

CITY OF HAMPTON, VIRGINIA

PUBLIC-PRIVATE EDUCATION  
FACILITIES AND INFRASTRUCTURE  
ACT OF 2002 GUIDELINES

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Revised May 2, 2018

These Guidelines were adopted by the City Council of the City of Hampton, Virginia on May 9, 2018.

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## **I. INTRODUCTION**

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA"), which is wholly incorporated by this reference, grants the City of Hampton, Virginia (the "City") the authority to enter into public-private partnerships for the development of certain qualifying public use projects if the City determines there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. The PPEA sets forth requirements that the City must follow when reviewing, approving, and negotiating proposals received pursuant to the PPEA. Guidance with regard to the use of the PPEA is provided herein, but it is also incumbent upon the City and all private entities to comply with the applicable provisions of the PPEA, as it may be amended from time to time. A copy of the PPEA in effect at the time of this revision is attached as Appendix I.

### **A. The City's Guidelines**

The City has adopted these guidelines (the "Guidelines") to satisfy the statutory prerequisite to the use of the PPEA. The procedures set forth herein may be amended only by City Council action. The City Manager (all references to which shall include her duly designated designee for all purposes set forth herein and under the PPEA) is authorized to the fullest extent permitted by law to implement these Guidelines and take action on behalf of the City as to any PPEA matter or transaction in any instance when these guidelines make reference to the "City."

The PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, the City will maintain an open dialogue with private entities to discuss the need for public facilities and infrastructure improvements. Further, the PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by a private entity, but also may benefit to the private entity through innovative approaches to project financing, development and use. **However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to *public* use and typically involve facilities critical to the public health, safety and welfare. Accordingly, staff shall continue to exercise full and proper due diligence in the evaluation and selection of operators for these projects. In this regard, the qualifications, capabilities, resources, and other attributes of a prospective operator and its whole team shall be carefully examined for every project.** In addition, private entities proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience, or other contents of their proposal.

### **B. Qualifying Projects and Related Services**

A project must be a "qualifying project" in order for the PPEA to be an option for development. The PPEA contains a broad definition of qualifying project that includes, but is not limited to public buildings and facilities of all types, such as:

- 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;
- Any building or facility that meets a public purpose and is developed or operated by or for any public entity;
- Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- Utility and telecommunications and other communications infrastructure;
- A recreational facility;
- Technology infrastructure, services, and applications, including but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- Any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means;
- Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- Any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or
- Any solid waste management facility as defined in Code of Virginia § 10.1-1400 that produces electric energy derived from solid waste.

The City may also 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 the City may deem appropriate.

## **II. GENERAL PROVISIONS**

### **A. Proposal Submission**

A proposal may be either solicited by the City by a request for proposals or invitation to bid (“Solicited Proposal”) or delivered to the City by a private entity without the issuance by the City of any such solicitation (“Unsolicited Proposal”). In either case, the proposal must be clearly labelled by the private entity as a “PPEA PROPOSAL.” The specific

requirements for the submission of a Solicited Proposal shall be specified in the applicable solicitation. Unsolicited Proposals must be submitted by delivery of at least one (1) original, one (1) digital, and ten (10) copies of any proposal, together with the required initial review fee as provided in Section II-E below to the Deputy Director of Finance for Procurement, 1 Franklin Street, 3<sup>rd</sup> Floor, Hampton, Virginia 23669.

Proposers may be required to follow a two-part proposal submission process, consisting of a Conceptual Phase and a Detailed Phase, as described in more detail herein. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived by the City from the project. Project benefits to be considered are those occurring before and during the construction, renovation, expansion, or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the City of the financial feasibility of the proposed project. The City may, at any time, require the proposer to provide additional information, additional copies of prior submissions, and/or clarification as to any submission. The City may also use an accelerated documentation, review, and selection process for proposals involving a qualifying project that the City deems a priority. In addition, to facilitate the flow of critical information, the City may establish criteria by which a proposer may provide clarification to a submission.

## **B. City Review**

The City Manager shall designate a working group ("Selection Committee") to review and evaluate all proposals and to negotiate all required agreements. The Selection Committee will be chaired by the City Manager and shall be comprised of the Director of Economic Development (or designee), the Director of Public Works (or designee), the Director of Planning (or designee), the Director of Finance (or designee), the Deputy Director of Finance for Procurement (or designee), and the City Attorney (or designee), and any other participants deemed necessary by the City Manager. The composition of the Selection Committee may be modified or supplemented by the City Manager at any time. The City shall receive an analysis of the proposal from the Selection Committee in determining whether to enter into an agreement with the private entity.

## **C. Project Financing**

The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on the City's authority and the circumstances of each project, financing options might include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, property exchanges, development agreements, conduit financing and other methods allowed by law. The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief

Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount. Notwithstanding this tool, the City's cost analysis of a proposal will not be linked solely to the financing plan, as the City may determine to finance the project through other available means.

#### **D. Affected Local Jurisdictions**

The term "affected local jurisdiction" means any county, city or town in which all or a portion of the qualifying project is located. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the City must provide each affected local jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of acceptance of the proposal by the City. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided to the City within five (5) business days of such delivery. Affected local jurisdictions that are not responsible public entities under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to the City and to indicate whether the proposed qualifying project is compatible with the local comprehensive plan, local infrastructure development plans, or capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the City, and no negative inference shall be drawn from the absence of comment by an affected local jurisdiction. The City may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from other affected local jurisdictions.

#### **E. Review Fees**

The City is permitted to charge reasonable fees to cover the costs of processing, reviewing, and evaluating proposals. The City shall not be obligated to consider any proposal in the event a proposer fails to submit any fees imposed pursuant to these guidelines shall result in the rejection of the related proposal. All fees shall be paid with certified funds.

##### **1. *Unsolicited Proposals and Competing Proposals***

Each Unsolicited Proposal and any Competing Proposal (as that term is later defined) submitted after public notice thereof must include an initial processing fee of \$2,500.00 at the time of submission. If the City decides to proceed with a detailed review, each proposer shall pay an additional review fee calculated at the rate of 1% percent (1.0%) of the City's reasonably anticipated total costs of the proposed project, but not less than Five Thousand Dollars (\$5,000.00) nor more than Fifty Thousand Dollars (\$50,000.00), at the time of the submittal of the detailed review. The City will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, and outside consultants, financial advisors, engineers, and attorney's fees associated with evaluating the proposal. In the event either the initial processing fee of \$2,500 or the additional proposal

fee is determined by the City Manager to be insufficient to cover all of the direct costs incurred or expected to be incurred by the City in reviewing the proposal, the proposer shall promptly pay the additional amount(s) as specified by the City Manager in writing within 30 calendar days of the date of any such written notice.

## **2. *Solicited Proposals***

Review fees required for Solicited Proposals will be set forth in the applicable solicitation, and may differ depending on the specifics of the project to which the solicitation pertains.

## **F. Freedom of Information Act**

### **1. *General Applicability of Disclosure Provisions***

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (Code of Virginia §2.2-3700 et. seq.; "FOIA"). However, Code of § 2.2-3705.6 (11) exempts certain information from FOIA's mandatory disclosure provisions, subject to the discretion of the City. The City may elect to release some or all documents except to the extent the documents are marked as provided in subsection 2 and are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code § 59.1-336 et seq.);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements;
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the City or private entity would be adversely affected; or
- d. Documents or information that would raise public safety or security concerns as described in Virginia Code § 2.2-3705.2.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the City must comply with the provisions of such order.



## **2. *Protection from Mandatory Disclosure for Certain Documents Submitted by Private Entity***

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the City at the time the documents are submitted earmarking with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section II.D.1.

Upon the receipt of a written request for protection of documents, the City shall determine whether the documents contain trade secrets, financial records, or other information that would adversely affect the financial interest or bargaining position of the City or private entity in accordance with Section II. F.1. The City shall make a written determination of the nature and scope of the protection to be afforded by the City under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section II.F.1.

Once a written determination has been made by the City, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the City or any affected local jurisdiction to which such documents are provided.

If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

## **3. *Protection from Mandatory Disclosure for Certain Documents Produced by the City***

The City may withhold from disclosure memoranda, staff evaluations, or other records prepared by the City, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining position of the City would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the City.

Cost estimates relating to a proposed procurement transaction prepared by or for the City shall not be open to public inspection.

## **4. *Documents that cannot be withheld from Public Access***

The City may not withhold from public access the following:

- a. procurement records other than those subject to the written determination of the City;
- b. information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the City and the private entity;
- c. information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- d. information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

#### **G. Posting and Public Inspection Requirements**

Conceptual proposals, whether received as part of Solicited Proposals, Unsolicited Proposal, or Competing Proposal, shall be posted on the City's website within 10 working days after acceptance of such proposals for a period of not less than 45 days. In addition, the City may publish in a newspaper of general circulation in the area of the project a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Virginia Department of General Service's web-based electronic procurement program commonly known as "eVA."

In addition to those posting requirements, at least one (1) copy of the proposals shall be made available for public inspection in the City Clerk's Office during regular business hours. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records. Further, nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the City Manager so as to provide maximum notice to the public of the opportunity to inspect the proposals.

Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 of the Code of Virginia shall not be required to be posted, except as otherwise agreed to by the City and the private entity.

#### **H. Ownership and Use of Concepts**

The City shall have the right to develop the project or aspects of it in any manner that the City determines in its sole discretion and may incorporate into the project any concept that is included in any proposal submitted to it. Unless otherwise agreed to in writing by the City, by submitting a proposal, a proposer acknowledges that it is submitting merely a concept which has no monetary or intellectual property value, and disclaims any

proprietary or other legal interest in any such concept(s).

#### **I. Use of Public Funds**

Virginia constitutional and statutory requirements and City ordinances and policies as each applies to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

#### **J. Conflicts of Law**

In all cases, where a conflict in terms between these guidelines and mandatory provisions of the PPEA or FOIA exist, the applicable provisions of the Code of Virginia shall apply. Further, in the event that the PPEA is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, the City shall appropriately amend the Guidelines. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines nonetheless shall be interpreted in a manner to conform to the PPEA as amended.

#### **K. Applicability of Other Laws**

Nothing in the PPEA shall affect the duty of the City to comply with all other applicable laws not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (Code of Virginia §2.2-4300 et. seq.; the "VPPA") is as set forth in the PPEA.

#### **L. Participation of Small and Minority-Owned Business**

The City's policy is to facilitate participation of all qualified proposers, including small businesses and businesses owned by women and minorities in its procurement transactions. Persons making proposals to the City pursuant to the PPEA 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. The use of lists of such businesses available from the City's Minority Business Office and the Virginia Department of Minority Enterprise is encouraged.

### **III. SOLICITED PROPOSALS**

The City may request proposals from private entities to develop or operate qualifying projects by issuing a Solicited Proposal. The City will set forth in that solicitation the format and supporting information that is required to be submitted, consistent with the provisions

of the PPEA. The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals.

The solicitation will be posted in such public areas as are normally used for posting of the City's procurement notices, including the City's website. Notice may also be published in a newspaper or other publications of general circulation. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Information meetings and/or pre-proposal conferences may be held as deemed appropriate by the City.

Any proposal submitted pursuant to the PPEA that is not received in response to a Solicited Proposal shall be processed as an Unsolicited Proposal.

#### **IV. UNSOLICITED PROPOSALS**

An Unsolicited Proposal is a means by which the City can receive, evaluate, and negotiate with a private entity without soliciting proposals to develop or operate a qualifying project. For that purpose, the City may nonetheless publicize its needs and may encourage interested parties to submit proposals subject to the terms and conditions of the PPEA. In doing so, the City may establish suggested timelines for accepting and selecting proposals for the review and selection for negotiation.

At a minimum, an Unsolicited Proposal and Competing Proposals should be prepared in accordance with the requirements of the Conceptual Design, as further described in Section V(A), and must include payment of the applicable Review Fee. The City may, at its sole discretion, discontinue its evaluation of any proposal at any time. Furthermore, if the City determines that it is in the City's interest to do so with respect to any Unsolicited Proposal, the City may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

##### **A. Decision to Accept and Consider Unsolicited Proposal**

1. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the City will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If the City determines not to accept the proposal at this stage, it will return the proposal and the accompanying initial review fee to the private entity.

2. If the City chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the City for posting of public notices and on the City's website for a period of not less than 45 days. The City shall also publish the same notice at least once not less than 45 days prior to deciding whether to proceed further with the proposal in one or more newspapers or periodicals of general circulation in the area to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice may also be advertised in other

publications of general circulation, *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website "eVa." The notice shall state that the City has received and accepted an unsolicited proposal under the PPEA, intends to evaluate the proposal, may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the City and the PPEA ("Competing Proposals"). The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Interested parties shall have at least 45 days from the date the notice is first published by the City to submit Competing Proposals.

3. The City will engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the City, to provide 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 City Council determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the City. This analysis shall be used by the Selection Committee in its review.

#### **B. Conceptual Design Review**

The review of Conceptual Designs is considered the initial stage of review. Only proposals complying with the requirements of the PPEA and these Guidelines that contain sufficient information and are provided in an appropriate format for a meaningful evaluation will be considered by the City for further review at the conceptual stage. The City will determine by written finding at this initial stage of review whether it will proceed using either standard procurement procedures consistent with the VPPA; or guidelines developed by the City that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The City may proceed using competitive negotiation guidelines only if it makes a written determination that doing so is likely to be advantageous to the City and the public based upon either (i) the probable scope, complexity or urgency of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

After reviewing the original Unsolicited Proposal and any Competing Proposals submitted during the notice period, the City may determine:

- not to proceed further with any proposal,
- to proceed to the detailed phase of review with the original proposal,
- to proceed to the detailed phase with a competing proposal,
- to proceed to the detailed phase with multiple proposals, or
- to request modifications or amendments to any aspect of any proposals.

## **V. PROPOSAL PREPARATION AND SUBMISSION**

### **A. Conceptual Design - Format for Submissions at Conceptual Stage**

In addition to the requirements set forth in Sections III and IV, proposals submitted at the conceptual stage must contain the completed form as found in Appendix II and an executive summary of the proposal satisfactory for posting and publication to satisfy the requirements of Virginia law. In addition, information, unless expressly waived by the City Manager (or designee), in the following areas must be provided by the private entity:

#### ***1. Qualification and Experience***

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, and prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. Provide the names, street and mailing addresses, as well as email addresses and telephone numbers of all persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
- d. Provide current or most recently audited financial statements of the firm or firms and each partner with an equity interest of twenty percent or greater. Regardless of the individual equity interest of each firm or partner to the proposal, the most recent audited financial statements must be provided for firms and each partner that collectively comprise ninety percent of the equity interest in the project.
- e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to

The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2, of the 1950 Code of Virginia, as amended.

f. Identify the officers and directors of the firm or firms submitting the proposal.

g. Identify all businesses that have a parent-subsidary or affiliated business entity relationship with the firm or firms submitting the proposal.

h. Identify all known contractors or service providers, including but not limited to the providers of architectural services, real estate services, financial services, and legal services. For each firm or major subcontractor that will provide those services, provide the following information; (i) a sworn certification by an authorized representative of the firm, firms or individual partners attesting to the fact that the firm, firms or partners are not currently debarred or suspended by federal, state or local governmental entities from providing such services; (ii) a completed qualification statement that reviews all relevant information regarding technical qualifications, capabilities, firm resources, business integrity, including but not limited to bonding capabilities, insurance coverage, firm equipment. This statement will include mandatory disclosures by the firm, firms or partners for the past three years of any of the following business conducts: a) Bankruptcy filings b) liquidated damages c) fines, forfeitures, assessments or penalties e) contract defaults f) license revocation, suspension or other disciplinary actions g) prior debarments or suspensions by a governmental entity h) denial of prequalification findings of non-responsibility i) safety past performances data j) violations of any federal, state or local criminal or civil laws k) criminal indictments or investigations l) legal claims filed by or against the firm m) describe worker safety training programs, job site safety programs, accident prevention programs and written safety plans, including incident investigation and reporting procedures.

## **2. *Project Characteristics***

a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.

b. Identify and fully describe any work to be performed by the City or any other public entity.

- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including sufficient time for the City's review and the estimated time for completion.
- g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions for the City's use of the project.
- i. Provide information relative to phased or partial openings of the project prior to completion of the entire work proposed.
- j. List any other assumptions relied on for the project to be successful.
- k. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- l. Define applicable quality standards to be adhered to for achieving the desired project outcome(s).
- m. List any contingencies that must occur for the project to be successful.

### **3. *Project Financing***

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources



and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.

c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, a complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

d. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.

e. Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the City's revenue stream.

f. Identify the amounts and the terms and conditions for any revenue sources.

g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

h. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is non-investment grade, the City may require the use of credit enhancements.

i. Outline the financial penalties, if any, that would result should the City wish to terminate a project early or restructure the cash flows for some reason of its own choosing.

j. Provide a breakout of the fees to any underwriting firms(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

k. Provide a letter of interest or commitment from the financial institution which proposer has identified as a financial partner in the project.

#### **4. *Project Benefit and Compatibility***

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the City, 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, including the anticipated timelines that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the anticipated significant benefits to the community and the City, region or state, including anticipated benefits to the economic condition of the public entity and whether the project is critical to attracting or maintaining competitive industries and businesses to the City.
- e. Describe compatibility with the City's comprehensive plan, infrastructure development plans, the capital improvements budget or other government spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

#### **5. *Additional Information***

Any additional information as the City may reasonably request to comply with the requirements of the PPEA.

#### **B. Detailed Design - Format for Submissions at Detailed Stage**

If the City decides to proceed to the detailed phase of review with one or more proposals, the completed form as found in Appendix II and the following information, unless expressly waived by the City Manager (or designee), must be provided by the private entity:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;

3. A statement and strategy setting out the plans for securing all necessary property and/or easements or other rights implicated or to be affected or created. The statement must include the names and addresses, if known, of the current owners and the parcel or tax map identification numbers and current zoning and use of the subject properties.

4. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults in performance;

5. A total life-cycle cost including maintenance, specifying methodology and assumptions of the project or projects including major building systems, and the proposed project start date. Include anticipated commitment of all parties, equity, debt, and other financing mechanisms, and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.

6. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments and the methodology and circumstances for changes and usage of the projects over the useful life of the projects.

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 City comprehensive plans (including related environmental, land use and facility standards ordinances where applicable) or infrastructure development plans or indication of the steps required for acceptance into such plans.

9. Explanation of how the proposed project would impact the City's development plans and the development plans of each affected local jurisdiction.

10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the City's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.), Title 2.2, of the 1950 Code of Virginia, as amended.

11. Identify all known contractors or service providers, including but not limited to the providers of architectural services, real estate services, financial services, and legal services.

12. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the City. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the City, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

13. Additional material and information as the City may reasonably request.

### **C. Additional Terms and Conditions Applicable to All Proposal Submissions**

The following additional terms and conditions apply to the submission of any proposals to the City pursuant to the PPEA, whether unsolicited, competing unsolicited, or solicited, and by submitting any proposal to the City, the private entity submitting the proposal agrees also to them.

1. Neither these Guidelines, nor any request or solicitation, nor the City's receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by the City to any proposer, or any other obligation by the City to any proposer. The City makes no promise, express or implied, regarding whether it will accept a proposal, enter into a agreement with any proposer, or the manner in which it will consider proposals. The City will only be bound by the terms of any comprehensive agreement(s) or interim agreement(s) into which it enters should it choose to enter into any such agreements.

2. The City will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal, engaging in oral presentations, discussions, or negotiations, or for any other costs associated with complying with these Guidelines or the PPEA.

3. Proposers may be required to make an oral presentation or oral presentations of their proposal in the City, at their own expense. The City Manager may request the presence of proposers' representatives from their development, financial, architectural engineering and construction teams at these presentations. The City Manager (will schedule the time and location for these presentations. By submitting its proposal, the proposer agrees to make these representatives reasonably available in the City.

4. The City reserves the right of the City Manager to waive any

informality with respect to any proposal submitted.

5. The City reserves the right to accept or reject any and all proposals received, in whole or in part, and to negotiate separately in any manner necessary to serve the best interests of the City. Any procurement under these Guidelines may result in multiple awards to multiple offerors.

6. The City reserves the right to reject any and all proposals without explanation.

7. These provisions of these guidelines shall apply automatically to all PPEA procurements by the City.

8. The City will not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

9. Discussions between the City and private entities about the need for infrastructure improvements shall not limit the ability of the City to later determine to use standard procurement procedures to meet its infrastructure needs.

## **VI. PROPOSAL EVALUATION AND SELECTION CRITERIA**

The following items shall be considered in the evaluation and selection of PPEA proposals. The City, however, reserves and retains the right to reject any request or proposal at any time for any reason whatsoever.

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

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

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

7. Project ownership.

## **B. Project Characteristics**

Factors to be considered in determining the project characteristics include:

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

## **C. Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include, but are not necessarily limited to:

1. Cost and cost benefit to the City;
2. Financing and the impact on the debt or debt burden of the City;
3. Financial plan, including the degree to which the proposer has conducted a due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity cost assessment;
5. Cash flow requirements of the City,
6. Estimated cost;
7. Life-cycle cost analysis;

8. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable;
9. Credit history of the proposer; and
10. Such other items as the City deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the City, or if financing such a project may impact the locality's debt rating or financial position, the City may select its own finance team, source, and financing vehicle.

#### **D. Project Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

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

#### **E. Other Factors**

Other factors that may be considered by the City in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated selection, review, and documentation timelines;
5. Local citizen and government comments;
6. Benefits to the public, including financial and non-financial;

7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the public entity and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the City deems appropriate.

## **VI. INTERIM AND COMPREHENSIVE AGREEMENTS**

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the City. Prior to entering into a comprehensive agreement an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of the City and the selected proposer with regard to the project. Any interim or comprehensive agreement shall establish a date for the commencement of activities related to the qualifying project, which may be extended by written agreement. Prior to execution of any interim or comprehensive agreement, the agreement shall be submitted for approval by the City Council.

### **A. Interim Agreement Terms**

The scope of an interim agreement may include but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.



## **B. Comprehensive Agreement Terms**

The scope of the comprehensive agreement shall include, as deemed appropriate by the City, but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with development and/or operation of the qualifying project in a manner satisfactory to the City;
2. The review of plans and specifications for the qualifying project by the responsible public entity;
3. The rights of the City to inspect and/or terms under which the City would receive certified third-party inspections of the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and private entity employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the City to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the private entity will reimburse the City for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the City and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the private entity by the City and the transfer or purchase of property or other interests of the private entity by the City;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
  - a. A copy of any service contract shall be filed with the City.
  - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon

request.

c. Classifications according to reasonable categories for assessment of user fees may be made.

10. The terms and conditions under which the City may contribute financial resources, if any, for the qualifying project;

11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

12. The terms and conditions under which the City will be required to pay money to the private entity and the amount of any such payments for the project;

13. Other requirements of the PPEA or other applicable law; and

14. Such other terms and conditions as the City may deem appropriate.

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

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

### **C. Public Hearing During Proposal Review Process; Notice and Posting Requirements**

1. No later than 30 days prior to entering into an interim or comprehensive agreement, the City shall hold a public hearing on the proposals.
2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the City, the City shall post the proposed agreement in the following manner:
  - a. Posting shall be on: (i) the City's website or by publication in a newspaper of general circulation in the area in which the contract is to be performed, containing a summary of the proposals, and the location where copies of the proposals are available for public inspection.. Posting may also be on the Virginia Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the City Manager.
  - b. At least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of

Virginia Code Section §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the City and the private entity.

- c. Any studies and analyses considered by the public entity in its review of a proposal shall be disclosed to the City Council at some point prior to the execution of an interim or comprehensive agreement;
3. Once an interim agreement or a comprehensive agreement has been entered into, the City shall make procurement records available for public inspection, upon request.
  - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adversely affected the financial interest or bargaining position of the City or private entity in accordance with Section II.D.2, above.
  - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code § 59.1-336 et seq.), or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise. To the extent access to procurement records are compelled or protected by a court order, than the City must comply with such order.
4. Upon execution of an interim or comprehensive agreement, the City shall within 30 days thereafter electronically file a copy of the comprehensive agreement and its supporting documents with the Auditor of Public Accounts.

**D. Other Matters Relating to any Comprehensive Agreement or Interim Agreement**

1. These procedures shall be deemed automatically incorporated by reference into any agreement entered into by the City pursuant to the PPEA.
2. For purposes of these procedures, the private entity includes its successors, assigns, sureties or others claiming through the private entity.
3. The City Manager may further supplement the provisions herein with the terms and conditions of any agreements.

**APPENDIX I - The Public-Private Education and Facilities and Infrastructure  
Act of 2002**

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## APPENDIX II - PPEA Proposal Submission Certification Form

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

Proposer's Address: \_\_\_\_\_

Proposer's:

\_\_\_\_\_ Telephone No: \_\_\_\_\_

\_\_\_\_\_ Facsimile No: \_\_\_\_\_

\_\_\_\_\_ E-mail Address: \_\_\_\_\_

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

The proposer acknowledges receipt of the following addenda, if any:

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

Addendum No. \_\_\_\_\_ Dated \_\_\_\_\_

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 of the solicitation for this procurement and in the City of Hampton's \_\_\_\_\_, PPEA Implementing Guidelines, that neither the proposer nor any member of its team or its 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 or Proposer)

Commonwealth of Virginia :  
: to wit  
County/City of \_\_\_\_\_:

On \_\_\_\_\_, \_\_\_\_\_, \_\_\_\_\_, (same name as above)  
appeared before me, and after satisfying me of his/her identity and after being placed  
under oath, swore to the truthfulness of the above statement.

\_\_\_\_\_  
Notary Public

My commission expires: \_\_\_\_\_ Notary Registration No: \_\_\_\_\_

DRAFT