



**City of Lynchburg, Virginia**

**Implementation Procedures and Guidelines**

**for the**

**Public-Private Transportation Act of 1995**

**and the**

**Public-Private Education Facilities and Infrastructure**  
**Act of 2002, as amended**

Adopted January 27, 2004  
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CITY OF LYNCHBURG  
PPTA / PPEA IMPLEMENTATION PROCEDURES AND GUIDELINES

**I. INTRODUCTION.**

A. Scope and Applicability.

This document presents the implementation procedures and guidelines (the "procedures") developed by the City of Lynchburg ("the City") to guide the selection of projects under the purview of the City as authorized by the Virginia Public- Private Transportation Act of 1995 (the "PPTA") (Virginia Code §56-556 et seq.), and the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended (the "PPEA") (Virginia Code §56-575.1 et seq.). The PPTA and PPEA are collectively referred to herein as "the Acts". Copies of the PPTA and PPEA are included as Appendices A and B, respectively, to these procedures. The City is a political subdivision of the Commonwealth of Virginia with the authority to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement and install a wide range of projects for public use, and therefore is a "Responsible Public Entity" as that term is used in both the PPTA and PPEA.

As discussed below, the PPTA authorizes public-private partnerships to develop "qualifying transportation facilities," and the PPEA authorizes such partnerships to develop "Qualifying Projects." The term "qualifying transportation facility" is defined in the PPTA as follows:

*"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.*

The PPTA further defines a "transportation facility" as follows:

*"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the transportation facility.*

The term "Qualifying Project" under the PPEA is defined as follows:

*"Qualifying project" 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; or (vi) technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.*

The terms "Proposal," "Qualifying Project" or "Project" will be used herein to apply to authorized projects under either the PPTA or PPEA, unless otherwise stated.

These procedures apply to proposals submitted under the authority of either the PPTA or PPEA, or both. The City reserves the right to consider a proposal under either or both Acts. While the Acts are fundamentally similar, prospective proposers are cautioned to review them closely as there are significant differences between the PPEA and PPTA.

The Acts allow both solicited and unsolicited proposals. The major steps involved in evaluating, selecting, and implementing the projects are similar for both solicited and unsolicited proposals. It is anticipated that the private sector will identify prospective projects, although the City may, from time to time, solicit proposals generally or for specific projects. Private entities may also propose innovative financing methods, including the imposition of user fees, lease payments, or other service payments under the provisions of the Acts.

As explained more fully below, these procedures adopt a "two phase" proposal process for both solicited and unsolicited proposals. The first phase involves the submission of a "Conceptual Proposal" of limited scope, and the second phase requires the submission of a "Detailed Proposal" by one or more proposers selected by the City after review of the Conceptual Proposal.

B. Point of Contact for PPTA/PPEA Information and Submission of Proposals.

The City Manager has designated the City Purchasing Agent to serve as the point of contact for the implementation of these procedures, to receive proposals submitted under the PPTA/PPEA and to respond to inquiries regarding the PPTA/PPEA or these procedures.

C. City Review Board.

All proposals for a Qualifying Project will be reviewed and selections made by a City Review Board (CRB), which shall consist of:

- The City Manager
- The Director of Financial Services
- The City Attorney
- The Purchasing Agent
- Other members as the City Manager may determine

The CRB may also employ outside advisors and consultants to assist in its review of proposals.

D. Reservation of Rights.

In connection with any proposal or Qualifying Project, the City shall have all rights available to it by law in administering these procedures, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the City. Proposers shall have no recourse against the City for such rejection. Proposers will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate Comprehensive Agreement negotiations.
4. Negotiate with a proposer without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any request for proposals ("RFP") or invitation for bids ("IFB").
7. Revise, supplement or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by proposers hereunder, except for initial fees paid by proposers with an unsolicited conceptual proposal where the City declines to accept the proposal for consideration.
10. Request revisions to Conceptual or Detailed Proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Submit a proposal for review by outside consultants or advisors selected by the City without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential

pursuant to an agreement between the City and the proposer, and to refer all requests for such information to the City.

13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the City in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

Under no circumstances shall the City be liable for, or reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the City makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these procedures, the proposer must submit the question in writing to the City Purchasing Agent and the City will respond in writing as it determines appropriate.

E. Timeline for Proposal Review and Consideration.

For solicited proposals, the City will include an anticipated timeline for submission and review of proposals. For unsolicited proposals, the City will attempt to review proposals in a timely manner and will discuss with the proposer an anticipated timeline for the full process should the City decide to proceed.

Every attempt will be made to move through the process as expeditiously as possible.

Normal expected timelines for selecting proposals and negotiating an interim agreement or comprehensive agreement are set out at Appendices C and D hereto. Appendix C sets out the normal expected timeline for a procurement initiated by an unsolicited proposal. Appendix D sets out the normal expected timeline for a procurement solicited by the City.

For projects deemed a priority by the City, the portion of timelines related to selection, review, and documentation may be accelerated.

The City should generally adhere to these timelines, but the City Manager may deviate from them when it is in the City's interests to do so.

**II. GENERAL PROVISIONS.**

A. Proposal Submission.

1. Solicited Proposals

From time to time, the City may issue RFPs or IFBs inviting proposals from private entities to acquire, design, construct, improve, renovate, expand, equip,

maintain, operate, implement and/or install Qualifying Projects. The RFP or IFB will outline minimum qualifications and project selection criteria, specify information and documents which must accompany the proposals, the factors which will be used in evaluating the proposals, and contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications which will be required of private entities submitting proposals ("proposers"). Proposers are encouraged to be as innovative as possible in their proposals.

Pre-proposal conferences may be held, as deemed appropriate, and notice of such will be provided in the RFP or IFB. Proposers will be instructed as to the format in which to submit proposals and what minimum information, materials, and fees must be submitted in order for the proposal to be considered complete.

Public notice of the solicitation of proposals under the Acts will be posted at least 60 days prior to the date set for receipt of proposals by posting in a public area of City Hall normally used for the posting of City public notices, by posting on the Purchasing Division website, [www.lynchburgva.gov/procurement](http://www.lynchburgva.gov/procurement), and other electronic posting sites, and by publication in one or more newspapers or other publications of general circulation within and/or outside the City of Lynchburg, including the Virginia Business Opportunities publication, so as to provide reasonable notice to the maximum number of proposers that can be reasonably anticipated to submit proposals. In addition, proposals may be solicited directly from potential proposers.

## 2. Unsolicited Proposals

The Acts permit responsible public entities to receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement and/or install Qualifying Projects. The City will receive such unsolicited proposals at any time pursuant to these procedures. The City will evaluate unsolicited proposals whenever received so long as the proposals meet the requirements of the Acts and these procedures and are determined to be in the City's best interest.

Once a proposal is received and deemed by the City to meet all legal and policy requirements for initial review, as set out in relevant provisions of the Acts, and the proposer and the City have reached an agreement on the protection of confidential information as permitted under Virginia Code Section 2.2-3705.A.56, the City will publish a notice accepting such proposal for initial review and inviting other private entities to submit competing proposals, as follows:

- i. Post a notice for 45 calendar days, or such additional time as determined by the City, in a public area of City Hall normally designated for such public notices.
- ii. Publish the same notice in one or more newspapers or periodicals of general circulation, including the Virginia Business Opportunities publication, as appropriate to notify



potential proposers that might be interested. The notice will state that the City has received an unsolicited proposal under the Acts, that it intends to evaluate the proposal, that it may negotiate a Comprehensive Agreement with the proposer based on the proposal, and that it will accept for simultaneous consideration any competing and compliant proposals the City receives in accordance with these procedures within 45 calendar days, or more, of the initial posting of the notice. The notice will summarize the proposed Qualifying Project, including its location, and will generally contain a deadline, not less than 45 calendar days from posting of the notice, for receipt of competing proposals.

- iii. Post the notice on the City's Purchasing Division website, [www.lynchburgva.gov/procurement](http://www.lynchburgva.gov/procurement).

The deadline for the City's receipt of any such competing proposals in writing will generally be 3:00 p.m. local, on the designated day after the City's initial publication of the notice unless otherwise stated by the City in the notice of acceptance and invitation for competing proposals. Only those competing, compliant proposals submitted and actually received in writing by the City at the location specified in the invitation for competing proposals by such deadline will be considered unless the City terminates consideration of, or negotiation on the original unsolicited proposal.

The City may, in its sole discretion, extend the 45 day period, but otherwise will not accept competing proposals received after the designated period. The City recognizes that it may receive proposals, which have certain characteristics in common yet differ in meaningful ways. In such cases, the City reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal, and to proceed accordingly under these procedures.

Because of the consequences to a proposer for failing to submit within the designated period a proposal which the City could later deem a competing proposal, prospective proposers are strongly urged to monitor the City notices of proposals received, and to be prepared to submit within such designated period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the City a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The City will endeavor, no later than fourteen days thereafter, to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the City

elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the City will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

If state or federal funds are anticipated in any proposal, the City may also notify the appropriate state or federal agencies.

B. General Administrative Issues.

Proposers shall deliver one (1) original, nine (9) copies, and one (1) electronic copy of their Conceptual Proposal and, if requested, Detailed Proposal to the City at the following address:

Purchasing Agent  
City of Lynchburg Purchasing Division  
Third Floor Hall  
900 Church Street  
Lynchburg, Va. 24504

Proposals are to be sealed in mailing envelopes or packages bearing the proposer's name, address and the words "PPTA / PPEA Project Proposal" clearly written on the outside.

The cover page must include the title of the proposal, the name and address of the proposing entity, the person authorized to act on behalf of the proposer and his or her telephone and facsimile numbers, and email address.

Also, pursuant to the Acts, copies of proposals must be provided directly to the governing body of each local jurisdiction (city, county, town etc.), if any, affected by a proposed project. A list of all local jurisdictions being provided a copy of the proposal must accompany the Conceptual Proposal with name and address of recipient and date delivered.

In addition, in the case where the project is a highway or a bridge, a copy of the proposal should be delivered to the Commonwealth Transportation Commissioner on the same day it delivers its proposal to the City. The Commissioner will be asked to provide written comments to the City within 60 days of receipt of such proposal.

C. General Format for Submission of Conceptual Proposal.

An authorized representative of the firm or consortium making the proposal must sign the proposal. All information requested under Section IV, "FORMAT FOR CONCEPTUAL PROPOSAL" should be submitted. Proposers failing to submit all information requested for Conceptual or Detailed Proposals may be given an opportunity to promptly submit missing information or may be given a lowered evaluation of the proposal. Conceptual Proposals that lack key information required may be rejected.

Proposals should be prepared simply and economically, providing a straightforward, concise description of the proposer's capabilities to complete the

proposed project. Emphasis should be placed on completeness and clarity of content.

Proposals submitted for consideration should include a comprehensive scope of work and provide enough information about the project to determine whether it meets the criteria stated herein. In addition, the financial plan for the project must contain enough detail so that an analysis will reveal whether the proposed project financing is feasible.

Proposals should be organized in the order requested herein. All pages of the proposal should be consecutively numbered. Evaluation of proposals will be better facilitated if proposers will cross reference responses by citing the tab number, and sub letter, and repeating the text of the requirement, not the text of the proposal. If a response covers more than one page, the tab number and sub letter should be repeated at the top of the next page. The proposal should contain a table of contents, which cross references the requirements by category. Information that the proposer desires to present that does not fall within any of the requirements should be inserted at an appropriate place or be attached at the end of the proposal and designated as additional material. Proposals that are not organized in this manner risk elimination from consideration.

Each copy of the proposal should be bound or otherwise contained in a single volume where practical. All documentation submitted with the proposal should be contained in that single volume, except that information for which a claim of confidentiality is made should be submitted in a separately bound document or volume for convenience of review by the City. Any such volume containing confidential information should be clearly marked on its cover as containing confidential information to reduce the potential for inadvertent disclosure.

Proposers who submit a proposal may be required to give an oral presentation of their proposal to the City. Such presentations will provide opportunities to educate the City and/or clarify aspects of the proposed project.

#### D. General Format for Submission of Detailed Proposal.

Once Conceptual Proposals have been reviewed, one or more such proposers may be selected for submission of Detailed Proposals. The required contents of a Detailed Proposal are as listed below in Section V, entitled "FORMAT FOR DETAILED PROPOSAL," but may be modified for specific projects in the notice of selection and request for Detailed Proposals.

As with Conceptual Proposals, one (1) original, nine (9) copies, and one (1) electronic copy of each Detailed Proposal must be submitted and the required review fee increment paid. Each copy should be bound in one or more volumes with a detailed table of contents showing the location of the required information. The required items should be provided in individually tabbed sections marked in accordance with the contents listed herein. Pages should be numbered consecutively. As with Conceptual Proposals, confidential information should be segregated into a separate volume for ease of review and production in response to potential requests under the Virginia Freedom of Information Act (FOIA). Any such volume containing confidential information should be clearly marked on its

cover as containing confidential information to reduce the potential for inadvertent disclosure.

#### E. Proposal Review Fee

The PPEA permits the City to charge a reasonable fee for the review of all proposals for Qualifying Projects, whether solicited or unsolicited. The PPTA, however, only allows the City to charge a review fee for unsolicited proposals. When applicable, the fee will be payable in two increments: the first increment must accompany the submission of a Conceptual Proposal, and the second increment must accompany a Detailed Proposal requested by the City. Any proposal submitted without the required fee will be deemed noncompliant and will be rejected.

##### 1. Proposal Review Fee for Solicited Projects.

For solicited proposals, for qualifying projects as defined under the PPEA, the fee schedule will be set forth in the RFP or IFB.

##### 2. Proposal Review Fee for Unsolicited Projects.

The City has established a fee schedule for the review of unsolicited proposals for Qualifying Projects under these procedures. This fee schedule is subject to revision for specific projects, based on the complexity or details of the project, and upon the actual cost to the City to review the proposal.

The fee schedule is based upon the estimated construction cost of the proposed Qualifying Project. If the proposal also includes maintenance and operation services to be provided by the private entity for a period longer than one year following construction, the required fee shall be increased by 50% to cover evaluation of the services components of the proposal. Proposals including only services and no construction component shall include a fee commensurate with a proposal with a construction cost under \$20,000,000.

- a. Projects with Estimated Construction Cost under \$20,000,000, and "services only" proposals.

A total fee of \$20,000, payable in two increments: (1) \$5,000 with the Conceptual Proposal, and (2) \$15,000 with the Detailed Proposal, if requested.

- b. Projects with Estimated Construction Cost between \$20,000,000 and \$50,000,000.

A total fee of \$30,000, payable in two increments: (1) \$7,500 with the Conceptual Proposal, and (2) \$22,500 with the Detailed Proposal, if requested.

- c. Projects with Estimated Construction Cost over \$50,000,000.

A total fee of \$50,000, payable in two increments: (1) \$10,000 with the Conceptual Proposal, and (2) \$40,000 with the Detailed Proposal if requested.

### 3. Refunds of Fees.

If an unsolicited Conceptual Proposal is determined upon initial review by the City to be not proper for consideration or is otherwise rejected without conclusion of an agreement on the protection of confidential information, the initial payment of the fee will be refunded. If an unsolicited Detailed Proposal is rejected without negotiations with the proposer, ninety per cent (90%) of the second incremental payment will be refunded to the proposer.

#### F. Virginia Freedom of Information Act.

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("VFOIA"). In accordance with § 2.2-3705 A 56 of VFOIA, such documents are releasable if requested, except to the extent that they relate to (a) confidential proprietary information submitted to the City 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 the City or the private entity or the bargaining position of either party. 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 City shall make the procurement records available upon request, in accordance with Virginia Code §§ 2.2-4342 and 56-575.16.5. However, proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets provided by a private entity as evidence of its qualifications and properly designated under this paragraph as "Confidential-Not Releasable under VFOIA" are not considered procurement records.

If requesting that the City not disclose information, the proposer must (i) invoke an exclusion when the data or materials are submitted to the City or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. In addition, the proposer must clearly mark each page of its proposal that it contends not to be discloseable under the VFOIA with the legend "Confidential – Not Releasable under VFOIA." The City may only protect confidential proprietary information and 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.

Except as reasonably necessary for the City, staff, and consultants to review proposals, the City promises to maintain the confidentiality of confidential proprietary information that is provided to it by a private entity pursuant to a proposal for a procurement under these procedures if the private entity follows all the steps required by paragraph 4.4. of this policy to designate the information as confidential proprietary information excluded from disclosure under VFOIA, and if the information is, in fact, information that is properly exempt from release under VFOIA. The City Manager shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the City Council, staff, and consultants having a need to know the information to carry out the procurement. Despite the

City's sincere intent to honor this promise of confidentiality, nothing contained herein shall constitute a waiver of sovereign immunity, a consent to suit, or a contractual undertaking, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the City or its Mayor, council members, City Manager, officers, employees, attorneys, or agents for any failure to maintain confidentiality of information.

Any information in a proposal that becomes incorporated into a Comprehensive Agreement or Interim Agreement with the proposer submitting it, such as by becoming an exhibit, shall become a public record releasable under VFOIA upon execution of the agreement and its approval by the City.

#### G. Affected Local Jurisdiction Review

The Acts require that proposals be submitted to affected local jurisdictions for review. This requirement applies to both Conceptual Proposals and Detailed Proposals. While, normally, the City of Lynchburg will be the only affected locality, the City will notify and solicit comment from any locality thought to be affected by a proposal and will respond to a request from any locality that feels it is affected. Affected localities will be provided with copies of accepted Conceptual and Detailed Proposals and Confidentiality Agreements at the appropriate time in the process and will be given 60 days from the receipt of such documents to provide comment. Comments received within the 60-day period will be given consideration by the City and no negative inference will be drawn from the absence of comment.

Each proposer will be permitted to review any comments from affected jurisdictions applicable to its or other proposals, subject to limitations on the sharing of confidential information under a Confidentiality Agreement.

#### H. Applicability of Other Law.

##### 1. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any agreement entered into under the PPTA or PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds should be incorporated into planning for any PPTA or PPEA project, and any PPTA/PPEA procurement should comply with City fiscal policies. Virginia constitutional and statutory restrictions that apply to the City regarding expenditures of public funds shall be deemed to be incorporated into any agreement into which the City enters pursuant to the PPTA/PPEA and to condition the City's obligations thereunder.

Nothing in the Acts affects the duty of the City or any of its officers, employees or agents to comply with all other applicable law not in conflict with the Acts, and proposals for Qualifying Projects shall consider those requirements where applicable. However, the applicability of the Virginia Public Procurement Act (the VPPA) shall be as set forth in paragraph I of this policy.

I. Adoption of Certain Portions of the Virginia Public Procurement Act and Use of Competitive Negotiation and Competitive Sealed Bidding Procedures.

The provisions of the Virginia Public Procurement Act, Va. Code § 2.2-4300, et seq., shall not apply to procurements by the City under the PPTA/PPEA except as follows:

1. The definitions of "competitive sealed bidding" and "competitive negotiation" of other than professional services in Va. Code § 2.2-4301 are hereby adopted.
2. The provisions of Va. Code §2.2-4310 shall apply to all PPTA/PPEA procurements.
3. The provisions from the Ethics in Public Contracting Act, Va. Code § 2.2-4367 through 2.2-4377, shall apply to all PPTA/PPEA procurements.
4. The provisions of Va. Code §2.2-4343 are adopted as additional authority for parts of this policy.
5. The provisions of Virginia Code §2.2-4337 apply to bonds or letters of credit for any components of a qualifying project involving construction.
6. Before accepting any unsolicited proposal or before issuing any solicitation for proposals, the City will determine whether it will proceed to evaluate proposals using either:
  - a. "Competitive sealed bidding", as defined in Va. Code § 2.2-4301; or
  - b. "Competitive negotiation" of other than professional services as defined in Va. Code § 2.2-4301.
7. The City may proceed using competitive negotiation procedures described in paragraph 6.a. above only if the City Council first makes a written determination pursuant to Virginia Code § 56-575.16.2 that doing so is likely to be advantageous to the public based upon either (i) the probable scope, complexity or priority of the project, or (ii) the risk sharing, including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed, or (iii) the increase in funding, dedicated revenue source or other economic benefit that would otherwise not be available.

### **III. PROPOSAL EVALUATION AND SELECTION.**

#### **A. Decision to Accept an Unsolicited Proposal.**

The City must make several determinations in order to accept an unsolicited proposal for a Qualifying Project. Proposers are required to address all of the following criteria in their proposals to assist the City in making informed determinations.

#### **B. Initial Review by the City.**

1. Determination if the proposal presents a "Qualifying Project" under the PPTA or the PPEA.

The first determination that must be made by the City is whether the proposal constitutes a "Qualifying Project" under the PPEA, or a "qualified transportation facility" under the PPTA. The definitions of these terms are presented in the introduction to these procedures.

2. Determination of whether the proposed project meets the public purposes of the Acts and the City.

The Acts require that the City determine if the proposed project serves the public purpose as defined in the Acts by facilitating the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation and/or installation of a Qualifying Project or facility. Specifically, in determining whether a proposed project meets this "public purpose" requirement, the City must determine if:

- a. There is a public need for or benefit derived from the Qualifying Project;
- b. The estimated cost of the Qualifying Project is reasonable in relation to similar facilities; and
- c. The private entity's plans will result in the timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, implementation, installation, and/or operation of the Qualifying Project.

Each of these criteria should be addressed in the proposal.

In addition, the City will determine if the proposed project is desirable and compatible with other City, regional or state plans. Proposers are cautioned that a proposal may be rejected on this basis alone even if it is an otherwise Qualifying Project under the Acts.

3. Determination to use "competitive sealed bidding" or "competitive negotiation" procedures.

The City will acquire a Qualifying Project through the use of "competitive sealed bidding" procedures unless a determination is made, in writing, that proceeding



through "competitive negotiation" procedures will be advantageous to the City and the public based on the (a) the probable scope, complexity or urgency of the project, or (b) risk sharing, added value, an increase in funding or economic benefit from the project that would not otherwise be available. Proposers should address these factors in their proposals.

C. Written determination of qualification.

The City will make a written determination that the above criteria are satisfied prior to proceeding with further consideration of Conceptual Proposals.

D. Conclusion of an Agreement on the Protection of Confidential Information.

Following a decision of the City to accept and consider a Conceptual Proposal, the City and the proposer will review the provisions of paragraph II.F., above, and, if necessary, execute a Confidentiality Agreement designating confidential information within the proposal that will be excluded from public availability under the Virginia FOIA.

E. Publication for Competing Proposals.

Following a decision by the City to accept a Conceptual Proposal and the conclusion of a Confidentiality Agreement, the City will publish a notice of its decision and an invitation for the submission of competing proposals ("the public notice").

If the City has determined it will proceed under competitive sealed bidding procedures, it will so state in the public notice, and advise that it will enter into negotiations to execute a Comprehensive Agreement for a Qualifying Project with the proposer presenting a Qualifying Project with the lowest evaluated cost to the City.

If the City has determined it will proceed under competitive negotiation procedures, it will so state in the public notice and advise of any special evaluation criteria it will use in its evaluation in addition to those stated in these procedures or it will identify the person from whom such information can be obtained at the City. If the City uses these procedures, it is not required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received.

The public notice will state the date, time and location for receipt of competing proposals in accordance with these Procedures.

F. Receipt of Competing Proposals.

After passage of the date for the receipt of competing proposals, the City will review and make the initial determinations required above for all competing proposals. The City may reject any or all proposals at any time.

G. Determination and Agreement on Confidential Material for Competing Proposals.

Agreement must be reached on all competing proposals regarding protection of confidential information. Upon conclusion of Confidentiality Agreements, if any, with private entities submitting accepted proposals, the City may begin its review.

H. Selection for Submission of Detailed Proposals.

If no competing proposals are submitted after publication of the public notice, or only one Conceptual Proposal is received in response to an RFP or IFB, the City may proceed immediately to request a Detailed Proposal from the sole proposer.

Otherwise, the City shall then evaluate all Conceptual Proposals according to the evaluation factors, and select two or more proposers deemed to be fully qualified and best suited for submission of Detailed Proposals, unless it makes a written determination that the original proposer was the only fully qualified proposer or was clearly more highly qualified than the others under consideration.

The CRB will perform its review of each Conceptual Proposal to determine whether the proposer has, in the sole opinion of the CRB (i) submitted a complete proposal; (ii) assembled a team which is qualified and capable of completing the proposed facility; (iii) developed a conceptual plan which is technically feasible; and (iv) provided a financial plan which will allow access to the necessary capital to finance the facility. The CRB may consider the advice of outside consultants and advisors, federal and state agencies with appropriate technical expertise, and legal counsel in reaching its decision. The CRB may request oral presentations and/or additional documentation in order to assess project feasibility and proposer's qualifications. If any proposer makes an oral presentation, each proposer will be given that same opportunity.

The City will request submission of Detailed Proposals in writing and state the date by which such submissions shall be required. The request for Detailed Proposals shall specify the deliverables that must be included in the Detailed Proposal. The City may also request that a proposer address in detail certain aspects of its proposal or respond to certain questions in its Detailed Proposal.

Those private entities submitting proposals not selected for Detailed Proposals shall also be notified in writing.

I. Receipt and Review of Detailed Proposals.

Those Detailed proposals received in a timely manner and complying with the requirements of these procedures and the City's request for Detailed Proposals will be reviewed by the CRB. Before such review, however, the City will execute a Confidentiality Agreement, if necessary, with each proposer as to the protection of confidential information.

A Detailed Proposal should not depart significantly from the technical approach or financing plan described in the Conceptual Proposal. If a proposer departs significantly in either respect, the City may reject the Detailed Proposal as non-

compliant. In particular, adoption of significant aspects or characteristics of a competing Conceptual Proposal will normally result in disqualification and rejection of a Detailed Proposal.

Proposers may be required to make an oral presentation to the CRB to explain their proposals and respond to questions. The format of the presentation will include a formal presentation by the proposer, followed by any questions the CRB may have pertaining to the project proposal or the presentation. The CRB may also ask the proposer to address concerns expressed through the public comment process. These meetings will allow the City to seek clarification of project elements and complete deliverable requirements, and provide proposers with the opportunity to further explain their proposed projects. If there is an issue to which the proposer is unable to respond during the formal presentation, the City may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

The CRB may request clarifying or additional information from any proposer regarding its Detailed Proposal.

J. Selection of Proposal(s) for Negotiation of Comprehensive Agreement.

The CRB will consider comments from any affected local jurisdictions and any oral presentations of the proposers, and select one or more proposals for negotiations leading to the selection of one proposal for the negotiation of a Comprehensive Agreement. The selection by the CRB will be presented to the Lynchburg City Council for review and final approval.

K. Negotiation and Approval of Comprehensive Agreement.

Following approval of the selected proposal, the City and the private entity proposer will enter into negotiations to conclude a Comprehensive Agreement. If the City and the proposer cannot conclude a Comprehensive Agreement acceptable to both parties within a reasonable time, the City may terminate negotiations with the selected proposer and negotiate with another proposer, or it may terminate all negotiations or consideration of the proposed project.

The Lynchburg City Council must approve the proposed Comprehensive Agreement before its execution.

#### **IV. FORMAT FOR CONCEPTUAL PROPOSALS.**

A. Description

Proposals shall provide a straightforward, concise delineation of capabilities, experience and approach. Elaborate brochures and/or excessive promotional materials are not required or desirable. A Conceptual Proposal shall contain the following information: (i) proposer's qualifications and experience, (ii) project characteristics, (iii) project financing and estimate of construction costs, (iv) anticipated public support or opposition, or both, (v) project benefit and

compatibility and (vi) any additional information as the City may reasonably request to comply with the requirements of the Acts.

Information in Conceptual proposals should be organized into an Executive Summary, Introduction, and individually tabbed sections in accordance with the following format:

### Executive Summary

A brief description of the project scope and characteristics, the general approach to financing the proposed project and the benefits. The Executive Summary may be used by the City in public notices and other short descriptions of the proposal.

### Introduction

Among other information, the Introduction should address the criteria by which the City must evaluate the proposed project to determine if it is a "Qualifying Project" under the Acts, identify how the proposed project serves the public purposes of the Acts, and whether or not the use of competitive negotiation as a method of procurement can be authorized.

#### B. TAB 1. Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each entity 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 the length of time in business, business experience, public sector experience, other engagements of the firm or consortium of firms and experience with projects of comparable size and complexity. Include the identity of any firms that will provide performance guarantees and warranties and a description of such guarantees and warranties.
- c. Provide the names, addresses, email addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- d. Provide the address, telephone number, and the name of a specific contact person for an entity, or entities, for which the firm or consortium of firms, or primary members of the consortium, have completed a similar project or projects. These references should include:
  - Name and address of project owner/sponsor
  - Name, telephone number, fax number, and email address of the owner's project manager
  - A summary of the project including budget and final cost
  - Project schedule (proposed and actual)

- e. Provide the most recent audited financial statement of the firm or firms, and each partner with an equity interest of twenty percent or greater. Such financial statements shall be for a period not more than one year before the date of the proposal. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports, if such reports have been filed.
- f. Identify any persons known to the proposer who would be disqualified 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 § 2.2-3100 et seq.).
- g. Include any planned participation by small, women-owned, or minority-owned businesses during project development and implementation.

C. TAB 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. Include a description of any components, planned initially or for the future, that are expected to generate revenue for the project or the proposer.
- b. Identify and fully describe any work to be performed by the City.
- c. Provide a statement 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 proposer intends to request the City to condemn.
- d. 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. Identify which, if any, permits or approvals are to be obtained by the City.
- e. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- f. Identify the projected positive social, economic and environmental impacts of the project.
- g. Identify the proposed schedule for work on the project, including the estimated time for completion, and any extended or maintenance warranties.
- h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, 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 the City's or the public's use of the project.
  - j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- D. TAB 3. Project Financing
- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase and/or segment (e.g. planning, design, construction).
  - 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.
  - c. Include a list and discussion of assumptions (user fees, tolls, usage rates) underlying all major elements of the plan.
  - 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 (financial, services, property, etc.), if any, expected from governmental sources and the timing of any anticipated commitment.
  - f. Provide financial information which indicates the proposer's financial stability and ability to finance the project.
  - g. Include a description and analysis (cost/benefit, tax, etc.) to demonstrate the project's financial feasibility.
- E. TAB 4. Public Support, Project Benefit and Compatibility
- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall community, region, or state.
  - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition for the project.
  - c. Explain the strategy and plans to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
  - d. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the City and whether the project is critical to attracting or maintaining competitive industries and businesses to the City or the surrounding region.

- e. Address project compatibility with the City's master plan, local comprehensive plans, local infrastructure development plans, the capital improvements plan or other government spending plan.

**V. FORMAT FOR DETAILED PROPOSALS.**

A. Description and Required Information

If the City decides to proceed to the detailed phase of review with one or more proposals, it shall specify any particular deliverables it will require in the Detailed Proposals. In addition, the following information should be provided by the proposer unless waived by the City:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public or private 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 forth 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 proposer intends to request the City to condemn;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include the anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
6. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
9. Identification of any known conflicts of interest or other disabilities that may impact the City's consideration of the proposal, including the identification of any persons known to the proposer who would be disqualified 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 (Code of Virginia § 2.2-3100 et seq.).
10. Additional material and information as the City may reasonably request.

## **VI. PROPOSAL EVALUATION.**

### **A. Manner of Evaluation and Use of Outside Professionals**

Unless the City Council directs a different manner of evaluation in writing, evaluations of proposals shall be by such persons or group or committee of persons as the City Manager may designate, subject to such review as the City Council or City Manager may direct. Evaluations of proposals shall include, without limitation, analysis of the proposals' specifics, advantages, disadvantages, long-term costs, and short-term costs, using the evaluation criteria specified for the procurement. The City Manager shall engage the services of qualified professionals not employed by the City, which may include, without limitation, an architect, professional engineer, or certified public accountant, to provide an independent analysis as part of the evaluation. Notwithstanding the preceding sentence, if the City Council determines that such analysis of proposals will be performed by City staff, the City Manager need not engage such an outside professional.

### **B. Evaluation and Selection Criteria**

The City will consider criteria it deems appropriate in the evaluation and selection of proposals at all phases of its review. Such criteria may include some or all of the criteria listed in Appendix E hereto but shall not be limited to those criteria alone. The City may, in its sole discretion, select other evaluation criteria that it deems appropriate to the specific project.

## **VII. COMPREHENSIVE AGREEMENTS and INTERIM AGREEMENTS.**

### **A. Description and Terms**

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, operating, implementing and/or installing, a Qualifying Project the proposer(s) selected must enter into a comprehensive agreement with the City.



Each Comprehensive Agreement shall define the rights and obligations of the City and the selected proposer with regard to the project. 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, operation, implementation or installation of the Qualifying Project, in the forms and amounts satisfactory to the City;
2. The performance milestones that will be required of the proposer.
3. The design, construction, operation and maintenance standards with which the proposer must comply.
4. The review and approval of plans and specifications for the Qualifying Project by the City if the plans and specifications conform to the City's standard conditions;
5. The rights of the City to inspect the Qualifying Project to ensure compliance with the Comprehensive Agreement;
6. The maintenance of a policy or policies of liability insurance, (copies of which shall be filed with the City accompanied by proofs of insurance), or self-insurance, in form and amount satisfactory to the City 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;
7. The right of the proposer to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement and/or install the facility, the duration of the operator's rights to operate the facility, and the conditions under which the facility will be dedicated to the City.
8. The monitoring of the practices of the proposer and/or operator by the City to ensure proper maintenance and provisions for the City to take appropriate action to ensure the facility is properly maintained.
9. The procedures by and conditions under which the City will exercise its power of eminent domain.
10. The terms under which the proposer and/or operator will reimburse the City for services provided;
11. The events that will constitute default by the proposer, the proposer's rights to notice and cure and the remedies available to the City.

12. The events that will constitute default by the City, the City's rights to notice and cure and the remedies available to the proposer.
13. The rights and remedies of any lender with respect to the proposer's defaults and the City's remedies.
14. The policy and procedures that will govern the rights and responsibilities of the City and the proposer and/or operator in the event that the Comprehensive Agreement is terminated or there is a material default by the proposer and/or operator including the conditions governing assumption of the duties and responsibilities of the proposer and/or operator by the City and the transfer or purchase of property or other interests of the proposer and/or operator to/by the City;
15. The events that will constitute force majeure and the remedies the parties will have in the event of such occurrence.
16. The terms under which the proposer and/or operator will file appropriate financial statements on a periodic basis.
17. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use of the Qualifying Project;
  - a. A copy of any service contract shall be filed with the City.
  - b. The proposer and/or operator shall make a schedule of the current user fees or lease payments available to any member of the public upon request.
  - c. Classifications according to reasonable categories for assessment of user fees may be made.
18. The terms and conditions under which the City may contribute financial, or other, resources, if any, for the Qualifying Project; and
19. The conditions under which the proposer may assign its rights under the Comprehensive Agreement.
20. The obligation of the operator to maintain records, to allow inspection and audit and to provide regular reports to the City.
21. Other requirements of the Acts

Any changes in the terms of the Comprehensive Agreement as may be agreed upon by the parties from time to time shall be added to the Comprehensive Agreement by written amendment.

## B. Interim Agreements

In exceptional circumstances, the City may enter into an "Interim Agreement" within the meaning of the PPEA prior to or in connection with the negotiation of a comprehensive agreement for a qualifying project when doing so clearly is in the City's best interests. As a matter of policy, the City does not favor entry into "Interim Agreements" with proposers because this technique tends to reduce competition and competitive negotiations. In particular, entry into an "Interim Agreement" with a proposer without first reaching an agreement as to the material terms of a comprehensive agreement, particularly as to Guaranteed Maximum Price, scope of work, and quality of work, generally would tend to eliminate most of the City's ability to obtain the best value through competitive negotiations with two or more proposers. Accordingly, use of "Interim Agreements" is strongly disfavored by the City, and their use must be fully justified. Further, as a condition for entry into any interim agreement, the City must first obtain approval of such entry from the City Council.

## **VIII. DISPUTES, CLAIMS AND OTHER MATTERS ARISING UNDER OR RELATING TO ANY COMPREHENSIVE AGREEMENT OR INTERIM AGREEMENT**

The following provisions apply to any disputes, claims or other matters arising under or relating to any comprehensive agreement or interim agreement entered into pursuant to the Acts by the City on the one hand ("Owner"), and any private entity ("Contractor"), on the other hand. Disputes, claims and other matters in question between the parties arising under or relating to any comprehensive agreement or any interim agreement shall only be resolved as follows:

- A. The Contractor shall give Owner written notice of any claim for any additional compensation, damages, delay or other relief within ten (10) days of the beginning of the occurrence of the event leading to the claim being made and shall submit the actual claim and any supporting data within thirty (30) days after the occurrence giving rise to the claim ends. The written notice shall be a document addressed to the Owner that clearly states Contractor's intention to make a claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by Owner. The claim must be certified under oath as true and correct by a principal of Contractor. The "occurrence" means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of time impacts will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed time impacts will be allowed. Complete satisfaction of this subparagraph 12.1 is an absolute prerequisite for Contractor to pursue a claim, dispute, or other matter arising under or relating to the agreement. Failure by Contractor to satisfy this paragraph VIII.A. shall constitute a waiver by Contractor of the claim, dispute, or other matter for which such failure occurs.

- B. The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Lynchburg, Virginia. Should the dispute, claim or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than 90 days after mediation is requested by a party, either party may proceed in accordance with 12.1.3 below. However, nothing in this paragraph VIII.B. excuses Contractor from compliance with all the provisions of Section VIII.
- C. If the procedures of paragraph VIII.B. have been followed, but, more than 90 days have passed since a party has invoked mediation, and the dispute, claim or other matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Lynchburg Circuit Court, Lynchburg, Virginia, or if the subject or amount in controversy is within its jurisdiction, the Lynchburg General District Court, Lynchburg, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- D. Nothing in paragraphs VIII.B. and VIII.C. shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Lynchburg Circuit Court if circumstances so warrant.
- E. In the event of any dispute, claim, or other matter in question arising, Contractor shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any claim, dispute or other matter in connection with the payments of moneys, Contractor shall be entitled to receive payments for non-disputed items, subject to any right of set-off by Owner.
- F. These procedures and the provisions of the interim agreement or comprehensive agreement, as applicable, supercede any right at common law by Contractor for a claim of material breach or for rescission of such agreement.
- G. These procedures shall be deemed automatically incorporated by reference into any agreement entered into by the City pursuant to the Acts.
- H. For purposes of these procedures, "Owner" means the City, and "Contractor" means the private entity or entities entering into the agreement with the City, as well as Contractor's successors, assigns, sureties or others claiming through Contractor.
- I. The City Manager may further supplement Section VIII. of this policy with the terms and conditions of any agreements.

## **IX. PROTESTS OF PPTA/PPEA PROCUREMENTS**

The following are the exclusive procedures for contesting or challenging (protesting) (a) the terms or conditions of any solicitation of proposals by the City pursuant to the Acts, (b) nonselection of a proposal for further consideration, and (c) the selection of any proposal for entry into a comprehensive agreement or interim agreement or the entry into a comprehensive agreement or interim agreement under the Acts:

- A. Any protest to any term or condition of a solicitation or any term or condition imposed by the City must be made in writing and delivered to the City Manager so it is received by the City Manager before proposals are due. Otherwise, any such protest shall be deemed to be waived.
- B. A protest of a City decision not to select a proposal for further consideration may only be made by the entity who submitted the proposal at issue. A protest of a City decision to select a proposal for entry into an agreement or to enter into an agreement may only be made by an entity who submitted a proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the City's decision. Protests shall only be granted if (1) the protester has complied fully with this Section IX and there has been a violation of law, these guidelines, or mandatory terms of the solicitation that clearly prejudiced the protester in a material way, or (2) a statute requires voiding of the decision.
- C. Any entity desiring to protest a City decision not to select a proposal for further consideration, to select a proposal for entry into an agreement, or to enter into an agreement shall submit the protest in writing and deliver it so that it is received by the City Manager not later than 5 business days after announcement of the decision. Otherwise any such protest shall be deemed to be waived.
- D. The City Manager shall issue a written decision on a protest within 10 days of its receipt by the City Manager.
- E. If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing suit in the Lynchburg Circuit Court, Lynchburg, Virginia, and serving the City with such suit within 10 days of such denial. Otherwise, the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
- F. The exclusive relief allowed if a protest is granted is to void the decision being protested. Under no circumstances will any monetary relief be allowed.
- G. Strictly following these procedures shall be a mandatory prerequisite for any challenge of any nature to a decision by the City relating to terms and conditions of a PPTA/PPEA solicitation or terms and conditions imposed by the City, nonselection of a proposal for further consideration, selection of a proposal, or entry into an agreement. A failure to follow all these

procedures strictly shall constitute a waiver of any right to challenge judicially a City decision (a) as to terms or conditions in a PPTA/PPEA solicitation or imposed by the City, (b) not to select a proposal for further consideration, (c) to select a proposal, or (d) to enter into an agreement.

#### **X. PARTICIPATION OF SMALL AND MINORITY-OWNED BUSINESS**

The City's policy is to facilitate participation of small businesses and businesses owned by women and minorities in its procurement transactions, including procurement transactions under the Acts.

Persons making proposals to the City pursuant to the Acts should ensure that reasonable efforts are made to facilitate participation of small businesses and businesses owned by women and minorities as part of their proposals. Resort to lists of such businesses available from the Virginia Department of Minority Enterprise is encouraged.

#### **XI. PROPOSERS' AGREEMENT TO TERMS AND CONDITIONS OF THIS POLICY**

The City Manager shall require as a condition of accepting any proposal for consideration that its proposer agree to be bound by all the terms and conditions of this policy. Proposers shall submit with any proposal the certification that is set out at Appendix F hereto.

## Appendix A

### The Public-Private Transportation Act of 1995

#### Code of Virginia, 1950, As Amended

#### § 56-556. Title.

This chapter may be cited as the "**Public-Private Transportation Act of 1995.**" (1994, c. 855; 1995, c. 647.)

#### § 56-557. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located.

"Asset management" means a systematic process of operating and maintaining the state system of highways by combining engineering practices and analyses with sound business practices and economic theory to achieve cost-effective outcomes.

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the operator and the responsible public entity required by § 56-566 of this chapter.

"Maintenance" means that term as defined in § 33.1-23.02.

"Material default" means any default by the operator in the performance of its duties under subsection F of § 56-565 of this chapter that jeopardizes adequate service to the public from a qualifying transportation facility and remains unremedied after the responsible public entity has provided notice to the operator and a reasonable cure period has elapsed.

"Operator" means the private entity that is responsible for the acquisition, construction, improvement, maintenance and/or operation of a qualifying transportation facility.

"Private entity" means any natural person, corporation, limited liability company, partnership, joint venture or other private business entity.

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of any of the foregoing, but shall not include any public service company.

"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.

"Responsible public entity" means a public entity that has the power to acquire, construct, improve, maintain and/or operate the applicable transportation facility.

"Revenues" means the user fees and/or service payments generated by a qualifying transportation facility.

"Service contract" means a contract entered into between a public entity and the operator pursuant to § 56-561 of this chapter.

"Service payments" means payments to the operator of a qualifying transportation facility pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any other property that is needed to operate the transportation facility.

"User fees" mean the rates, fees or other charges imposed by the operator of a qualifying transportation facility for use of all or a portion of such qualifying transportation facility pursuant to the comprehensive agreement.

(1994, c. 855; 1995, c. 647; 2001, c. 286; 2002, cc. 570, 593.)

**§ 56-558. Policy.**

A. The General Assembly finds that:

1. There is a public need for timely acquisition or construction of and improvements to transportation facilities within the Commonwealth that are compatible with state and local transportation plans;
2. Such public need may not be wholly satisfied by existing ways in which transportation facilities are acquired, constructed or improved; and
3. Authorizing private entities to acquire, construct, improve, maintain, and/or operate one or more transportation facilities may result in the availability of such transportation facilities to the public in a more timely or less costly fashion, thereby serving the public safety and welfare.

B. An action, other than the approval of the responsible public entity under § 56-560 of this chapter, shall serve the public purpose of this chapter if such action facilitates the timely acquisition or construction of or improvement to a qualifying transportation facility or the continued operation of a qualifying transportation facility.

C. It is the intent of this chapter, among other things, to facilitate to the greatest extent possible, the pooling and funding mechanisms of the Intermodal Surface Transportation Efficiency Act of 1991, and any successor legislation, to the end that transportation financing be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services which are the subject of this chapter.



D. This chapter shall be liberally construed in conformity with the purposes hereof.

(1994, c. 855; 1995, c. 647.)

**§ 56-559. Prerequisite for operation.**

Any private entity seeking authorization under this chapter to acquire, construct, improve, maintain and/or operate a transportation facility shall first obtain approval of the responsible public entity under § 56-560. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-560 or the responsible public entity may request proposals pursuant to subsection B of § 56-560.

(1994, c. 855; 1995, c. 647.)

**§ 56-560. Approval by the responsible public entity.**

A. The private entity may request approval by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity with respect to the transportation facility or facilities that the private entity proposes to operate as a qualifying transportation facility:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the transportation facility or facilities;
2. A description of the transportation facility or facilities, including the conceptual design of such facility or facilities and all proposed interconnections with other transportation facilities;
3. The projected total life-cycle cost of the transportation facility or facilities and the proposed date for acquisition of or the beginning of construction of, or improvements to the transportation facility or facilities;
4. A statement setting forth the method by which the operator proposes to secure all property interests required for the transportation facility or facilities. The statement shall include: (i) the names and addresses, if known, of the current owners of the property needed for the transportation facility or facilities, (ii) the nature of the property interests to be acquired, and (iii) any property that the responsible public entity is expected to be requested to condemn;
5. Information relating to the current transportation plans, if any, of each affected local jurisdiction;
6. A list of all permits and approvals required for acquisition or construction of or improvements to the transportation facility or facilities from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
7. A list of public utility facilities, if any, that will be crossed by the transportation facility or facilities and a statement of the plans of the operator to accommodate such crossings;

8. A statement setting forth the operator's general plans for financing and operating the transportation facility or facilities;

9. The names and addresses of the persons who may be contacted for further information concerning the request; and

10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals from private entities for the acquisition, construction, improvement and/or operation of transportation facilities. The responsible public entity shall not charge a fee to cover the costs of processing, reviewing, and evaluating proposals received in response to such requests.

C. The responsible public entity may grant approval of the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility if the responsible public entity determines that it serves the public purpose of this chapter. The responsible public entity may determine that the acquisition, construction, improvement and/or operation of the transportation facility or facilities as a qualifying transportation facility serves such public purpose if:

1. There is a public need for the transportation facility or facilities of the type the private entity proposes to operate as a qualifying transportation facility;

2. The transportation facility or facilities and the proposed interconnections with existing transportation facilities, and the operator's plans for operation of the qualifying transportation facility or facilities, are reasonable and compatible with the state transportation plan and with the local comprehensive plan or plans;

3. The estimated cost of the transportation facility or facilities is reasonable in relation to similar facilities; and

4. The private entity's plans will result in the timely acquisition or construction of or improvements to the transportation facility or facilities or their more efficient operation. In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request submitted by a private entity pursuant to subsection A, including without limitation, reasonable attorney's fees and fees for financial and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into a comprehensive agreement with the responsible public entity.

F. In connection with its approval of the operation of the transportation facility or facilities as a qualifying transportation facility, the responsible public entity shall establish a date for the acquisition of or the beginning of construction of or improvements to the qualifying transportation facility. The responsible public entity may extend such date from time to time.

(1994, c. 855; 1995, c. 647; 2003, c. 289.)

**§ 56-561. Service contracts.**

In addition to any authority otherwise conferred by law, any public entity may contract with an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other consideration as such public entity may deem appropriate.

(1994, c. 855; 1995, c. 647.)

**§ 56-562. .**

Repealed by Acts 1995, c. 647.

**§ 56-563. Affected local jurisdictions.**

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-560 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying transportation facility shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying transportation facility to the responsible public entity and indicating whether the facility is compatible with the local comprehensive plan.

(1994, c. 855; 1995, c. 647.)

**§ 56-564. Dedication of public property.**

Any public entity may dedicate any property interest that it has for public use as a qualified transportation facility if it finds that so doing will serve the public purpose of this chapter. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law, to the operator, subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the operator to operate the qualifying transportation facility.

(1994, c. 855; 1995, c. 647.)

**§ 56-565. Powers and duties of the operator.**

A. The operator shall have all power allowed by law generally to a private entity having the same form of organization as the operator and shall have the power to acquire, construct, improve or operate the qualifying transportation facility and impose user fees and/or enter into service contracts in connection with the use thereof. No tolls or user fees may be imposed by the operator on any free road, bridge, tunnel or overpass unless such road, interstate highway, bridge, tunnel or overpass is reconstructed to provide for increased capacity.

B. The operator may own, lease or acquire any other right to use or operate the qualifying transportation facility.

C. Any financing of the qualifying transportation facility may be in such amounts and upon such terms and conditions as may be determined by the operator. Without limiting the generality of the foregoing, the operator may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

D. Subject to applicable permit requirements, the operator shall have the authority to cross any canal or navigable watercourse so long as the crossing does not unreasonably interfere with then current navigation and use of the waterway.

E. In operating the qualifying transportation facility, the operator may:

1. Make classifications according to reasonable categories for assessment of user fees; and
2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to a similar transportation facility.

F. The operator shall:

1. Acquire, construct, improve, maintain and/or operate the qualifying transportation facility in a manner that meets the engineering standards of the responsible public entity for transportation facilities operated and maintained by such responsible public entity, all in accordance with the provisions of the comprehensive agreement;
2. Keep the qualifying transportation facility open for use by the members of the public at all times after its initial opening upon payment of the applicable user fees, except when exempted by § 33.1-252, and/or service payments; provided that the qualifying transportation facility may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance procedures;
3. Maintain, or provide by contract for the maintenance of, the qualifying transportation facility;
4. Cooperate with the responsible public entity in establishing any interconnection with the qualifying transportation facility requested by the responsible public entity; and
5. Comply with the provisions of the comprehensive agreement and any service contract.

(1994, c. 855; 1995, c. 647; 2002, c. 593.)

**§ 56-566. Comprehensive agreement.**

A. Prior to acquiring, constructing, improving, maintaining, and/or operating the qualifying transportation facility, the operator shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of performance and payment bonds in connection with the construction of or improvements to the qualifying transportation facility, in the forms and amounts satisfactory to the responsible public entity;
2. Review of plans and specifications for the qualifying transportation facility by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standard conditions of the responsible public entity;
3. Inspection of construction of or improvements to the qualifying transportation facility by the responsible public entity to ensure that they conform to the engineering standards acceptable to the responsible public entity;
4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;
5. Monitoring of the maintenance practices of the operator by the responsible public entity and the taking of such actions as the responsible public entity finds appropriate to ensure that the qualifying transportation facility is properly maintained;
6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;
7. Filing of appropriate financial statements on a periodic basis;
8. A reasonable maximum rate of return on investment for the operator; and
9. The date of termination of the operator's authority and duties under this chapter and dedication to the appropriate public entity.

B. The comprehensive agreement shall provide for such user fees as may be established from time to time by agreement of the parties. Any user fees shall be set at a level that, taking into account any service payments, allows the operator the rate of return on investment specified in the comprehensive agreement. A copy of any service contract shall be filed with the responsible public entity. A schedule of the current user fees shall be made available by the operator to any member of the public on request. In negotiating user fees under this section, the parties shall establish fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying transportation facility. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees provided for therein comply with this chapter. User fees established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the operator and the persons specified therein as providing financing for the qualifying transportation facility. The comprehensive agreement may contain such other lawful terms and conditions to which the operator and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the operator to acquire, construct, improve, maintain and/or operate one or more qualifying transportation facilities.

E. The comprehensive agreement shall provide for the distribution of any earnings in excess of the maximum rate of return as negotiated in the comprehensive agreement. Without limitation, excess earnings may be distributed to the Commonwealth's transportation trust fund, to the responsible public entity, or to the operator for debt reduction or they may be shared with affected local jurisdictions.

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

(1994, c. 855; 1995, c. 647.)

#### **§ 56-567. Federal, state and local assistance.**

The responsible public entity may take any action to obtain federal, state or local assistance for a qualifying transportation facility that serves the public purpose of this chapter and may enter into any contracts required to receive such federal assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying transportation facility to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state or federal government or any agency or instrumentality thereof.

(1994, c. 855; 1995, c. 647.)

#### **§ 56-568. Material default; remedies.**

A. Except upon agreement of the operator and any other parties identified in the comprehensive agreement, no responsible public entity shall exercise any of the remedies provided in this section or in subsection B or C of § 56-569 unless the Commission, after notice to the operator and the secured parties (as may appear in the operator's records) and an opportunity for hearing, shall first issue a declaratory judgment that a material default, as defined in § 56-557, has occurred and is continuing.

B. Upon entry by the Commission of a declaratory judgment order pursuant to subsection A above, unless such order is stayed pending appeal to the Virginia Supreme Court, the responsible public entity may exercise any or all of the following remedies:

1. The responsible public entity may elect to take over the transportation facility or facilities and in such case it shall succeed to all of the right, title and interest in such transportation facility or facilities, subject to any liens on revenues previously granted by the operator to any person providing financing therefor and the provisions of subsection C below.

2. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying transportation facility or facilities. Nothing in this chapter shall be construed to limit the exercise of the power of condemnation by any responsible public entity against a qualifying transportation facility after the entry by the Commission of a final declaratory judgment order pursuant to subsection A above. Any person that has provided financing for the qualifying transportation facility, and the operator, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

3. The responsible public entity may terminate the comprehensive agreement and exercise any other rights and remedies which may be available to it at law or in equity.

4. The responsible public entity may make or cause to be made any appropriate claims under the performance and/or payment bonds required by subsection A 1 of § 56-566.

C. In the event the responsible public entity elects to take over a qualifying transportation facility pursuant to subsection B 1 of this section, the responsible public entity shall acquire, construct, improve, operate and maintain the transportation facility, impose user fees for the use thereof and comply with any service contracts as if it were the operator. Any revenues that are subject to a lien shall be collected for the benefit of, and paid to, secured parties, as their interests may appear, to the extent necessary to satisfy the operator's obligations to secured parties, including the maintenance of reserves and such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the transportation facility or facilities, including compensation to the responsible public entity for its services in operating and maintaining the qualifying transportation facility. Remaining revenues, if any, after all payments for operation and maintenance of the transportation facility or facilities, and to, or for the benefit of, secured parties, have been made, shall be paid to the operator, subject to the negotiated maximum rate of return. The right to receive such payment, if any, shall be considered just compensation for the transportation facility or facilities. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the operator by the election to take over the qualifying transportation facility. Assumption of operation of the qualifying transportation facility shall not obligate the responsible public entity to pay any obligation of the operator from sources other than revenues.

(1994, c. 855; 1995, c. 647.)

**§ 56-569. Condemnation.**

A. At the request of the operator, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the operator.

B. Except as provided in subsection A of this section, until the Commission has entered a final declaratory judgment order under subsection A of § 56-568, the power of condemnation may not be exercised against a qualifying transportation facility.

C. After the entry of such final order by the Commission, any responsible public entity having the power of condemnation under law may exercise such power of condemnation as provided in subsection B 2 of § 56-568 in lieu of, or at any time after taking over the transportation facility pursuant to subsection B 1 of § 56-568.

(1994, c. 855; 1995, c. 647.)

**§ 56-570. Utility crossings.**

The operator and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying transportation facility or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of or improvements to the qualifying transportation facility, which shall be construed to include construction of or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the operator. Should the operator and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the operator.

(1994, c. 855; 1995, c. 647.)

**§ 56-571. Police powers; violations of law.**

A. All police officers of the Commonwealth and of each affected local jurisdiction, shall have the same powers and jurisdiction within the limits of such qualifying transportation facility as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying transportation facility at any time for the purpose of exercising such powers and jurisdiction. This authority does not extend to the private



offices, buildings, garages and other improvements of the operator to any greater degree than the police power extends to any other private buildings and improvements.

B. To the extent the transportation facility is a road, bridge, tunnel, overpass or similar transportation facility for motor vehicles, the traffic and motor vehicle laws of the Commonwealth or, if applicable, any local jurisdiction shall be the same as those applying to conduct on similar transportation facilities in the Commonwealth or such local jurisdiction. Punishment for offenses shall be as prescribed by law for conduct occurring on similar transportation facilities in the Commonwealth or such local jurisdiction.

(1994, c. 855; 1995, c. 647.)

#### **§ 56-572. Dedication of assets.**

The responsible public entity shall terminate the operator's authority and duties under this chapter on the date set forth in the comprehensive agreement. Upon termination, the authority and duties of the operator under this chapter shall cease, and the qualifying transportation facility shall be dedicated to the responsible public entity or, if the qualifying transportation facility was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

(1994, c. 855; 1995, c. 647.)

#### **§ 56-573. Sovereign immunity.**

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying transportation facility or its operation, including but not limited to interconnection of the qualifying transportation facility with any other transportation facility. Counties, cities and towns in which a qualifying transportation facility is located shall possess sovereign immunity with respect to its construction and operation.

(1994, c. 855; 1995, c. 647.)

#### **§ 56-573.1. Procurement.**

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) shall not apply to this chapter; however, a responsible public entity may enter into a comprehensive agreement only in accordance with procedures adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310.
2. A responsible public entity may enter into a comprehensive agreement in accordance with procedures adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity 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. A responsible public entity shall proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity, or urgency of a project or (ii) risk sharing, added value, an increase in funding, or economic benefit from the project that would not otherwise be available. When the responsible public entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the Secretary of Transportation shall be required before the comprehensive agreement is signed.

3. Comprehensive agreements for maintenance or asset management services for a transportation facility that is a highway, bridge, tunnel or overpass, and any amendment or change order thereto that increases the highway lane-miles receiving services under such an agreement shall be procured in accordance with procedures that are consistent with procurement through "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310. Furthermore, such contracts shall be of a size and scope to encourage maximum competition and participation by agency prequalified contractors and otherwise qualified contractors.

4. The provisions of subdivision 3 shall not apply to maintenance or asset management services agreed to as part of the initial provisions of any comprehensive agreement entered into for the original construction, reconstruction, or improvement of any highway pursuant to Chapter 22 (§ 56-556 et seq.) of Title 56.

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

6. Nothing in this section shall require that professional services be procured by any method other than competitive negotiation in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

(1995, c. 647; 2002, cc. 570, 593; 2003, c. 968.)

### **§ 56-573.2. Jurisdiction.**

The Commission shall have exclusive jurisdiction to adjudicate all matters specifically committed to its jurisdiction by this chapter.

(1995, c. 647.)

### **§ 56-574. Preservation of the Virginia Highway Corporation Act of 1988.**

Nothing in this chapter shall be construed to repeal or change in any manner the Virginia Highway Corporation Act of 1988, as amended (§ 56-535 et seq.). Nothing in the

Virginia Highway Corporation Act of 1988, as amended, shall apply to qualifying transportation facilities undertaken pursuant to the authority of this chapter.

(1994, c. 855; 1995, c. 647.)

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## **Appendix B**

### **The Public-Private Education Facilities and Infrastructure Act of 2002, as amended**

#### **Code of Virginia, 1950, As Amended**

##### **§ 56-575.1. Definitions.**

As used in this chapter, unless the context requires a different meaning:

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

"Commission" means the State Corporation Commission.

"Comprehensive agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-575.9.

"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.

"Material default" means any default by the private entity in the performance of its duties under subsection E of § 56-575.8 that jeopardizes adequate service to the public from a qualifying project.

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

"Private entity" means 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.

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

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land 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, including, but not limited to, telecommunications,

automated data processing, word processing and management information systems, and related information, equipment, goods and services; or (vii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

"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.

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

(2002, c. 571; 2003, c. 1034; 2005, cc. 618, 865.)

#### **§ 56-575.2. Declaration of public purpose.**

A. The General Assembly finds that:

1. There is a public need for timely acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities within the Commonwealth that serve a public need and purpose;
2. Such public need may not be wholly satisfied by existing methods of procurement in which qualifying projects are acquired, designed, constructed, improved, renovated, expanded, equipped, maintained, operated, implemented, or installed;
3. There are inadequate resources to develop new education facilities, technology infrastructure and other public infrastructure and government facilities for the benefit of citizens of the Commonwealth, and there is demonstrated evidence that public-private partnerships can meet these needs by improving the schedule for delivery, lowering the cost, and providing other benefits to the public;
4. Financial incentives exist under state and federal tax provisions that promote public entities to enter into partnerships with private entities to develop qualifying projects;
5. Authorizing private entities to develop or operate one or more qualifying projects may result in the availability of such projects to the public in a more timely or less costly fashion, thereby serving the public safety, benefit, and welfare.

B. An action under § 56-575.4 shall serve the public purpose of this chapter if such action facilitates the timely development or operation of qualifying projects.

C. It is the intent of this chapter, among other things, to encourage investment in the Commonwealth by private entities and facilitate the bond financing provisions of the Economic Growth and Tax Relief Reconciliation Act of 2001 or other similar financing mechanisms, private capital and other funding sources that support the development or operation of qualifying projects, to the end that financing for qualifying projects be expanded and accelerated to improve and add to the convenience of the public, and such that public and private entities may have the greatest possible flexibility in contracting with each other for the provision of the public services that are the subject of this chapter.

D. This chapter shall be liberally construed in conformity with the purposes hereof.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

**§ 56-575.3. Prerequisite for operation of a qualifying project.**

A. Any private entity seeking authorization under this chapter to develop or operate a qualifying project shall first obtain approval of the responsible public entity under § 56-575.4. Such private entity may initiate the approval process by requesting approval pursuant to subsection A of § 56-575.4 or the responsible public entity may request proposals or invite bids pursuant to subsection B of § 56-575.4.

B. Any facility, building, infrastructure or improvement included in a proposal as a part of a qualifying project shall be identified specifically or conceptually.

C. Upon receipt by the responsible public entity of a proposal submitted by a private entity initiating the approval process pursuant to subsection A of § 56-575.4, the responsible public entity shall determine whether to accept such proposal for consideration in accordance with § 56-575.16. If the responsible public entity determines not to accept for consideration the proposal submitted by the private entity pursuant to subsection A of § 56-575.4, it shall return the proposal, together with all fees and accompanying documentation, to the private entity.

D. The responsible public entity may reject any proposal initiated by a private entity pursuant to subsection A of § 56-575.4 at any time.

(2002, c. 571; 2003, cc. 292, 1034; 2005, c. 865.)

**§ 56-575.3:1. Adoption of guidelines by responsible public entities.**

A. Any responsible public entity requesting or considering a proposal for a qualifying facility shall adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall guide the selection of projects under the purview of the responsible public entity and include, but not be limited to, reasonable criteria for choosing among competitive proposals and timelines for selecting proposals and negotiating an interim or comprehensive agreement.

B. Such guidelines shall permit accelerated selection, review and documentation timelines for proposals involving a qualifying facility that the responsible public entity deems a priority.

(2005, c. 865.)

**§ 56-575.4. Approval of qualifying projects by the responsible public entity.**

A. A private entity may request approval of a qualifying project by the responsible public entity. Any such request shall be accompanied by the following material and information unless waived by the responsible public entity:

1. A topographic map (1:2,000 or other appropriate scale) indicating the location of the qualifying project;
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
3. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project;
4. Information relating to the current plans for development of facilities or technology infrastructure 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 local jurisdiction;
5. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
6. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings;
7. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
8. The names and addresses of the persons who may be contacted for further information concerning the request;
9. User fees, lease payments, and other service payments over the term of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1 and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time; and
10. Such additional material and information as the responsible public entity may reasonably request.

B. The responsible public entity may request proposals or invite bids from private entities for the development or operation of qualifying projects.

C. The responsible public entity may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if the responsible public entity determines that the project serves the public purpose of this chapter. The responsible public entity may determine that the development or operation of the qualifying project as a qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
3. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the responsible public entity may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

D. The responsible public entity may charge a reasonable fee to cover the costs of processing, reviewing and evaluating the request, including without limitation, reasonable attorney's fees and fees for financial, technical, and other necessary advisors or consultants.

E. The approval of the responsible public entity shall be subject to the private entity's entering into an interim or comprehensive agreement pursuant to § 56-575.9 with the responsible public entity.

F. In connection with its approval of the qualifying project, the responsible public entity shall establish a date for the commencement of activities related to the qualifying project. The responsible public entity may extend such date from time to time.

G. The responsible public entity shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under subdivision 11 of § 2.2-3705.6.

H. Nothing in this chapter or in an interim or comprehensive agreement entered into pursuant to this chapter shall be deemed to enlarge, diminish or affect the authority, if any, otherwise possessed by the responsible public entity to take action that would impact the debt capacity of the Commonwealth.

(2002, c. 571; 2003, c. 1034; 2004, c. 690; 2005, c. 865.)

#### **§ 56-575.5. Service contracts.**

In addition to any authority otherwise conferred by law, any public entity may contract with a private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

(2002, c. 571; 2005, c. 865.)

#### **§ 56-575.6. Affected local jurisdictions.**

A. Any private entity requesting approval from, or submitting a proposal to, a responsible public entity under § 56-575.4 shall notify each affected local jurisdiction by furnishing a copy of its request or proposal to each affected local jurisdiction.

B. Each affected local jurisdiction that is not a responsible public entity for the respective qualifying project shall, within sixty days after receiving such notice, submit any comments it may have in writing on the proposed qualifying project to the responsible



public entity and indicate whether the facility is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan. Such comments shall be given consideration by the responsible public entity prior to entering a comprehensive agreement pursuant to § 56-575.9 with a private entity.

(2002, c. 571.)

**§ 56-575.7. Dedication of public property.**

Any public entity may dedicate any property interest, including land, improvements, and tangible personal property, that it has for public use in a qualifying project if it finds that so doing will serve the public purpose of this chapter by minimizing the cost of a qualifying project to the public entity or reducing the delivery time of a qualifying project. In connection with such dedication, a public entity may convey any property interest that it has, subject to the conditions imposed by general law governing such conveyances, to the private entity subject to the provisions of this chapter, for such consideration as such public entity may determine. The aforementioned consideration may include, without limitation, the agreement of the private entity to develop or operate the qualifying project. The property interests that the public entity may convey to the private entity in connection with a dedication under this section may include licenses, franchises, easements, or any other right or interest the public entity deems appropriate.

(2002, c. 571; 2005, c. 865.)

**§ 56-575.8. Powers and duties of the private entity.**

A. The private entity shall have all power allowed by law generally to a private entity having the same form of organization as the private entity and shall have the power to develop or operate the qualifying project and collect lease payments, impose user fees or enter into service contracts in connection with the use thereof.

B. The private entity may own, lease or acquire any other right to use or operate the qualifying project.

C. Any financing of the qualifying project may be in such amounts and upon such terms and conditions as may be determined by the private entity. Without limiting the generality of the foregoing, the private entity may issue debt, equity or other securities or obligations, enter into sale and leaseback transactions and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying project.

D. In operating the qualifying project, the private entity may:

1. Make classifications according to reasonable categories for assessment of user fees; and
2. With the consent of the responsible public entity, make and enforce reasonable rules to the same extent that the responsible public entity may make and enforce rules with respect to similar facilities.

E. The private entity shall:

1. Develop or operate the qualifying project in a manner that is acceptable to the responsible public entity, all in accordance with the provisions of the interim or comprehensive agreement pursuant to § 56-575.9 or 56-575.9:1;
2. Keep the qualifying project open for use by the members of the public at all times, or as appropriate based upon the use of the facility, after its initial opening upon payment of the applicable user fees, lease payments, or service payments; provided that the qualifying project may be temporarily closed because of emergencies or, with the consent of the responsible public entity, to protect the safety of the public or for reasonable construction or maintenance activities. In the event that a qualifying project is technology infrastructure, access may be limited as determined by the conditions of the interim or comprehensive agreement;
3. Maintain, or provide by contract for the maintenance or upgrade of the qualifying project, if required by the interim or comprehensive agreement;
4. Cooperate with the responsible public entity in making best efforts to establish any interconnection with the qualifying project requested by the responsible public entity; and
5. Comply with the provisions of the interim or comprehensive agreement and any lease or service contract.

F. Nothing shall prohibit an private entity of a qualifying project from providing additional services for the qualifying project to public or private entities other than the responsible public entity so long as the provision of additional service does not impair the private entity's ability to meet its commitments to the responsible public entity pursuant to the interim or comprehensive agreement as provided for in § 56-575.9 or 56-575.9:1.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

**§ 56-575.9. Comprehensive agreement.**

A. Prior to developing or operating the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance and payment bonds, letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity and in compliance with § 2.2-4337 for those components of the qualifying project that involve construction;
2. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;
3. Inspection of the qualifying project by the responsible public entity to ensure that the private entity's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;

4. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) or self-insurance, each in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. Monitoring of the practices of the private entity by the responsible public entity to ensure that the qualifying project is properly maintained;

6. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. Filing of appropriate financial statements on a periodic basis; and

8. Policies and procedures governing the rights and responsibilities of the responsible public entity and the private entity in the event the comprehensive agreement is terminated or there is a material default by the private entity. Such policies and guidelines shall include conditions governing assumption of the duties and responsibilities of the private entity by the responsible public entity and the transfer or purchase of property or other interests of the private entity by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the private entity from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the private entity under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions under which the responsible public entity agrees to provide notice of default and cure rights for the benefit of the private entity and the persons specified therein as providing financing for the qualifying project. The comprehensive agreement may contain such other lawful terms and conditions to which the private entity and the responsible public entity mutually agree, including, without limitation, provisions regarding unavoidable delays or provisions providing for a loan of public funds to the private entity to develop or operate one or more qualifying projects. The comprehensive agreement may also contain provisions where the authority and duties of the private entity under this chapter shall cease, and the qualifying project is dedicated to the responsible public entity or, if the qualifying project was initially dedicated by an affected local jurisdiction, to such affected local jurisdiction for public use.

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

F. When a responsible public entity that is not an agency or authority of the Commonwealth enters into a comprehensive agreement pursuant to this chapter, it shall within 30 days thereafter submit a copy of the comprehensive agreement to the Auditor of Public Accounts.

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

(2002, c. 571; 2003, c. 1034; 2004, c. 986; 2005, c. 865.)

**§ 56-575.9:1. Interim agreement.**

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

(2005, c. 865.)

**§ 56-575.10. Federal, state and local assistance.**

A. Any financing of a qualifying facility may be in such amounts and upon such terms and conditions as may be determined by the parties to the interim or comprehensive agreement. Without limiting the generality of the terms and conditions of the financing, the private entity and the responsible public entity may propose to utilize any and all funding resources that may be available to them and may, to the fullest extent permitted by applicable law, issue debt, equity, or other securities or obligations, enter into leases, access any designated trust funds, borrow or accept grants from any state infrastructure bank, and secure any financing with a pledge of, security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying facility.

B. The responsible public entity may take any action to obtain federal, state, or local assistance for a qualifying project that serves the public purpose of this chapter and may enter into any contracts required to receive such assistance. If the responsible public entity is a state agency, any funds received from the state or federal government or any agency or instrumentality thereof shall be subject to appropriation by the General Assembly. The responsible public entity may determine that it serves the public purpose of this chapter for all or any portion of the costs of a qualifying project to be paid, directly or indirectly, from the proceeds of a grant or loan made by the local, state, or federal government or any agency or instrumentality thereof.

(2002, c. 571; 2005, c. 865.)

**§ 56-575.11. Material default; remedies.**

A. In the event of a material default by the private entity, the responsible public entity may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.

B. Any responsible public entity having the power of condemnation under state law may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.

C. The responsible public entity may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.

D. The responsible public entity may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § 56-575.9.

E. In the event the responsible public entity elects to take over a qualifying project pursuant to subsection A, the responsible public entity may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the responsible public entity may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the responsible public entity shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the responsible public entity to pay any obligation of the private entity from sources other than revenues.

(2002, c. 571; 2003, c. 1034; 2005, c. 865.)

**§ 56-575.12. Condemnation.**

At the request of the private entity, the responsible public entity may exercise any power of condemnation that it has under law for the purpose of acquiring any lands or estates or interests therein to the extent that the responsible public entity finds that such action serves the public purpose of this chapter. Any amounts to be paid in any such condemnation proceeding shall be paid by the private entity.

(2002, c. 571; 2005, c. 865.)

**§ 56-575.13. Utility crossing.**

The private entity and each public service company, public utility, railroad, and cable television provider, whose facilities are to be crossed or affected shall cooperate fully with the other entity in planning and arranging the manner of the crossing or relocation of the facilities. Any such entity possessing the power of condemnation is hereby expressly granted such powers in connection with the moving or relocation of facilities to be crossed by the qualifying project or that must be relocated to the extent that such moving or relocation is made necessary or desirable by construction of, renovation to, or improvements to the qualifying project, which shall be construed to include construction of, renovation to, or improvements to temporary facilities for the purpose of providing service during the period of construction or improvement. Any amount to be paid for such crossing, construction, moving or relocating of facilities shall be paid for by the private entity. Should the private entity and any such public service company, public utility, railroad, and cable television provider not be able to agree upon a plan for the crossing or relocation, the Commission may determine the manner in which the crossing or relocation is to be accomplished and any damages due arising out of the crossing or relocation. The Commission may employ expert engineers who shall examine the location and plans for such crossing or relocation, hear any objections and consider modifications, and make a recommendation to the Commission. In such a case, the cost of the experts is to be borne by the private entity. Such determination shall be made by the Commission within ninety days of notification by the private entity that the qualifying project will cross utilities subject to the Commission's jurisdiction.

(2002, c. 571; 2005, c. 865.)

**§ 56-575.14. Police powers; violations of law.**

All police officers of the Commonwealth and of each affected local jurisdiction shall have the same powers and jurisdiction within the limits of such qualifying project as they have in their respective areas of jurisdiction and such police officers shall have access to the qualifying project at any time for the purpose of exercising such powers and jurisdiction.

(2002, c. 571.)

**§ 56-575.15. Sovereign immunity.**

Nothing in this chapter shall be construed as or deemed a waiver of the sovereign immunity of the Commonwealth, any responsible public entity or any affected local jurisdiction or any officer or employee thereof with respect to the participation in, or approval of all or any part of the qualifying project or its operation, including but not limited to interconnection of the qualifying project with any other infrastructure or project. Counties, cities and towns in which a qualifying project is located shall possess sovereign immunity with respect to its design, construction, and operation.

(2002, c. 571.)

**§ 56-575.16. Procurement.**

The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or guidelines of the Division of Engineering and Buildings of the Department of General Services or the Virginia Information Technologies Agency, including the

Capital Outlay Manual and those interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133, 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public entity, shall not apply to this chapter. However, a responsible public entity may enter into a comprehensive agreement only in accordance with guidelines adopted by it as follows:

1. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with procurement through competitive sealed bidding as defined in § 2.2-4301 and subsection B of § 2.2-4310.
2. A responsible public entity may enter into a comprehensive agreement in accordance with guidelines adopted by it that are consistent with the procurement of "other than professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such responsible public entity 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. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the responsible public entity deems appropriate.

A responsible public entity shall proceed in accordance with the guidelines adopted by it pursuant to subdivision 1 unless it determines that proceeding in accordance with the guidelines adopted by it pursuant to this subdivision is likely to be advantageous to the responsible public entity and the public, based on (i) the probable scope, complexity or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available. When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor's Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.

3. Nothing in this chapter shall authorize or require that a responsible public entity obtain professional services through any process except in accordance with guidelines adopted by it that are consistent with the procurement of "professional services" through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310.
4. A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall:

a. If the responsible public entity is not an agency or authority of the Commonwealth, require the responsible public entity to engage the services of qualified professionals, which may include an architect, professional engineer or certified public accountant, not employed by the responsible public entity to provide to the responsible public entity independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project, unless the governing body of the responsible public entity determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the responsible public entity.

b. Provide for the posting and publishing of public notice of a private entity's request for approval of a qualifying project pursuant to subsection A of § 56-575.4 and a reasonable time period, determined by the responsible public entity to be appropriate to encourage competition and public-private partnerships pursuant to the goals of this chapter, such reasonable period not to be less than 45 days, during which the responsible public entity will receive competing proposals pursuant to that subsection.

Such guidelines shall also require advertising the public notice in the Virginia Business Opportunities publication and posting a notice on the Commonwealth's electronic procurement website.

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

6. A responsible public entity that is a school board or a county, city or town may enter into an interim or comprehensive agreement under this chapter only with the approval of the local governing body.

(2002, c. 571; 2003, cc. 292, 968, 1034; 2004, c. 986; 2005, c. 865.)

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## APPENDIX C

### Projected Procurement Timeline for PPTA/PPEA Procurement Initiated By Unsolicited Proposal

Activity Number	Date	Activity	
1	D	Receipt of Unsolicited Proposal	
2	D+45	Decide whether to accept Unsolicited Proposal, whether to use competitive negotiation, and what conditions to impose	
3	D+75	Prepare Notice of Unsolicited Proposal, Receipt of Unsolicited Proposal, and Post and Publish	
4.	D+135	Receive Competing Conceptual-Phase Proposals	
5	D+195	Evaluate Conceptual-Phase Proposals, decide whether to proceed. If proceeding, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals	
6	D+225	Receive Detailed-Phase Proposals	
7.6.	D+270	Evaluate Detailed-Phase Proposals, conduct interviews, and select proposers for negotiation of Agreement	
8.7	D+315	Negotiate Interim Agreement or Comprehensive Agreement	
9	D+350	Obtain Approval by City Council	

## APPENDIX D

### Projected Procurement Timeline for PPTA/PPEA Procurement Solicited By Request for Proposals (“RFP”)

<b>Activity Number</b>	<b>Date</b>	<b>Activity</b>	
1	D	Initiate procurement. Decide whether to use competitive negotiation and issue RFP.	
2	D+45	Receive Conceptual-Phase Proposals	
3	D+105	Evaluate Conceptual-Phase Proposals and decide whether to proceed. Select proposers to invite to submit, and invite submission of Detailed-Phase Proposals	
4.	D+135	Receive Detailed-Phase Proposals	
5	D+180	Evaluate Detailed-Phase Proposals, conduct interviews, and select proposers for negotiation of Agreement	
6	D+225	Negotiate Interim Agreement or Comprehensive Agreement	
7	D+270	Obtain Approval by City Council	

Note: Considerable planning before Step 1 is required to determine the City's needs for a project and to state them in an RFP.

## **Appendix E**

### **Potential Proposal Evaluation and Selection Criteria**

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

Does the proposer propose a team which is qualified, led, and structured in a manner which will clearly enable the team to complete the proposed project?

##### **1. Experience with Similar Projects**

Have members of this team previously worked together in successfully constructing, improving or managing similar projects? Has the lead firm managed, or any of the member firms worked on, a similar privatization project?

##### **2. Demonstration of Ability to Perform Work**

What commitments has the team made to carry out the project? Does the team possess the necessary financial, staffing, equipment, and technical resources to successfully complete the project? Does the team and/or member firms have competing financial or workforce commitments that may inhibit success and follow-through on this project?

##### **3. Leadership Structure**

Is one firm designated as lead on the project? Does the organization of the team indicate a well thought out approach to managing the project? Is there an agreement/document in place between members?

##### **4. Project Manager's Experience**

Is a Project Manager identified, and does this person work for the principal firm? If not, is there a clear definition of the role and responsibility of the Project Manager relative to the member firms? Does the Project Manager have experience leading this type and magnitude of project?

##### **5. Management Approach**

Have the primary functions and responsibilities of the management team been identified? Have the members of the team developed an approach to facilitate communication among the project participants? Has the firm adequately described its approach to communicating with and meeting the expectations of the City?

##### **6. Financial Condition**

Is the financial information submitted on the firms sufficient to determine the firms' capability to fulfill their obligations described in the project proposal?

##### **7. Project Ownership**

Does the proposal identify the proposed ownership arrangements for each phase of the project and indicate assumptions on legal liabilities and responsibilities during each phase of the project?

**8. Participation of Small Businesses and Businesses Owned by Women and Minorities**

What is the level of commitment by the proposers to use small, minority-, and women-owned business enterprises in developing and implementing the project?

**9. Competitive Bidding**

To what extent have adequate and transparent procurement policies been adopted by the proposer to maximize competitive bidding opportunities for potential subcontractors and suppliers?

**B. Project Characteristics**

Does the proposed project serve a public purpose as required by the Acts? Is the project technically feasible?

**1. Project Definition**

Is the project described in sufficient detail to determine the type and size of the project and its location?

**2. Proposed Project Schedule**

Is the time frame for project completion clearly outlined? Is the proposed schedule reasonable given the scope and complexity of the project? Does the proposal contain adequate assurances that the project will be completed and will be completed on time?

**3. Operation**

Does the proposer present a reasonable statement setting forth plans for operation of the facility?

**4. Technology**

Is the proposal based on proven technology? What is the degree of technical innovation associated with the proposal? Will the knowledge or technology gained from the project benefit other areas of the state or nation, as well as the City? Does the technology proposed maximize interoperability with relevant local and statewide technology? Can the proposed project upgrade relevant local technology?

**5. Conforms to Laws, Regulations, and Standards**

Is the proposed project consistent with applicable state and federal statutes and regulations, or reasonably anticipated modifications of state or federal statutes, regulations or standards? Does the proposed design meet appropriate state and federal standards?

**6. Federal Permits**

Is the project outside the purview of federal oversight, or will it require some level of federal involvement or permitting?

**7. Meets/Exceeds Environmental Standards**

Is the proposed project consistent with applicable state and federal environmental statutes and regulations? Does the proposed design meet applicable state environmental standards? Does the proposal adequately address or improve air quality conformity?

**8. State and Local Permits**

Does the proposal list the required permits and a schedule to obtain them? Are there negative impacts known for the project? If so, is there a mitigation plan identified? Are alternatives to standards or regulations needed to avoid those impacts that cannot be mitigated?

**9. Property Acquisition**

Does the proposal set forth the method by which the private operator proposes to secure all property interests required for the facility? Does the statement include: the names and addresses, if known, of the current owners of the property needed for the facility, the nature of the property to be acquired, and a listing of any property that the City is expected to be requested to condemn?

**10. Maintenance**

Does the proposer have a plan to maintain the facility in conformance with City standards? Does the proposal clearly define assumptions or responsibilities during the operational phase?

**C. Project Financing**

Has the proposer provided a financial plan and financial guarantees which will allow for access to the necessary capital to finance the facility?

**1. Financing**

Did the proposer demonstrate evidence of its ability and commitment to provide sufficient equity in the project as well as the ability to obtain the other necessary financing?

**2. Financial Plan**

Does the financial plan demonstrate a reasonable basis for funding project development and operations? Are the assumptions on which the plan is based well defined and reasonable in nature? Are the plan's risk factors identified and dealt with sufficiently? Are the planned sources of funding and financing realistic? Does the proposer make a financial contribution to the project?

**3. Estimated Cost**

Is the estimated cost of the facility reasonable in relation to the cost of similar projects? The final determination will depend, to a large extent, on a cost/benefit analysis.

**4. Life Cycle Cost Analysis**

Does the proposal include an appropriately conducted analysis of projected rate of return and life-cycle cost estimate of the proposed project and/or facility?

**5. Business Objective**

Does the proposer clearly outline its reason for pursuing this project? Do the proposer's assumptions appear reasonable?

**D. Public Support**

Has the proposer garnered sufficient public support for the proposed project?

**1. Community Benefits**

Will this project bring a significant benefit to the City, the region, and/or the state? Are there ancillary benefits to the City because of the project?

**2. Community Support**

What is the extent of support or opposition for the project? Does the project proposal demonstrate an understanding of City and regional issues and needs, as well as the impacts the project may have on those needs? Is there a demonstrated ability to work with the City? Have all affected local jurisdictions provided a clear written statement of the extent of their support for the project?

**3. Public Involvement Strategy**

What strategies are proposed to involve local and state elected officials in developing the project? What level of community involvement has been identified for the project? Is there a clear strategy for informing, educating and obtaining community input through the development and life of the project?

**E. Project Compatibility**

Is the proposed project compatible with the City's master plan, local comprehensive plans, local infrastructure development plans, the capital improvements budget or other government spending plans?

**1. Compatibility with the Existing Transportation System**

Does the project propose improvements that are compatible with the present and planned transportation system? Does the project provide continuity with existing and planned state and local facilities?

**2. Fulfills Policies and Goals**

Does the proposed project help achieve performance, safety, mobility or transportation demand management goals? Does the project improve connections among the transportation modes?

**3. Enhance Community-Wide Transportation System**

Are there identified project benefits to the affected community transportation system? Does this project enhance adjacent transportation facilities?

**4. Consistency with Local, Regional and State Transportation Plans**

Is the project consistent with the City's comprehensive plan and regional and state transportation plans? If not, are steps proposed that will achieve consistency with such plans?

**5. Economic Development**

Will the proposed project enhance the City's, the region's and the state's economic development efforts? Is the project critical to attracting or maintaining competitive industries and businesses to the City or region, consistent with stated objectives?

**6. Impacts on Other Facilities**

Have crossings or other impacts on facilities of public service companies, public or private utilities, railroads and cable television providers, that may be affected by the project, been addressed? If a transportation project, are all proposed interconnections with other transportation facilities, the communities that may be affected, and alternatives (e.g. alignments) that may need to be evaluated identified?

**Appendix F**

**Proposer's Certification**

Proposer's Name: \_\_\_\_\_  
\_\_\_\_\_

Proposer's Address	Proposer's:
_____	Telephone No.: _____
_____	Facsimile No.: _____
_____	E-mail Address: _____

Proposer's or Proposer's Contractor's Virginia Class A General Contractor's License Number \_\_\_\_\_

Proposer's or Proposer's Architects and Engineers Virginia Registration Numbers: \_\_\_\_\_

After first being placed under oath, I hereby certify that I have authority to submit this proposal on behalf of the proposer whose name appears above, that I am a principal of the proposer, that the proposer hereby agrees to all of the terms and conditions in The City of Lynchburg, Virginia, Implementation Procedures and Guidelines for the Public-Private Transportation Act of 1995 and the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, that neither the proposer nor any member of its team or their principals is currently suspended or debarred from public contracting by any federal, state or local government entity, that I have taken reasonable steps to ascertain the accuracy of all the information contained in this proposal and this certification, and that the information in this proposal and certification is accurate to the best of my knowledge or information and belief.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed/Typed Name

\_\_\_\_\_  
Title (Principal of Proposer)



