



Hampton Roads Sanitation District

Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act (PPEA)

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I. *Introduction*

The Public-Private Education Facilities and Infrastructure Act (the “PPEA”) of 2002, Virginia Code § 56-575, grants the Hampton Roads Sanitation District (“HRSD”), a responsible public entity as defined in the PPEA, the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon HRSD and all private entities to comply with the provisions of the PPEA.

In compliance with the PPEA, the Hampton Roads Sanitation District Commission (the “Commission”) adopted these guidelines, which shall be made publicly available, to implement the PPEA. Therefore, in accordance with Commission directive, staff will follow these guidelines to receive and evaluate any proposal submitted to HRSD under the provisions of the PPEA.

II. *General Provisions*

A. Proposal Submission

1. Pursuant to Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Bid/Proposal”) or delivered to the public entity 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.”
2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by HRSD for that particular proposal and shall be consistent with all applicable provisions of the PPEA.
3. Any Unsolicited Proposal shall be submitted to HRSD by delivering six complete copies, together with the required initial review fee as provided below in Section II (C), to the HRSD Procurement Division, 5701 Thurston Avenue, Suite 100 (23455) P.O. Box 5913 (23471-0913), Virginia Beach, Virginia. Other requirements for an Unsolicited Proposal are as set forth below in Section II. A working group may be designated by the HRSD General Manager to review and evaluate all unsolicited proposals. (*Section Revised 3/24/2010*)
4. HRSD may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity securities, or other securities or obligations. The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease back transactions,

enhanced use leasing, property exchanges, development agreements, conduit financing, and other methods allowed by law.

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 HRSD. Project benefits to be considered are those occurring during the construction, renovation, expansion, or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by HRSD of the financial feasibility of the proposed project. HRSD may request, in writing, clarification to the submission. The cost analysis of a proposal should not be linked solely to the financing plan as HRSD may determine to finance the project through other available means.

The qualifications, capabilities, resources, and other attributes of the private entity and its team shall be carefully examined for every project. In addition, private entities proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience, or other contents of their proposals, including all specific aspects of the proposed plans to be performed by the private entity.

B. Affected Jurisdictions

HRSD will determine affected jurisdictions and if deemed appropriate shall provide such local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery. Any such other affected jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to HRSD and to indicate whether the proposed qualifying project is compatible with the affected jurisdiction's local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. HRSD will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, HRSD may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected jurisdictions.

C. Proposal Review Fee

A review fee will be charged a private entity submitting an Unsolicited Proposal to HRSD, to cover HRSD'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 HRSD 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 advisors, and technical experts, used by HRSD in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of HRSD's costs.

1. Such fees shall be imposed based on the reasonably anticipated costs to HRSD. Upon submission of an unsolicited proposal, HRSD will provide an estimate of anticipated total review fees. Total review fees shall not exceed two and one-half percent (2.5%) of the reasonably anticipated total gross cost of the proposed

qualifying project, but shall be no less than \$2,500. Included in the total review fees are:

- a. **Initial fee** – shall be no more than twenty percent (20%) of the total review fee amount. Payment of the initial fee must be received by HRSD in order for HRSD to proceed with its review.
 - b. **Detailed review fees** – If the proposal proceeds to the detailed review phase, the balance, eighty percent (80%), of the estimated total review fee shall be paid for HRSD to proceed with its review.
2. **Additional fees** – Additional fees may be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if HRSD reasonably anticipates incurring costs in excess of the initial and review fee paid by the private entity. HRSD will notify the private entity of the amount of such additional fees when it anticipates incurring such costs. Prompt payment of such additional fees is required before HRSD will continue to process, review, and evaluate the proposal.
 3. **Reimbursement of excess fees paid** – In the event the total fees paid by the private entity exceed HRSD’s total costs incurred in processing, reviewing, and evaluating the proposal, HRSD shall reimburse the difference. Otherwise, HRSD shall retain all fees paid.

D. Freedom of Information Act

Generally, proposal documents submitted by private entities are subject to disclosure under the Virginia Freedom of Information Act (“FOIA”). In accordance with § 2.2-3705.6 (11) of FOIA, such documents must be released if requested, except to the extent that they relate to (a) confidential proprietary information submitted to HRSD under a promise of confidentiality or (b) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of HRSD or the private entity or the process of competition or bargaining.

Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the responsible public entity shall make the procurement records available upon request in accordance with § 2.2-4342.

When the private entity seeks a promise of confidentiality from HRSD as to proprietary information under (a) above, the private entity must (i) invoke the exclusion when the data or materials are submitted to HRSD or before such submission, (ii) clearly identify the specific data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary.

HRSD will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, HRSD 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. If the determination regarding protection or the scope thereof differs from the private entity's request, then HRSD will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by HRSD to accord less protection than requested by the private entity, the private entity may withdraw its proposal. In such cases, HRSD will return any fees paid (less any costs incurred by HRSD) to the private entity.

E. Use of Public Funds

Virginia constitutional and statutory requirements and HRSD policies as they apply to appropriation and expenditure of public funds apply to any agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with HRSD's Fiscal Policies as adopted by the Commission.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of HRSD to comply with all other applicable law not in conflict with the PPEA. Article 6 *Ethics in Public Contracting* of the Virginia Public Procurement Act (the VPPA) is hereby incorporated herein by reference. Otherwise, the applicability of the VPPA is as set forth in the PPEA and herein.

G. Reservation of Rights

HRSD reserves the right at any time to:

1. Reject any and all bids/proposals at any time.
2. Terminate consideration or evaluation of any and all bids/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 bid/proposal.
6. Negotiate with fewer than all proposers at any given time.
7. Request and/or receive additional information regarding any bid/proposal.
8. Issue addenda to and/or cancel any solicitation. (*Section Revised 3/24/2010*)
9. Revise, supplement, or withdraw all or any part of these Guidelines.

10. Assess, retain, and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines.
11. Request revisions to conceptual or detailed phase bids/proposals.

III. *Solicited Bids/Proposals*

The procedures applicable to any particular solicited Bid, Proposal or Two-Step Proposal and shall be specified in the solicitation and shall be consistent with the requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation for Bids (“IFB”), Request for Proposals (RFP”) or Two-Step Proposal process within the meaning of those terms as used in the HRSD Procurement Manual. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB, RFP or Two-Step Proposal 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 as required by the PPEA and provided for below in § IV(A)(2) and (b) proposals received in response to publicity by HRSD concerning particular needs when HRSD has not issued a corresponding IFB, RFP, or Two-Step Proposal even if HRSD otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs. *(Section Revised 3/24/2010)*

IV. *Unsolicited Proposals*

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal HRSD’s first step will be to determine whether to accept it for consideration at the conceptual stage. If HRSD accepts the proposal, then in step two HRSD will give public notice of the Unsolicited Proposal and invite competing proposals. In step three, HRSD will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. However, HRSD may discontinue its evaluation of any proposal at any time. Furthermore, if HRSD determines that it is in HRSD’s interest to do so with respect to any Unsolicited Proposal, HRSD may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

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

1. Upon receipt from a private entity of any Unsolicited Proposal, HRSD will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If HRSD determines not to accept the proposal at this stage it will return the proposal to the private entity.
2. If HRSD chooses to accept an Unsolicited Proposal for conceptual-phase consideration, the private entity will be required to submit payment of an Initial fee based on HRSD’s estimate of anticipated total review fees as described in section II;

C. HRSD shall also give public notice of the proposal in accordance with the PPEA and shall specify a period of time not less than 45 days during which it will receive competing Unsolicited Proposals pursuant to § 56-575.4(A) of the PPEA. Although not required by the PPEA, at the discretion of HRSD such notice may be given consistent with the requirements for public notice as set forth in the Procurement Manual. During the period for receiving competing Unsolicited Proposals, HRSD may continue to evaluate the original Unsolicited Proposal.

B. Contents of Initial Submission

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable HRSD to evaluate the practicality and sufficiency of the proposal. HRSD will use a two-step proposal process unless, it determines, in its sole discretion, to use an accelerated review process. (Section Revised 3/24/2010)
2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by HRSD. Project benefits to be considered may occur during the construction, renovation, expansion, or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by HRSD of the financial feasibility of the proposed project, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request HRSD to provide resources for financing the project and the nature and extent of any such resources.
3. HRSD may require additional submissions to clarify information previously provided or to address other areas of concern to HRSD.

C. Initial Review at the Conceptual Stage

1. While only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and which are provided in an appropriate format should be considered by HRSD for further review at the conceptual stage, HRSD may determine to evaluate any proposal it chooses. Formatting requirements for proposals at the conceptual stage are found in Section IV (D).
2. After reviewing the original proposal and any competing proposals submitted during the notice period, HRSD may determine:
 - a. not to proceed further with any proposal,
 - b. to proceed to the detailed phase of review with the original proposal,
 - c. to proceed to the detailed phase with a competing proposal,
 - d. to proceed to the detailed phase with multiple proposals, or
 - e. to proceed directly to an interim agreement or comprehensive agreement.

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

D. Format for Submissions at the Conceptual Stage

Unsolicited Proposals at the conceptual stage shall be submitted to the HRSD Procurement Division and contain the following information in the following format, plus such additional information as HRSD may request:

1. Qualifications and Experience

- a. Identify the legal structure of the private entity or consortium of private entities 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. All members of the private entity's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Identified team members, including major subcontractors, may not be substituted or replaced once a project is approved and comprehensive agreement entered into without the written approval of HRSD. Include the status of any Virginia licensing requirements imposed on each partner, proposer, contractor, and major subcontractor.
- b. Describe the experience of the private entity or consortium of private entities making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service, and other standards. Describe the past safety performance record and current safety capabilities of the private entity or consortium of private entities. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the private entity or consortium of private entities. Describe the length of time in business, business experience, public sector experience, and other engagements of the private entity or consortium of private entities. Include the identity of any private entities that will provide design, construction, and completion guarantees and warranties, and a description of such guarantees and warranties.
- c. For each private entity or major subcontractor that will be utilized in the project, provide a statement listing all of the private entity's prior projects and clients for the past three (3) years and contact information for same (name, address, telephone number, e-mail address). If a private entity has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible.

- d. Provide the names, prior experience, addresses, telephone numbers, and e-mail addresses of persons within the private entity or consortium of private entities who will be directly involved in the project or who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the private entity or private entities and each partner with an equity interest of twenty (20) percent or greater.
- f. 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.
- g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. For each private entity or major subcontractor that will perform construction and/or design activities, provide the following information:
 - (1) A sworn certification by an authorized representative of the private entity attesting to the fact that the private entity is not currently debarred or suspended by any federal, state or local government entity.
 - (2) A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, private entity resources and financial integrity of the private entity, including but not limited to, bonding capacities, insurance coverage, and private entity equipment. This statement shall also include a mandatory disclosure by the private entity for the past three years any of the following conduct:
 - (a) Bankruptcy filings
 - (b) Liquidated damages
 - (c) Fines, assessments, or penalties
 - (d) Judgments or awards in contract disputes
 - (e) Contract defaults, contract terminations
 - (f) License revocations, suspensions, other disciplinary actions
 - (g) Prior debarments or suspensions by a governmental entity
 - (h) Denials of prequalification, findings of non-responsibility
 - (i) Safety past performance data, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate," and "Total Lost Workday Incidence Rate"
 - (j) Violations of any federal, state, or local criminal or civil law
 - (k) Criminal indictments or investigations
 - (l) Legal claims filed by or against the private entity

- i. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that the 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 HRSD or any other public entity.
- 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, or environmental impacts of the project measured against HRSD's planning and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental or archaeological assessment has been completed.
- e. Identify the projected positive social, economic and environmental of the project measured against HRSD's planning and design standards.
- f. Identify the proposed schedule for the work on the project, including sufficient time for HRSD's review and the estimated time for completion.
- g. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to the projected schedule.
- h. Propose allocation of risk and liability and assurances for timely completion of the project.
- i. State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on HRSD's use of the project.
- j. Provide information relative to phased openings of the proposed project.
- k. List any other assumptions relied on for the project to be successful.
- l. 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. If costs span a period greater than twelve (12) months they should be reported in "year of expenditure" dollars.
- 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 based upon HRSD's

adopted operational standards. Include any supporting due diligence studies, analyses, or reports.

- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions shall include all significant fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions shall be included. Any ongoing operational fees, if applicable, shall 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. Describe methods and remedies associated with any financial default.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from HRSD sources and the timing of any anticipated commitment, both one-time and ongoing.
- f. Identify the need, if any, for HRSD to provide its revenue credit support. Any private entity debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. HRSD may require the use of credit enhancements.
- g. Indicate how HRSD would benefit from any future private entity project debt refinancing.
- h. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings. Indicate who would receive the benefit of any cost savings from a refinancing. Would the savings go to HRSD, would the savings be shared and to what extent, or does the private entity only receive benefit of this potential?
- i. If the private entity has already chosen an underwriter(s), provide a breakout of the fees to any underwriting private entity(s) and the type of obligation the private entity(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. HRSD reserves the right to appraise the selection of underwriter(s) lending terms.
- j. Identify the amounts and the terms and conditions for any revenue sources.
- k. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- l. HRSD reserves the right to reject all private entity financing proposals and provide its own financing to meet project costs.

4. Project Benefit and Compatibility

- a. Identify community benefits, including the economic impact the project will have on the local community in terms of amount of revenues to be generated for HRSD, the number jobs generated for area residents and level of pay and

fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.

- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
 - c. Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
 - d. Describe any anticipated significant benefits to the community and HRSD, including anticipated economic, social, environmental, transportation, etc., benefits and whether the project is critical to attracting or maintaining competitive industries and businesses.
 - e. Compatibility with HRSD's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use, and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements program, and capital budget or other government spending plan.
5. Any additional information as HRSD may reasonably request.

E. Format for Submissions at the Detailed Stage

If HRSD decides to proceed to the detailed phase of review with one or more proposals, the private entity will be required to submit payment of a Detailed review fee based on HRSD's estimate of anticipated total review fees as described in section II; C the submissions shall be submitted to the HRSD Procurement Division and the following information should be provided by the private entity unless waived by HRSD:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site;
3. Conceptual (single line) plans and elevations depicting the general scope, appearance, and configuration of the proposed project;
4. Detailed description of the proposed participation, use, and financial involvement of HRSD. Include the proposed terms and conditions for the project;
5. A list of public and private utility facilities, if any, that will be impacted by the qualifying project and a statement of the plans of the proposer to accommodate such impacts;
6. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction;
7. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners

of the subject property as well as a list of any property the private entity intends to request the public entity to condemn;

8. A detailed listing of all private entities, along with their relevant experience and abilities, that will provide specific design, construction, and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance;
9. A total life-cycle cost, including maintenance in “year of expenditure” dollars, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using HRSD adopted service levels and standards;
10. A detailed discussion of assumptions about user fees or rates, lease payments, and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects;
11. Identification of any known government support or opposition, or 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;
12. Demonstration of consistency with appropriate HRSD and/or affected jurisdiction comprehensive plans (including related environmental, land use, and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement program and capital budget, or indication of the steps required for acceptance into such plans.
13. Explanation of how the proposed project would impact HRSD’s or affected jurisdiction’s development plans;
14. Identification of the executive management and the officers and directors of the private entity or private entities submitting the proposal. In addition, identification of any known conflicts of interest or other factors that may impact HRSD’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;
15. Acknowledge conformance with § 2.2 – 4367 through § 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act;
16. Detailed analysis of the financial feasibility of the proposed project, including the impact on similar facilities operated or planned by HRSD. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to HRSD, and all underlying data

supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project;

17. Additional material and information as HRSD may reasonably request.

V. Proposal Evaluation and Selection Criteria

Some or all of the following matters, including specified information required under Section IV above, may be considered in the evaluation and selection of PPEA proposals. However, HRSD 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 HRSD's review to determine whether the proposer possesses the requisite qualifications and experience will include but are not limited to the following:

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

B. Project Characteristics

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

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to Federal, State, and affected jurisdiction laws, regulations, and standards;

6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
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 include but are not limited to the following:

1. Cost and cost benefit to HRSD;
2. Financing and the impact on the debt burden of HRSD;
3. Financial plan including overall feasibility and reliability of plan; default implications; private entity's past performance with similar plans and similar projects; degree to which private entity has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies;
4. Estimated cost including debt source, operating costs, etc.;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable; and
7. Such other items as HRSD deems appropriate.

In the event that any project is financed through the issuance of obligations that financing such a project may impact HRSD's debt rating or financial position or HRSD feels in its sole discretion it is in a position to obtain better financing, HRSD 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 HRSD's, affected jurisdiction's or regional comprehensive or development plans include but are not limited to the following:

1. Community benefits; including the economic impact the project will have on HRSD in terms of amount of revenue to be generated for HRSD, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with HRSD, regional, and state economic development efforts; and

6. Compatibility with affected jurisdiction's land use and transportation plans.

E. Other Factors

Other factors that may be considered by HRSD in the evaluation and selection of PPEA proposals but are not limited to 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 comment;
6. Benefits to the public;
7. The private entity's compliance with the HRSD Diversity Procurement Policy and good faith effort to comply with the goals of such policy, when applicable;
8. The private entity's plans to employ local contractors and residents; and
9. Other criteria that HRSD deems appropriate.

VI. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with HRSD. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of HRSD and the private entity with regard to the project. The interim and comprehensive agreements and any amendments thereto must be approved by the HRSD Commission.

A. Interim Agreement Terms

Prior to or in connection with the negotiation of the comprehensive agreement, HRSD may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. The scope of an interim agreement may include, but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement; and

7. 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 the qualifying project, the selected private entity shall enter into a comprehensive agreement with HRSD. The comprehensive agreement shall define the rights and obligations of HRSD and the private entity with regard to the project.

As provided by the PPEA, the terms of the comprehensive agreement shall include, but not be limited to:

1. The delivery of maintenance, performance, and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project, in the forms and amounts satisfactory to HRSD and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;
2. The review and approval of plans and specifications for the qualifying project by HRSD;
3. The rights of HRSD to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by HRSD to ensure proper maintenance, safety, use, and management of the qualifying project;
6. The terms under which the private entity will reimburse HRSD for services provided;
7. The policy and procedures that will govern the rights and responsibilities of HRSD 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 HRSD and the transfer or purchase of property or other interests of the private entity by HRSD;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
 - a. A copy of any service contract shall be filed with HRSD;

- 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 HRSD will contribute financial resources, if any, for the qualifying project;
 - 11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
 - 12. The terms and conditions under which HRSD will be required to pay money to the private entity and the amount of any such payments for the project;
 - 13. Other requirements of the PPEA or other applicable law; and
 - 14. Such other terms and conditions as HRSD determines serve the public purpose of the PPEA.
- c. **Notice and Posting requirements**
- 1. In addition to the posting requirements of Section IV, HRSD shall advertise for a public hearing to discuss proposals it has received or the negotiated interim or comprehensive agreements. Such hearing may occur at a regularly scheduled meeting of the Board. Such notice shall be at least 30 days prior to the public hearing. Public comments may be submitted to HRSD at any time during the notice period and prior to the public hearing. After the public hearing and the end of the public comment period, no additional posting shall be required based on any public comment received. *(Section Revised 3/24/2010)*
 - 2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made, the proposed agreement shall be posted in the following manner:
 - a. On the HRSD website for 30 days prior to the execution of the agreement. *(Section Revised 3/24/2010)*
 - b. In addition to the posting requirements, a 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 HRSD and the private entity.
 - c. Any studies and analyses considered by HRSD in its review of a proposal shall be disclosed at some point prior to the execution of an interim or comprehensive agreement.
 - 3. Once an interim agreement or a comprehensive agreement has been entered into, the HRSD shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents

would have an adverse affect on the financial interest or bargaining position of HRSD or the private entity in accordance.

- b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

VII. Timelines

Actual timelines will depend on many factors, including complexity of the project, number of proposals received, staff workload, and Commission meeting schedules.

VIII. Governing Provisions

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

IX. Terms and Definitions

"Affected jurisdiction" is determined on a case-by-case basis on the criteria of the submittal, as well as taking into consideration the county, city, or town in which all or a portion of a qualifying project is located.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in §10.1-1400 that produces electric energy derived from solid waste. *(Section Revised 3/24/2010)*

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

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

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

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

"State" means the Commonwealth of Virginia.

"Two-Step Proposal" means a selection process which includes a first step where offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which HRSD may obtain, no more than five offerors deemed most suitable for the project shall be selected by HRSD and requested to submit proposals. *(Section Revised 3/24/2010)*

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