
**AUGUSTA COUNTY SERVICE AUTHORITY
OPERATING PROCEDURES AND POLICY MANUAL**

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Effective Date: May 19, 2022

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The Augusta County Service Authority Board of Directors (the “Board”) adopted this policy effective May 15, 2008 (and amended by the Board from time-to-time) to implement the Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”). Therefore, the Executive Director will follow this policy to receive and evaluate any proposal submitted to the Authority under the provisions of the PPEA. The procedures provided in this policy may be amended only by act of the Board.

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I. Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002 (the “PPEA”) grants the Augusta County Service Authority (the “Authority”), a responsible public entity as defined in the Act, the authority to create public-private partnerships for the development of a wide range of projects for public use if the Authority 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. Individually negotiated interim or comprehensive agreements between a private entity and the Authority will define the respective rights and obligations of the Authority and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the Authority and all private entities to comply with the provisions of the PPEA as applicable. A copy of the PPEA may be found in VA Code Sections §56-575.1-18. Terms defined in the PPEA shall have the same meaning when used in this policy.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA contains a broad definition of qualifying project that includes, but is not limited to public buildings and facilities of all types, for example:

- (i) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (ii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iii) Utility and telecommunications and other communications infrastructure;
- (iv) 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; or
- (v) Any services designed to increase productivity or efficiency through the direct or indirect use of technology;
- (vi) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

The PPEA establishes requirements that the Authority must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between the ACSA and the private entity.

The Executive Director is authorized to designate an individual or a working group to be responsible for implementing this policy, evaluating proposals and negotiating the interim or comprehensive agreements and

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references to Executive Director in this policy shall be deemed to include any such designee or group where appropriate.

The individual designated to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this policy shall be by the Executive Director.

In the event that the PPEA is amended in a manner that either conflicts with these guidelines or covers material matters not addressed by these guidelines, the Authority 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.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, the Authority will maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

II. General Provisions

A. Proposal Submission

A proposal may be either solicited by the Authority or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables.

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. The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on the Authority's authority and the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease back transactions, enhanced use leasing, property exchanges, development agreements, conduit financing and other methods allowed by law.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the Authority. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the Authority of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the Authority may determine to finance the project through other available means.

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Every Proposal must contain the form found in Appendix I to these guidelines.

The Authority may, at any time, require the proposer to provide additional information, additional copies of prior submissions, and/or clarification to any submission.

B. Format for Submissions at Conceptual Stage

The Authority will require that proposals at the conceptual stage contain the completed form titled **PPEA PROPOSAL SUBMISSION CERTIFICATION** as found in Appendix I to these Guidelines, an executive summary of the proposal satisfactory for posting and publication, and information, unless expressly waived by the Executive Director, in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as the Authority may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents that the Authority may request:

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.
- c. Provide the names, addresses, and telephone numbers of 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 a current and a most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
- e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

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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 Authority 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 Authority'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 and operation of the project and the existence of any restrictions on the Authority's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.
- k. 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.

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- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors. 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 Authority's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is less than investment grade, the Authority may require the use of credit enhancements.
- h. Outline the financial penalties, if any, that would result should the Authority wish to terminate a project early or restructure the cash flows for some reason of its own choosing.
- i. 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.
- j. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- 4. Project Benefit and Compatibility
 - a. Identify who will benefit from the project, how they will benefit and how the project will benefit the Authority, 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, 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.

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- d. Describe the anticipated significant benefits to the Authority, the community, region or state, including anticipated benefits to the economic condition of the Authority.
- e. Describe compatibility with Augusta County’s Comprehensive Plan, infrastructure development plans, 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.

C. Affected Local Jurisdictions

The term “affected local jurisdiction” means any city, county 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 Authority 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. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided to the Authority within five (5) business days of such delivery. Affected local jurisdictions that are not responsible public entities under the proposed qualifying project shall have sixty (60) days from the receipt of the request or proposal to submit written comments to the Authority and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the Authority, and no negative inference shall be drawn from the absence of comment by an affected local jurisdiction. The Authority 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.

D. Proposal Review Fee

The Authority shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. In regard to unsolicited proposals submitted under the PPEA, the Authority will require an initial processing fee of \$5,000 at the time of submission, with an additional proposal fee of \$10,000 to be paid within five (5) days after notice from the Authority should the project proceed beyond the initial review. The initial processing fee shall be submitted with the initial proposal. The Authority will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, the cost of all staff time to process, evaluate, review and respond to the proposal, and the out-of-pocket costs of outside consultants, financial advisors, engineers and attorneys associated with evaluating the proposal. In the event either the initial processing fee of \$5,000 or the additional proposal fee of \$10,000 is determined by the Executive Director to be insufficient to cover all of the direct costs incurred or expected to be incurred by the Authority in reviewing the proposal, the proposer shall pay the additional amount(s) as specified by the Executive Director. Any proposal submitted without payment of the required fee or any failure to

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pay the additional amount(s) as specified by the Executive Director within five (5) days shall result in the proposal not being considered or considered further.

E. Professional Review of Proposals

The Authority will engage the services of qualified professionals, which may include an architect, professional engineer or certified public accountant, not an employee of the Authority, 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 Board determines that such analysis of a request by a private entity for approval of a qualifying project shall be performed by employees of the Authority.

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 ("FOIA") except that § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the Authority may elect to release some or all of the documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 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; or
- 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 Authority or private entity would be adversely affected;

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

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

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

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Upon the receipt of a written request for protection of documents, the Authority shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the Authority or private entity in accordance with Section II.F.1. The Authority shall make a written determination of the nature and scope of the protection to be afforded by the Authority 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 Authority, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the Authority or any affected jurisdiction to which such documents are provided.

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

3. Protection from mandatory disclosure for certain documents produced by the Authority.

Memoranda, staff evaluations, or other records prepared by or for the Authority for the evaluation and negotiation of proposals may be withheld from disclosure where (a) 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 Authority would be adversely affected; and (b) the basis for the determination of adverse effect is documented in writing by the Executive Director. However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the Authority must comply with such order.

4. The Authority may not withhold from public access:

- (a) procurement records other than those subject to the written determination of the Authority;
- (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 Authority 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.

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

G. Use of Public Funds

Virginia constitutional and statutory requirements and Authority policies as they apply 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.

H. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the Authority to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. Solicited Proposals

The Authority may issue Requests for Proposals (RFP), inviting proposals from private entities to develop or operate qualifying projects. The Authority may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. The Authority will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The Authority may establish suggested timelines for the review and selection of solicited proposals.

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 Authority's notices, including the Authority's website. Notice may also be published on *Virginia Business Opportunities* and/or posted on the Commonwealth's electronic procurement site. In addition, solicited proposals may be posted pursuant to Section V.B. 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 Authority.

IV. Unsolicited Proposals

The PPEA permits the Authority to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop or operate a qualifying project. The Authority may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.

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Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee(s) by the proposer or proposers, the Authority will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the Authority determines not to accept the proposal and not proceed to publication and conceptual-phase consideration, it will return the proposal, together with all fees, less direct costs, and accompanying documentation, to the proposer.

If the Authority chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice of such within 10 working days. The posting shall be at least once for a period not less than forty-five (45) days. The posting period must be complete prior to deciding whether to proceed further with the proposal. The posting shall be made on the Authority's website and optionally on the Commonwealth's electronic procurement website. The notice may also be posted by other means as deemed necessary by the Authority. The notice shall state that the Authority (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the Authority and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Interested parties shall have at least forty-five (45) days from the date the notice is first published by the Authority to submit competing unsolicited proposals.

To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the Authority familiar with the unsolicited proposal and the guidelines established by the Authority shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The Authority shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the Authority shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.

V. Initial Review by the Authority at Conceptual Stage and Posting Requirements

A. Initial Review by the Authority at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the Authority for further review at the conceptual stage.
2. The Authority will determine by written finding at this initial stage of review whether it will proceed using:
 - i. Standard procurement procedures consistent with the VPPA; or

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- ii. Competitive Negotiation as outlined in 2.13. ACSA may proceed using competitive negotiation guidelines only if it makes a written determination that doing so is likely to be advantageous to the Authority 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.
3. After reviewing the original proposal(s) and any competing proposal(s) submitted during the notice period, the Authority may determine:
- i. not to proceed further with any proposal(s);
 - ii. to proceed to the detailed phase of review with one or more of the original proposal(s);
 - iii. to proceed to the detailed phase of review with one or more competing proposal(s);
 - iv. to proceed to the detailed phase of review with multiple proposals; or
 - v. to ask for modifications or amendments to any aspect of any proposal.

In the event that more than one proposal will be considered in the detailed phase of review, the Authority will consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

4. Discussions between the Authority and private entities about the need for infrastructure improvements shall not limit the ability of ACSA to later determine to use standard procurement procedures to meet its infrastructure needs. ACSA retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement.
5. Ownership and Use of Concepts
- i. The Authority shall have the right to develop any project or aspects of it in any manner that the Authority determines in its sole discretion and may incorporate into any project any concept that is included in any proposal submitted to it.
 - ii. By submitting a proposal, the 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.

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B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the Authority within ten (10) working days after acceptance of such proposals as follows:

The Authority's posting of a summary of the proposals and the location where copies of the proposals are available for public inspection shall be on the Authority's website. Posting may also be on the eVA website.

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the Authority so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection during regular business hours. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Authority and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

VI. Initial Review by the Authority at Conceptual Stage and Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

1. The Authority will require that proposals at the conceptual stage comply with Section II.B.

B. Format for Submissions at Detailed Stage

If the Authority decides to proceed to the detailed phase of review with one or more proposals the following information, unless expressly waived by the Executive Director, 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, including easements. 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.

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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 by such firms;
5. A total life-cycle cost including maintenance, specifying methodology and assumptions of the project, 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 the Augusta County Comprehensive Plan 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 Authority'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 Authority's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
11. Additional material and information as the Authority may reasonably request.

C. Additional Terms and Conditions on Proposal Submission

1. The following additional terms and conditions apply to submission of any proposals to the Authority pursuant to the PPEA, whether unsolicited, competing unsolicited, or solicited, and by submitting any proposal to the Authority, the private entity submitting the proposal agrees also to them.
2. Neither this policy, nor any request or solicitation, nor the Authority's receipt or consideration of any

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proposal shall create any contract, express or implied, any contractual or other obligation by the Authority to any proposer. The Authority makes no promise, express or implied, regarding whether it will enter into any agreement with any proposer or regarding the manner in which it will consider proposals. The Authority will only be bound by the terms of any interim or comprehensive agreement into which it enters should it choose to enter into any such agreements.

3. The Authority will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal or in engaging in oral presentations, discussions, or negotiations.
4. Proposers may be required to make an oral presentation or oral presentations of their proposal to the Authority at its offices at their own expense. The Executive Director may request the presence of proposers' representatives from their development, financial, architectural engineering and construction teams at these presentations. The Executive Director will schedule the time and location for these presentations. By submitting a proposal, the proposer agrees to make these representatives reasonably available to the Authority at its offices.
5. The Authority reserves the right to waive any informality with respect to any proposal submitted.
6. The Authority 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 Authority. Any procurement under these Guidelines may result in multiple awards to multiple offerors.
7. The Authority reserves the right to reject any and all proposals without explanation.
8. The provisions of this policy shall apply automatically to all PPEA procurements by the Authority.
9. The Authority will not discriminate against an offeror on any basis prohibited by law.

VII. Proposal Evaluation and Selection Criteria

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

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A. Qualifications and Experience

Factors to be considered in either phase of the Authority'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 Authority;
2. Financing and the impact on the debt or debt burden of the Authority;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. 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; and
8. Such other items as the Authority deems appropriate.

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In the event that any project is financed through the issuance of obligations that are deemed to be debt of the Authority, or if financing such a project may impact the Authority's debt rating or financial position, the Authority 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 local, regional, and state economic development efforts.

E. Other Factors.

Other factors that may be considered by the Authority 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 documentation, review, and selection;
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; and
9. Other criteria that the Authority deems appropriate.

VIII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the Authority. Prior to entering a comprehensive agreement an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of the Authority and the selected proposer with regard to the project.

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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. Establish 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 Authority, but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance or operation of the qualifying project in a manner satisfactory to the Authority;
2. The review of plans and specifications for the qualifying project by the Authority;
3. The rights of the Authority to inspect and/or terms under which the Authority 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 reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the Authority to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the private entity will reimburse the Authority for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the Authority 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 Authority and the transfer or purchase of property or other interests of the private entity by the Authority;

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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 Authority.
 - 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 Authority 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 Authority 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 Authority 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. Notice and Posting requirements.

1. In addition to the posting requirements of Section V.B, at least thirty (30) days prior to entering into an interim or comprehensive agreement, the Authority shall hold a public hearing on the proposals. After the public hearing is held, no additional posting shall be required.

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2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and the Authority has made a decision to award, the Authority shall post the proposed agreement in the following manner:
 - a. Posting of a summary of the proposals and the location where copies of the proposals are available for public inspection shall be on the Authority's website. Posting may also be on the eVA website.
 - b. In addition to the posting requirements, 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 § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Authority and the private entity.

3. Once an interim agreement or a comprehensive agreement has been entered into, the Authority 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 affect the financial interest or bargaining position of the Authority or private entity in accordance with Section II.F.2.
 - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

To the extent access to procurement records are compelled or protected by a court order, then the Authority must comply with such order.

D. Disputes, Claims, and Other Matters Relating to any Comprehensive Agreement or Interim Agreement

1. 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 PPEA by the Authority and any private entity. 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 private entity shall give the Executive Director written notice of any claim for any additional compensation, damages, delay or other relief within ten (10) days of the beginning of the

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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. The written notice shall be a document addressed to the Authority that clearly states the private entity's intention to make a claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by the Authority. The claim must be certified under oath as true and correct by a principal of the private entity. The term "occurrence" means the condition encountered in the field or the issue or matter 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 is an absolute prerequisite for the private entity to pursue a claim, dispute, or other matter arising under or relating to the agreement. Failure by the private entity to satisfy these provisions shall constitute a waiver by the private entity of the claim, dispute, or other matter for which such failure occurs.

- b. If the procedures of subparagraph a have been followed, and, more than ninety (90) days have passed since notice of a claim, and the dispute, claim or other matter in question remains unresolved, then either party may institute and maintain a lawsuit solely in the Circuit Court of Augusta County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Augusta County, Virginia, and may thereafter pursue all available appeals solely in Virginia state courts, to the extent jurisdiction exists.
- c. Nothing in subparagraph b shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of Augusta County, Virginia if circumstances so warrant.
- d. In the event of any dispute, claim, or other matter in question arising, the private entity 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, the private entity shall be entitled to receive payments for non-disputed items, subject to any right of set-off by the Authority.
- e. These procedures and the provisions of the comprehensive agreement supersede any right at common law by the private entity for a claim of material breach or for rescission of the agreement.
- f. These procedures shall be deemed automatically incorporated by reference into any agreement entered into by the Authority pursuant to the PPEA.
- g. For purposes of these procedures, the private entity includes its successors, assigns, sureties or others claiming through the private entity.

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- h. The Executive Director may further supplement these provisions with the terms and conditions of any agreements.

IX. Protests of PPEA Procurement

A. Coverage

The following are the exclusive procedures for contesting or challenging (protesting) the terms or conditions of any solicitation of proposals by the Authority pursuant to the PPEA, non-selection of a PPEA proposal for further consideration, and the selection of any PPEA proposal for entry into a comprehensive agreement or interim agreement under the PPEA.

B. Process and Conditions

1. Any protest to any term or condition of a solicitation or any term or condition imposed by the Executive Director or designee must be made in writing and delivered to the Executive Director or designee so it is received by the Executive Director or designee before proposals are due. Otherwise, any such protest shall be deemed to be waived.
2. A protest of an Authority decision not to select a PPEA proposal for further consideration may only be made by the entity which submitted the proposal at issue. A protest of an Authority decision to select a PPEA proposal for entry into an agreement or to enter into an agreement may only be made by an entity which submitted a proposal for the procurement at issue and which 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.
3. Any entity desiring to protest an Authority decision not to select a PPEA proposal for further consideration, to select a PPEA 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 Executive Director not later than five (5) business days after announcement of the decision. Otherwise any such protest shall be deemed to be waived.
4. The Executive Director shall issue a written decision on a protest within ten (10) days of its receipt.
5. If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing an appeal with the Board, which shall decide the appeal within thirty (30) days of its receipt. To the fullest extent permitted by law, the decision of the Board shall be binding and final.

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6. 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.
7. 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 Executive Director, non-selection of a PPEA proposal for further consideration, selection of a PPEA proposal, or entry into an agreement. A failure to follow all these procedures strictly shall constitute a waiver of any right to challenge an Authority decision (a) as to terms or conditions in a PPEA solicitation or imposed by the Executive Director or designee, (b) not to select a PPEA proposal for further consideration, (c) to select a PPEA proposal, or (d) to enter into an agreement.

X. Participation of Small and Minority-Owned Business

1. The Authority's policy is to facilitate participation of all qualified proposers, including small businesses and businesses owned by women and minorities in its procurement transactions.
2. Persons making proposals to the Authority 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. Lists of such businesses are available from the Virginia Department of Minority Enterprise.

XI. Governing Provisions

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

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APPENDIX I

**PPEA
PROPOSAL SUBMISSION
CERTIFICATION**

The undersigned certifies that the signatory below has the authority to submit this PPEA proposal and that this proposal is made pursuant to the Augusta County Service Authority's Guidelines Regarding Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002 (Guidelines), agreeing to the terms of the Guidelines. The undersigned also certifies that the information contained in its proposal is accurate and complete and tenders to the Authority a cashier's check in the amount required by the Guidelines.

Signature: _____

Printed/Typed Name: _____

Title: _____

Date: _____