

Region 2000 Services Authority

Implementation Procedures and Guidelines

for the

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

Adopted October 26, 2011

PPEA IMPLEMENTATION PROCEDURES AND GUIDELINES

I. INTRODUCTION.

A. Scope and Applicability.

This document presents the implementation procedures and guidelines (the "procedures") developed by the Region 2000 Services Authority (the "Authority") to guide the selection of projects under the purview of the Authority as authorized by the Virginia Public-Private Education Facilities and Infrastructure Act of 2002, as amended (the "PPEA") (Virginia Code §56-575.1 et seq.)(the "Act"). The Authority 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 the PPEA.

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 term "Qualifying Project" will be used herein to apply to authorized projects under the PPEA.

The Act allows 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 Authority 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 Authority after review of the Conceptual Proposal.

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

The Solid Waste Director shall serve as the point of contact for the implementation of these procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or these procedures.

C. Review.

All proposals for a Qualifying Project will be reviewed by staff and selections made by the Board of the Authority in its review of proposals. The Authority may 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 Authority 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 Authority. Proposers shall have no recourse against the Authority 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 Authority 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 Authority 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 Authority and the proposer, and to refer all requests for such information to the Authority.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the Authority 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 Authority 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 Authority 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 Solid Waste Director who will respond in writing as it determines appropriate.

E. Timeline for Proposal Review and Consideration.

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

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

II. GENERAL PROVISIONS.

A. Proposal Submission.

1. Solicited Proposals

From time to time, the Authority 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 Act will be posted at least 60 days prior to the date set for receipt of proposals by posting in a public area normally used for the posting of Authority public notices, by posting on the Authority website, and by publication in one or more newspapers or other publications of general circulation within and/or outside the Authority's geographic area, 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 Act 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 Authority will receive such unsolicited proposals at any time pursuant to these procedures. The Authority will evaluate unsolicited proposals whenever received so long as the proposals meet the requirements of the Act and these procedures and are determined to be in the Authority's best interest.

Once a proposal is received and deemed by the Authority to meet all legal and policy requirements for initial review, as set out in relevant provisions of the Act, and the proposer and the Authority have reached an agreement on the protection of confidential information as permitted under Virginia Code Section 2.2-3705.A.56, the Authority 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 Authority, in a public area 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 Authority has received an unsolicited proposal under the Act, 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 Authority 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 Authority's website.

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

The Authority may, in its sole discretion, extend the 45 day period, but otherwise will not accept competing proposals received after the designated period. The Authority recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such cases, the Authority 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 Authority could later deem a competing proposal, prospective proposers are strongly urged to monitor the Authority 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 Authority a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The Authority 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 Authority elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the Authority 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 Authority may also notify the appropriate state or federal agencies.

B. General Administrative Issues.

Proposers shall deliver one (1) original, six (6) copies, and one (1) electronic copy of their Conceptual Proposal and, if requested, Detailed Proposal to the Authority. Proposals are to be sealed in mailing envelopes or packages bearing the proposer's name, address and the words "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 Act, 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.

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 Authority. 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 Authority. Such presentations will provide opportunities to educate the Authority 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, six (6) 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 Authority to charge a reasonable fee for the review of all proposals for Qualifying Projects, whether solicited or unsolicited. 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.

A fee of \$5,000, payable at the time the Proposal is submitted. The Authority reserves the right to require an additional fee to review the Proposal, but not in excess of the actual costs.

3. Refunds of Fees.

If an unsolicited Conceptual Proposal is determined upon initial review by the Authority 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, less any costs that have already been incurred in reviewing the proposal.

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 Authority 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 Authority 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 Authority 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 Authority not disclose information, the proposer must (i) invoke an exclusion when the data or materials are submitted to the Authority 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 Authority 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 Authority, staff, and consultants to review proposals, the Authority 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 Authority shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the Authority Board, staff, and consultants having a need to know the information to carry out the procurement. Despite the Authority'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 Authority, its 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 Authority.

G. Affected Local Jurisdiction Review

The Act requires that proposals be submitted to affected local jurisdictions for review. This requirement applies to both Conceptual Proposals and Detailed Proposals. 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 Authority 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 PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds should be incorporated into planning for any PPEA project, and any PPEA procurement should comply with fiscal policies. Virginia constitutional and statutory restrictions that apply to the Authority regarding expenditures of public funds shall be deemed to be incorporated into any agreement into which the Authority enters pursuant to the PPEA and to condition the Authority's obligations thereunder.

Nothing in the Act affects the duty of the Authority or any of its officers, employees or agents to comply with all other applicable law not in conflict with the Act, 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 Authority under the 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 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 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 Authority 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 Authority may proceed using competitive negotiation procedures described in paragraph 6.a. above only if the Authority Board 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 Authority 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 Authority in making informed determinations.

B. Initial Review by the Authority.

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

The first determination that must be made by the Authority is whether the proposal constitutes a "Qualifying Project" under the PPEA.

2. Determination of whether the proposed project meets the public purposes of the Act and the Authority.

The Act requires that the Authority determine if the proposed project serves the public purpose as defined in the Act 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 Authority 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 Authority will determine if the proposed project is desirable and compatible with other Authority, 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 Act.

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

The Authority 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 Authority 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 Authority 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 Authority to accept and consider a Conceptual Proposal, the Authority 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 Authority to accept a Conceptual Proposal and the

conclusion of a Confidentiality Agreement, the Authority will publish a notice of its decision and an invitation for the submission of competing proposals ("the public notice").

If the Authority 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 Authority.

If the Authority 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 Authority. If the Authority 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 Authority will review and make the initial determinations required above for all competing proposals. The Authority 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 Authority 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 Authority may proceed immediately to request a Detailed Proposal from the sole proposer.

Otherwise, the Authority 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 Authority will perform its review of each Conceptual Proposal to determine whether

the proposer has, in the sole opinion of the Authority (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 Authority 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 Authority 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 Authority 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 Authority 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 Authority's request for Detailed Proposals will be reviewed by the Authority staff. Before such review, however, the Authority 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 Authority 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 Authority 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 Authority may have pertaining to the project proposal or the presentation. The Authority may also ask the proposer to address concerns expressed through the public comment process. These meetings will allow the Authority 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 Authority may, at its discretion, grant the proposer a reasonable period of time in which to submit a written response.

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

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

The Authority 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.

K. Negotiation and Approval of Comprehensive Agreement.

Following approval of the selected proposal, the Authority and the private entity proposer will enter into negotiations to conclude a Comprehensive Agreement. If the Authority and the proposer cannot conclude a Comprehensive Agreement acceptable to both parties within a reasonable time, the Authority 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 Authority Board 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 Authority may reasonably request to comply with the requirements of the Act.

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 Authority in public notices and other short descriptions of the proposal.

Introduction

Among other information, the Introduction should address the criteria by which the Authority must evaluate the proposed project to determine if it is a "Qualifying Project"

under the Act, identify how the proposed project serves the public purposes of the Act, 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 Authority.
- 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.
- 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 Authority.
- 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 Authority'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 Authority and whether the project is critical to attracting or maintaining competitive industries and businesses to the Authority or the surrounding region.
- e. Address project compatibility with the Authority'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 Authority 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 Authority:

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.
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 Authority'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 Authority may reasonably request.

VI. PROPOSAL EVALUATION.

A. Manner of Evaluation and Use of Outside Professionals

Unless the Authority Board directs a different manner of evaluation in writing, evaluations of proposals shall be by Authority staff and consultants. 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 Authority may engage the services of qualified professionals not employed by the Authority, which may include, without limitation, an architect, professional engineer, or certified public accountant, to provide an independent analysis as part of the evaluation.

B. Evaluation and Selection Criteria

The Authority will consider criteria it deems appropriate in the evaluation and selection of proposals at all phases of its review.

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 Authority. Each Comprehensive Agreement shall define the rights and obligations of the Authority 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 Authority;
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 Authority if the plans and specifications conform to the

Authority's standard conditions;

5. The rights of the Authority 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 Authority accompanied by proofs of insurance), or self-insurance, in form and amount satisfactory to the Authority 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 Authority.
8. The monitoring of the practices of the proposer and/or operator by the Authority to ensure proper maintenance and provisions for the Authority to take appropriate action to ensure the facility is properly maintained.
9. The procedures by and conditions under which the Authority will exercise its power of eminent domain.
10. The terms under which the proposer and/or operator will reimburse the Authority 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 Authority.
12. The events that will constitute default by the Authority, the Authority'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 Authority's remedies.
14. The policy and procedures that will govern the rights and responsibilities of the Authority 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 Authority and the transfer or purchase of property or other interests of the proposer and/or operator to/by the Authority;
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 Authority.
 - 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 Authority 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 Authority.
21. Other requirements of the Act.

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 Authority 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 Authority's best interests. As a matter of policy, the Authority 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 Authority'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 Authority, and their use must be fully justified.

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 Act by the Authority 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 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 or Campbell County Circuit Court, or if the subject or amount in controversy is within its jurisdiction, the Lynchburg or Campbell County General District Court 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 or Campbell County 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 Authority pursuant to the Act.
- H. For purposes of these procedures, "Owner" means the Authority, and "Contractor" means the private entity or entities entering into the agreement with the Authority, as well as Contractor's successors, assigns, sureties or others claiming through Contractor.

IX. PROTESTS OF 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 Authority pursuant to the Act, (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 Act:

- A. Any protest to any term or condition of a solicitation or any term or condition imposed by the Authority must be made in writing and delivered to the Solid Waste Director so it is received before proposals are due. Otherwise, any such protest shall be deemed to be waived.
- B. A protest of an Authority 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 an Authority 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 Authority'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 protestor in a material way, or (2) a statute requires voiding of the decision.

- C. Any entity desiring to protest an Authority 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 Solid Waste Director not later than 5 business days after announcement of the decision. Otherwise any such protest shall be deemed to be waived.
- D. The Solid Waste Director shall issue a written decision on a protest within 10 days of its receipt.
- 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 or Campbell County Circuit Court, and serving the Authority 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 Authority relating to terms and conditions of a PPEA solicitation or terms and conditions imposed by the Authority, 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 an Authority decision (a) as to terms or conditions in a PPEA solicitation or imposed by the Authority, (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 Authority'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 Act.

Persons making proposals to the Authority pursuant to the Act 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 Authority requires 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.

