (ii) local infrastructure development plans; or (iii) capital improvements budget or other government spending plans. SPSA will consider comments received within the 60-day period prior to entering into a comprehensive agreement regarding the proposal, but SPSA may begin or continue its evaluation of any such proposal during the 60-day period. (See Va. Code §§ 56-575.6).

C. Fees for Processing, Reviewing and Evaluating Proposals.

1. SPSA will process, review and evaluate each proposal, either through appropriate internal staff, or through outside qualified professionals, advisors or consultants with relevant experience, in analyzing whether to enter into an agreement with the private entity, in each case taking into account the specifics, advantages, disadvantages and long- and short-term costs of such proposal and contemplated agreement and all in accordance with and as further described in Section VI below. SPSA is authorized to and may charge a fee to a private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal and any competing unsolicited proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants; provided, any such fee should be reasonable in comparison to the level of expertise required to process, review and evaluate the proposal and should not be greater than the direct costs associated with processing, reviewing and evaluating the proposed qualifying project. "Direct costs" may include, among other things, (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal, and (ii) the out-of-pocket costs for qualified engineers, architects and other similar professionals, attorneys, accountants, consultants and financial advisors engaged by SPSA in its sole discretion to assist in such processing, review, evaluation and response.

2. The initial proposal fee is Ten Thousand Dollars (\$10,000.00) and must be paid by the proposer to SPSA at the same time that an unsolicited proposal, and each competing proposal with respect to such unsolicited proposal, is submitted to SPSA. The initial proposal fee may cover all or part of the processing, review and evaluation process. However, if the cost of processing, reviewing and evaluating any proposal exceeds the initial proposal fee charged by SPSA, SPSA may assess the proposer the additional costs deemed necessary to process, review and evaluate the proposal. SPSA will charge such fees to any proposer whose unsolicited proposal has been accepted by SPSA for conceptual phase review and to any proposer who submits a competing proposal with respect to such unsolicited proposal. Any initial proposal fees assessed and collected in connection with proposals that are rejected or otherwise not accepted by SPSA will be returned to the proposer in accordance with Section IV.C.3 below.
3. SPSA will not charge a fee for the processing, review and evaluation of proposals solicited by SPSA pursuant to a published IFB or RFP.
4. In the event the total fees paid by a proposer exceed SPSA's total direct costs incurred in processing, reviewing, and evaluating the proposal, SPSA will reimburse the difference. Otherwise, SPSA will retain all fees paid.

D. Virginia Freedom of Information Act.

1. Proposal documents submitted by private entities are generally subject to the FOIA, except that subdivision 11 of Virginia Code Section 2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and SPSA may elect to release some or all of the documents received, except to the extent that such documents are: (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code Section 59.1-336 et seq.); (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. Notwithstanding anything herein to the contrary, at no time shall SPSA be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.
2. Memoranda, staff evaluations or other records prepared by SPSA, its staff, outside advisors or consultants exclusively for the evaluation and negotiation of proposals are excluded from the obligation to disclose to the extent permitted in Virginia Code Section 2.2-3705.6.11. Also, cost estimates prepared by or for SPSA will not be open to public inspection.
3. In order to avail itself of the protection against the release of certain documents accorded to private entities under Section II.D.1 above, the private entity must make a written request to SPSA at the time the documents are submitted

designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Section II.D.1 above. A private entity may request and receive a determination from SPSA as to the anticipated scope of protection prior to submitting the proposal. SPSA is authorized and obligated to protect only confidential and proprietary information and 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.

4. Upon the receipt of a written request for protection of documents, SPSA shall determine whether the documents contain: (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of SPSA or the private entity. SPSA shall make a written determination of the nature and scope of the protection to be afforded by SPSA under this subdivision. If the written determination provides less protection than requested by the private entity, SPSA will permit the private entity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section II.D.1. SPSA will treat such a withdrawn proposal in the same manner as a proposal not accepted for publication and conceptual phase review as provided in Section IV.C, except that SPSA may retain all or a portion of the proposal review fee at its sole discretion to cover the costs of processing the proposal, including determinations regarding disclosure pursuant to this Section II.D.4. Once a written determination has been made by SPSA, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of SPSA or any affected jurisdiction to which such documents are provided. If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under the FOIA.
5. SPSA and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a proposal submitted under these Guidelines.
6. Once an interim agreement or a comprehensive agreement has been entered into, SPSA will make procurement records available in accordance with Virginia Code Section 56-575.17.D.

E. Use of Public Funds.

Virginia constitutional and statutory requirements regarding the appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, SPSA shall incorporate all of the processes and

procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA project.

F. Applicability of Other Laws.

Nothing in the PPEA shall affect the duty of SPSA to comply with all other federal, state, and local laws, and with SPSA's Procurement Policies, not in conflict therewith. In particular, the provisions of the Virginia Public Procurement Act shall be applicable as set forth in Virginia Code Section 56-575.16.

III. Solicited Proposals.

A. General.

SPSA shall specify the procedures and requirements applicable to any particular solicited proposal in the solicitation for that proposal, which procedures and requirements shall be consistent with the requirements of the PPEA and other applicable law. SPSA shall make all such solicitations pursuant to a written IFB or RFP, in accordance with the SPSA Procurement Policies.

B. Required Information and Evaluation Criteria.

The IFB or the RFP should specify, but should not necessarily be limited to, information and documents that must accompany each proposal and the factors that SPSA will use in evaluating submitted proposals. The IFB or 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-bid and pre-proposal conferences may be held as deemed appropriate by SPSA.

C. Notice and Posting Requirements

1. SPSA will post the IFB or the RFP in such public areas as are normally used for posting of SPSA's notices, including SPSA's website, for a period of sixty (60) days. Such IFB or RFP shall also be advertised in *Virginia Business Opportunities* and posted on the State's Department of General Services electronic procurement website commonly known as "eVA", in each case for such period of time as SPSA determines in its sole discretion.
2. Upon receipt of any proposal submitted in response to an IFB or RFP, SPSA shall determine whether to accept such solicited proposal for conceptual phase review, as described below.
3. If SPSA determines to accept a solicited proposal for conceptual phase review, then within ten (10) working days after its acceptance of such solicited proposal for conceptual phase review SPSA shall post such proposal on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA". In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which

the contract is to be performed a summary of the proposal, and the location where copies of the proposal are available for public inspection. Finally, SPSA may, in the exercise of its discretion, post such solicited proposal that has been accepted for conceptual phase review by additional means deemed appropriate by SPSA so as to provide maximum notice to the public of the opportunity to inspect the proposal.

4. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the solicited proposal that has been accepted for conceptual phase review.

D. Proposals Other Than in Response to an IFB or an RFP.

Any PPEA proposal submitted to SPSA other than in response to an IFB or RFP shall be deemed an unsolicited proposal under Article IV below. Such unsolicited proposals shall include (a) proposals received in response to a notice issued by SPSA that it has received another unsolicited proposal, and (b) proposals received in response to publicity by SPSA concerning particular needs but where SPSA has not issued a written IFB or RFP.

IV. Unsolicited Proposals.

A. General.

1. The following procedure for evaluating unsolicited proposals shall serve as SPSA's general process for encouraging the receipt and consideration of proposed projects under the PPEA. This procedure shall not preclude SPSA, however, from discontinuing its evaluation of any proposal at any time. Furthermore, if SPSA determines that it is in SPSA's interest to do so with respect to any unsolicited proposal, SPSA may cease or eliminate conceptual phase review and proceed directly to detailed phase review.
2. SPSA 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 by SPSA other than in response to an IFB or RFP, SPSA shall treat the proposal as an unsolicited proposal.

B. Submission of Unsolicited Proposal.

Any private entity seeking to submit an unsolicited proposal to SPSA or a competing proposal for an unsolicited proposal already submitted to SPSA shall deliver twenty (20) complete copies of its proposal, as provided below, to the SPSA Purchasing Administrator at the address provided above, together with a check in the amount of \$10,000 to cover SPSA's initial proposal fee described above in Section II.C.2. The term "Public Private Education Facilities and Infrastructure Proposal" must be clearly labeled on the outside of the envelope or package. The proposer shall also provide to SPSA a list of all affected jurisdictions that are being provided a copy of the proposal, together with the name and address of recipient and date delivered. SPSA may designate a working group to review and evaluate any such proposal.

C. Preliminary Review and Acceptance.

1. Upon receipt of any unsolicited proposal, accompanied by the required initial proposal fee, SPSA shall determine whether to accept the unsolicited proposal for conceptual phase review, as described below.
2. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, SPSA shall make available representatives of SPSA familiar with the unsolicited proposal and the Guidelines to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. SPSA 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, SPSA 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.
3. If SPSA determines not to accept the proposal, whether the proposal is a single proposal or one or multiple proposals, SPSA will return the rejected proposal(s), together with all fees and accompanying documentation, to the proposer.

D. Notice and Posting Requirements.

1. If SPSA determines to accept an unsolicited proposal for conceptual phase review, SPSA shall post a notice containing the information prescribed under Section IV.D.2 below in a public area regularly used by SPSA for posting of public notices, including SPSA's website, for a period of sixty (60) days, during which period SPSA will receive any competing proposals submitted pursuant to Section 56-575.4(A) of the PPEA. Such notice shall also be advertised in *Virginia Business Opportunities* and posted on the State's Department of General Service's central electronic procurement website commonly known as "eVA", in each case for such period of time as SPSA determines in its sole discretion.
2. The notice shall state that SPSA (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 during the 60-day notice period specified in Section IV.D.1 above any competing proposals that comply with the procedures adopted by SPSA and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.
3. In addition, if SPSA determines to accept an unsolicited proposal for conceptual phase review, then within ten (10) working days after its acceptance of such unsolicited proposal for conceptual phase review SPSA shall post such proposal on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA".

In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which the contract is to be performed a summary of the proposal, and the location where copies of the proposal are available for public inspection. Finally, SPSA may, in the exercise of its discretion, post such unsolicited proposal accepted for conceptual phase review by additional means deemed appropriate by SPSA so as to provide maximum notice to the public of the opportunity to inspect the proposal.

4. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the unsolicited proposal that has been accepted for conceptual phase review.
5. 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 SPSA and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

E. Conceptual Phase Review by SPSA.

1. SPSA will only consider proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format for further review at the conceptual phase. Formatting suggestions for proposals at the conceptual phase are found in Section V.A.
2. SPSA will initially determine whether it will proceed using:
 - (a) Standard procurement procedures consistent with the Virginia Public Procurement Act; or
 - (b) SPSA's policies for procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code Section 2.2-4301. SPSA may proceed using such policies only if it makes a written determination that doing so is likely to be advantageous to SPSA 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. If SPSA elects to proceed with procurement through "competitive negotiation," SPSA shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received.
3. After reviewing the original proposal and any competing proposals submitted during the 60-day notice period specified under Section IV.D.1 above, SPSA may determine:

- (a) not to proceed further with any proposal;
 - (b) to proceed to detailed phase review with the original proposal;
 - (c) to proceed to detailed phase review with a competing proposal;
 - (d) to proceed to detailed phase review with multiple proposals; or
 - (e) to request modifications or amendments to any proposals.
4. Any discussions between SPSA and a private entity about the need for infrastructure improvements shall not limit the ability of SPSA to later determine to use standard procurement procedures to meet its infrastructure needs. SPSA retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.

V. Proposal Preparation and Submission.

A. Format for Submissions for Conceptual Phase Review.

An unsolicited proposal must contain information in the following areas: (i) the proposer's 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 that SPSA 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 SPSA may request:

1. Qualification and Experience.
 - (a) Identify the legal structure of the firm or consortium of firms making the proposal (e.g., corporation, partnership, joint venture, limited liability company, etc.). Identify the organizational structure for the project, the management approach, and how each principal (e.g., major shareholder, member, partner, etc.) 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. Provide resumes of the key individuals who will be involved in the project.

- (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, member or shareholder with an equity interest of twenty percent (20%) 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 Virginia State and Local Government Conflict of Interest Act (Virginia Code Section 2.2-3100 *et seq.*).

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 SPSA or any private entity other than the proposer.
- (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 project 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 SPSA'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) Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
- (k) Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property for which condemnation may be necessary.
- (l) List any other assumptions relied on for the project to be successful.
- (m) List any contingencies that must occur for the project to be successful.

3. Project Financing.

- (a) Provide a preliminary estimate and describe the 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 identify of each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of SPSA's credit or revenue.
- (f) Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the proposer contemplates will provide financing for the project, and describe the nature and timing of each such commitment.

- (g) Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

4. Project Benefit and Compatibility.

- (a) Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of SPSA, and identify who will benefit from the project and how they will benefit.
- (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 whether the project is critical to attracting or maintaining competitive industries and businesses to SPSA or the surrounding region.
- (e) State whether the project is compatible with the comprehensive plan(s) for any affected jurisdiction, infrastructure development plans, capital improvements projects program, or other government spending plans and, if so, explain how.
- (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 for Detail Phase Review.

If SPSA decides to proceed to detail phase review with one or more unsolicited bids/proposals, then each included proposer shall provide the following information to SPSA unless contained in the conceptual phase proposal or expressly waived by SPSA:

1. A topographical map (1:2000 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. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property for which condemnation may be necessary.

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 cost-benefit analysis for the project, specifying methodology and assumptions of the project.
6. A total lifecycle 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 lifecycle 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.
7. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
8. 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.
9. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
10. Explanation of how the proposed project would impact local development plans of each affected jurisdiction.
11. 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 SPSA'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 (Virginia Code Section 2.2-3100 *et seq.*).
12. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by SPSA. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to SPSA, and all underlying data supporting any conclusions reached in the analysis or the selection by the proposer of the financing plan proposed for the project.
13. Such additional material and information as SPSA may request.

VI. Proposal Evaluation and Selection Criteria.

In addition to evaluation of materials and information described in Article V above, some or all of the following matters may be considered in the evaluation and selection of PPEA proposals.

A. Qualifications and Experience.

Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience may include but shall not be limited to:

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

B. Project Characteristics.

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

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

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 shall not be limited to:

1. Cost and benefit to SPSA based on a cost-benefit analysis.
2. Financing and the impact on the debt or debt burden of SPSA.
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies.
4. Opportunity costs assessment.
5. Estimated cost.
6. Lifecycle 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, as applicable.
8. Such other items as SPSA deems appropriate.

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 shall not be limited to:

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

E. Other Factors.

Other factors that SPSA may consider in the evaluation and selection of PPEA and proposals include:

1. The proposed cost of the qualifying project.

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

VII. Interim and Comprehensive Agreements.

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with SPSA and may enter into an interim agreement as described in Section VII.A below. SPSA may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of SPSA and the selected proposer with regard to the project.

A. Interim Agreement Terms.

Prior to entering into and/or in connection with the negotiation of a comprehensive agreement, SPSA may enter into an interim agreement that permits a private entity to perform compensable activities related to the project. The scope of an interim agreement may include but shall not be limited to:

1. Project planning and development.
2. Design and engineering.
3. Environmental analysis and mitigation.
4. Site planning and survey.
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.

6. Establishing a process for and timing of the negotiation of the comprehensive agreement.
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms.

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

1. 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, in the forms and amounts satisfactory to SPSA.
2. Review and approval of plans and specifications for the qualifying project by SPSA.
3. The right of SPSA to inspect the qualifying project to ensure compliance with the comprehensive agreement.
4. Maintenance of a policy or policies of liability insurance or self-insurance in a form and amount satisfactory to SPSA and reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project.
5. Monitoring and acting upon the practices of the operator by SPSA to ensure proper maintenance.
6. The terms under which the private entity will reimburse SPSA for services that SPSA will provide.
7. Policies and procedures governing the rights and responsibilities of SPSA and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the private entity by SPSA and the transfer or purchase of property or other interests of the private entity by SPSA.
8. Filing by the private entity of 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, subject to applicable laws controlling SPSA's ability to set or charge 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. In addition:

- (a) A copy of any service contract shall be filed with SPSA.
 - (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 SPSA 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 indemnification of SPSA for conducting the assessment and taking necessary remedial action.
 12. Any changes to the terms of the interim or comprehensive agreement may be agreed upon by the parties from time to time and shall be added to the interim or comprehensive agreement only by written amendment.
 13. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.
 14. Other requirements of the PPEA and other applicable law.

C. Public Hearing, Posting and Other Requirements.

1. In accordance with the PPEA, SPSA shall hold a public hearing on the proposals during the proposal review process, but not later than thirty (30) days prior to entering into an interim or a comprehensive agreement.
2. Once the negotiation phase for the development of an interim or comprehensive agreement is complete and a decision to award and/or consummate a qualifying project has been made by SPSA, but before an interim agreement or comprehensive agreement is entered into, SPSA shall post the proposed agreement on SPSA's website and/or on the State's Department of General Service's central electronic procurement website commonly known as "eVA" for a period of at least three (3) days. In addition, SPSA may in its discretion publish in a newspaper of general circulation in the area in which the agreement is to be performed a summary of the proposed agreement, and the location where copies of the proposed agreement are available for public inspection.
3. In addition to the posting requirements, SPSA shall make available for public inspection at least one copy of the proposed agreement. 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 SPSA and the private entity.

4. Once SPSA has entered into an interim agreement or a comprehensive agreement, SPSA shall make procurement records available for public inspection, upon request.
 - (a) Such procurement records shall include documents protected from disclosure during negotiation on the basis that the release of such documents would have adverse affect on the financial interest or bargaining position of SPSA or private entity in accordance with Section II.D.
 - (b) Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code Section 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.
 - (c) To the extent access to procurement records are compelled or protected by a court order, then SPSA shall comply with such order.
5. SPSA shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts. SPSA shall provide such agreements and supporting documents within thirty (30) days of the execution of the interim or comprehensive agreement.

VIII. Governing Provisions.

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

[END]