

**COMBINED GUIDELINES  
FOR PROJECTS PROPOSED PURSUANT TO  
THE PUBLIC-PRIVATE EDUCATION FACILITIES AND  
INFRASTRUCTURE ACT OF 2002 AND  
THE PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995**



**SOUTHEASTERN PUBLIC SERVICE AUTHORITY**

November 28,2007

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## **I. Introduction.**

### **A. The PPEA and the PPTA.**

The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575.1 *et seq.*) (the “PPEA”) and the Public-Private Transportation Act of 1995 (Va. Code § 56-556 *et seq.*) (the “PPTA”) (individually, an “Act”; together, the “Acts”) grant responsible public entities the authority to create public-private partnerships for the development of a wide range of projects and transportation facilities for public use if the public entity determines: (i) that there is a public need for the project or transportation facility; (ii) that the estimated cost of the project or transportation facility is reasonable in relation to similar projects or transportation facilities; (iii) that the public-private partnership’s plans will result in the timely development or operation of the project or transportation facility and, in the case of a transportation facility, the more efficient operation of the transportation facility; and (iv) in the case of transportation facilities, that the proposed development and/or operation of the facility or facilities and the proposed interconnection with existing transportation facilities are reasonable and will address the needs identified in an appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

The Acts define “responsible public entity” means any public entity including an authority, that has the power to develop or operate the applicable qualifying project or transportation facility. Individually negotiated interim or comprehensive agreements between a responsible public entity and a private entity will define the respective rights and obligations of the responsible public entity and the private entity.

### **B. SPSA as a Responsible Public Entity.**

The Southeastern Public Service Authority (SPSA) is a political subdivision of the Commonwealth of Virginia. Its Board of Directors is the governing body (the “Governing Body”). SPSA is a “responsible public entity” as such term is defined in the Acts. The PPEA provides that SPSA shall not proceed to consider any bid/proposal by a private entity for approval of a qualifying project until SPSA has adopted and made publicly available guidelines that are sufficient to enable SPSA to comply with the provisions of the PPEA (See Va. Code § 56-575.16(4)). Guidelines are also required by the PPTA (See Va. Code §§ 56-560.D and 56-573.1). The Governing Body has adopted these guidelines (these “Guidelines”) to implement the Acts and to assist in the selection of projects authorized by the Acts. These Guidelines are designed to be reasonable and to encourage competition, and shall be made available to the public.

### **C. Submissions.**

The person designated as SPSA’s primary point of contact for information about these Guidelines and for submission of solicited and unsolicited bids and proposals in accordance with the Acts is the SPSA Purchasing Administrator. Solicited and unsolicited bids and proposals shall be submitted to the SPSA Purchasing Administrator at 723 Woodlake Drive, Chesapeake, VA 23320.

These Guidelines apply to bids and proposals submitted under the authority of both the PPEA and the PPTA. SPSA reserves the right to consider a bid/proposal under the provisions of either or both the PPEA and/or the PPTA. While the PPEA and the PPTA are fundamentally similar, prospective proposers should review both statutes closely as there are significant differences between the PPEA and the PPTA.

In the event the PPEA or the PPTA is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, SPSA shall amend these Guidelines accordingly. If these Guidelines are not amended prior to the effective date of the new law, these Guidelines shall nonetheless be interpreted in a manner to conform to the new law.

**D. Reservation of SPSA Rights.**

SPSA reserves all rights available to it by law in administering these Guidelines including, without limitation, the right in its sole discretion to:

1. Reject any and all bids/proposals at any time.
2. Terminate consideration or evaluation of any and all bids/proposals at any time.
3. Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties.
4. Suspend or eliminate conceptual phase review and proceed directly to detailed phase review.
5. Negotiate with a proposer without being bound by any provision in its bid/proposal.
6. Negotiate with fewer than all proposers at any given time.
7. Request and/or receive additional information regarding any bid/proposal.
8. Issue addenda to and/or cancel any request for proposals (an “RFP”) or invitation for bid (an “IFB”).
9. Revise, supplement or withdraw at any time all or any part of these Guidelines.
10. Assess, retain and/or waive on a case by case basis any and all fees required to be paid by proposers in accordance with these Guidelines.
11. Request revisions to conceptual or detailed phase bids/proposals.

**E. Definitions.** The following definitions are applicable to projects proposed pursuant to both the PPEA and the PPTA unless otherwise specified:

1. “Affected jurisdiction”: under the PPTA, any county, city or town in which all or a portion of a qualifying transportation facility is located and any other

responsible public entity directly affected by the qualifying transportation facility.

2. “Affected local jurisdiction”: under the PPEA, any county, city or town in which all or a portion of a qualifying project is located.
3. “Appropriating body”: means the body responsible for appropriating or authorizing funding to pay for a qualifying project.
4. “Comprehensive agreement”: the comprehensive agreement between the private entity and the responsible public entity required by Section 56-575.9 of the Virginia Code (PPEA) and Section 56-566 of the Virginia Code (PPTA).
5. “Develop” or “development”: to plan, design, develop, finance, lease, acquire, install, construct, or expand.
6. “Interim agreement”:
  - (a) Under the PPTA, an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the development and/or operation of a qualifying transportation facility.
  - (b) Under the PPEA, an agreement between a private entity and the responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.
7. “Lease payment”: under the PPEA, any form of payment, including a land lease, by the public entity to the private entity for the use of a qualifying project.
8. “Maintenance”: under the PPTA, that term as defined in Section 33.1-23.02 of the Code of Virginia.
9. “Material default”: any default by the private entity in the performance of its duties under Subsection 56-565E of the Virginia Code (PPTA) or Subsection 56-575.8E of the Virginia Code (PPEA) that jeopardizes adequate service to the public from a qualifying transportation facility or a qualifying project, as applicable. Under the PPTA the default remains unremedied after the responsible public entity has provided notice to the private entity and a reasonable cure period has elapsed.
10. “Operate” or “operation”: to finance, maintain improve, equip, modify, repair, or operate.

11. “Private entity”: any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity or other business entity.
12. “Public entity”: the Commonwealth of Virginia and any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth and, under the PPTA, any other political subdivision of any county city or town. Under the PPEA, “public entity” also includes any public body politic and corporate, or any regional entity that serves a public purpose. Under the PPTA, “public entity” shall not include any public service company.
13. “Qualifying project” under the PPEA:
  - (a) 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.
  - (b) Any building or facility that meets a public purpose and is developed or operated by or for any public entity.
  - (c) Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity.
  - (d) Utility and telecommunications and other communications infrastructure.
  - (e) A recreational facility.
  - (f) Technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.
  - (g) Any technology, equipment or infrastructure designed to deploy broadband services to schools, businesses or residential areas.
  - (h) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.
14. “Qualifying transportation facility”: one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA.
15. “Responsible Public Entity”: a public entity that has the power to develop and/or operate the applicable qualifying project or qualifying transportation facility.

16. “Revenues”: all revenues, including, but not limited to, income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility or qualifying project, including, without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such transportation facility or project.
17. “Service contract”: a contract entered into between a public entity and the private entity pursuant to Section 56-561 of the Virginia Code (PPTA) or Section 56-575.5 of the Virginia Code (PPEA).
18. “Service Payments”: payments to the private entity in connection with the development and/or operation of a qualifying transportation facility or qualifying project pursuant to a service contract.
19. “State”: the Commonwealth of Virginia.
20. “Transportation facilities”: under the PPTA, any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility.
21. “User Fees”: the rates, tolls (PPTA), fees or other charges imposed by the private entity for the use of all or a portion of a qualifying transportation facility or qualifying project pursuant to the comprehensive agreement under Section 56-575.9 of the PPEA, or pursuant to the interim or comprehensive agreement under the PPTA.

## **II. General Provisions.**

### **A. Proposal Submission.**

1. Bids and proposals (together, “bids/proposals”; individually, a “bid/proposal”) may be submitted by private entities to SPSA either on an unsolicited basis (an “unsolicited bid/proposal”) or in response to a solicitation for such bids or proposals by SPSA (a “solicited bid/proposal”).
2. SPSA may require that any bid/proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential transportation facility or project participants.
3. SPSA will engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the responsible public entity, 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 under the PPEA, unless the Governing Body determines that such analysis will be performed by employees of SPSA.

**B. Affected Jurisdictions and Affected Local Jurisdictions.**

Any private entity requesting approval from, or submitting a bid/proposal to, SPSA must provide any other affected jurisdiction or affected local jurisdiction, as applicable, with a copy of its request or bid/proposal by certified mail, express delivery, or hand delivery within five (5) business days following submission of the bid/proposal to SPSA. Any such other jurisdiction shall have sixty (60) days from the date it receives its copy of the request or bid/proposal to submit written comments to SPSA (to the attention of the SPSA Purchasing Administrator). The copy provided to an affected jurisdiction or affected local jurisdiction shall include a notice of the deadline for comments. Under the PPEA, such written comments shall indicate whether the proposed project is compatible with the affected local jurisdiction's (i) local comprehensive plan; (ii) local infrastructure development plans; or (iii) capital improvements budget or other government spending plans. Under the PPTA, such written comments shall indicate whether the proposed transportation facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency. SPSA will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA and/or the PPTA regarding the bid/proposal, but SPSA may begin or continue its evaluation of any such bid/proposal during the 60-day period. (See Va. Code §§ 56-575.6 and 56-563).

**C. Proposal Review Fee.**

1. SPSA shall receive an analysis of the bid/proposal from appropriate internal staff, or from outside qualified professionals, advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. SPSA is authorized by the PPEA and the PPTA to charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited bid/proposal or competing unsolicited bid/proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants. Any fee charged for such review of a bid/proposal should be reasonable in comparison to the level of expertise required to review the bid/proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project or transportation facility. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the bid/proposal, and (ii) the out-of-pocket costs for qualified professionals, attorneys, consultants and financial advisors engaged by SPSA in its sole discretion to assist in such review.
2. No bid/proposal review fee shall be charged for the review of bids/proposals solicited by an RFP or IFB.

3. Bid/proposal review fees shall be charged to any proposer whose unsolicited bid/proposal has been accepted by SPSA for conceptual phase review. Such bid/proposal review fees shall be based on the reasonably anticipated costs of SPSA in accordance with the following schedule:
  - (a) Initial or Conceptual Phase Review Fee. The initial or conceptual review fee shall be Ten Thousand Dollars (\$10,000.00) and must be submitted with each unsolicited bid/proposal.
  - (b) Detailed Phase Review Fee. Upon SPSA's decision to proceed with a detailed phase proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not less than Two Thousand Five Hundred Dollars (\$2,500.00) nor more than Twenty Thousand Dollars (\$20,000.00), at the time of the submittal of the detailed phase proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited bid/proposal if and as SPSA reasonably anticipates incurring costs in excess of the initial detailed phase review fee. SPSA shall notify the proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before SPSA will continue the process, review, and evaluation of the bid/proposal.
4. SPSA may at its sole discretion at any time before or during the detailed phase review enter into an interim agreement with the proposer in accordance with Section VI.A below, under which SPSA may compensate the proposer for detailed phase proposal activities described therein.
5. In the event the total fees paid by the proposer exceed SPSA's reasonably estimated total costs incurred in processing, reviewing, and evaluating the proposal, SPSA shall reimburse the difference. Otherwise, SPSA shall retain all fees paid.

**D. Virginia Freedom of Information Act.**

1. Any confidential and proprietary information voluntarily provided to SPSA by a private entity pursuant to the PPEA or the PPTA shall be subject to disclosure under the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*) (the "FOIA"), except as otherwise provided by Subsections 56-575.4G (PPEA) and 56-560G (PPTA) of the Code of Virginia. Such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information provided to SPSA under a promise of confidentiality, or (ii) memoranda, working papers or other records related to bids/proposals where, if such records were made public, the financial interest of SPSA or the private entity involved with such bid/proposal or the process of competition or bargaining would be adversely affected. Memoranda, staff evaluations or other records prepared by SPSA, its staff, outside advisors or consultants exclusively for the evaluation of negotiation and proposals filed under the PPTA or the

PPEA are excluded from the obligation to disclose to the extent permitted in Subsection 2.2-3705.6(11) of the Virginia Code. Also, cost estimates prepared by or for SPSA will not be open to public inspection. At no time shall SPSA be liable to a proposer for the disclosure of all or a portion of a bid/proposal submitted under these Guidelines.

2. In order to prevent the release of any confidential and proprietary information that otherwise could be held in confidence by SPSA pursuant to Subsections 56-575.4G and 56-560G of the Code of Virginia, the private entity submitting the information must (i) invoke the exclusion from the FOIA when the data or materials are submitted to SPSA or before such submission, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why protection is necessary. A private entity may request and receive a determination from SPSA as to the anticipated scope of protection prior to submitting the bid/proposal. SPSA is authorized and obligated to protect only confidential and proprietary information and will not protect any portion of a bid/proposal from disclosure if the entire bid/proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.
3. Upon receipt of a request from a private entity that designates portions of a bid/proposal for protection from disclosure as confidential and proprietary, SPSA will determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the private entity. If the determination regarding protection of the scope thereof differs from the private entity's request, then SPSA will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by SPSA to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its bid/proposal. A bid/proposal so withdrawn will be treated in the same manner as a bid/proposal not accepted for publication and conceptual phase consideration as provided in Subsection IV.B.2 below, except that all or a portion of the proposal review fee may be retained by SPSA at its sole discretion to cover the costs of processing the bid/proposal, including determinations regarding disclosure pursuant to this Subsection II.D.3.
4. SPSA and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a bid/proposal submitted under these Guidelines.
5. Once an interim agreement or a comprehensive agreement has been entered into, SPSA will make procurement records available in accordance with Subsection 56-573.1:1D (PPTA) and Subsection 56-575.17D (PPEA) of the Code of Virginia.

**E. Use of Public Funds.**

Virginia constitutional and statutory requirements regarding the appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA or the PPTA. Accordingly, SPSA shall incorporate all of the processes and procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA or PPTA project(s).

**F. Applicability of Other Laws.**

Nothing in the PPEA or the PPTA shall affect the duty of SPSA to comply with all other federal, state, and local laws, and with SPSA's Procurement Procedures, not in conflict therewith. In particular, the applicability of the Virginia Public Procurement Act shall be as set forth in the PPEA and the PPTA.

**III. Solicited Bids and Proposals.**

The procedures and requirements applicable to any particular solicited bid/proposal shall be specified in the solicitation for that bid/proposal and shall be consistent with the requirements of the PPEA or the PPTA and other applicable law. All such solicitations shall be by issuance of a written IFB or RFP, in accordance with SPSA Procurement Policies. Any bid/proposal submitted pursuant to the PPEA or the PPTA that is not received in response to an IFB or RFP shall be deemed an unsolicited bid/proposal under Article IV below. This shall include (a) bids/proposals received in response to a notice issued by SPSA that it has received another unsolicited bid/proposal, and (b) bids/proposals received in response to publicity by SPSA concerning particular needs but where SPSA has not issued a formal IFB or RFP.

The IFB or RFP should specify, but should not necessarily be limited to, information and documents that must accompany each bid/proposal and the factors that will be used in evaluating the submitted bids/proposals. The IFB or RFP should be posted in such public areas as are normally used for posting of SPSA's notices, including SPSA's or, in the case of PPTA solicitations, VDOT's website. Notices may be advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site. Notices should also be published in a newspaper or other publications of general circulation. The IFB or RFP should 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 bids/proposals. Pre-bid and pre-proposal conferences may be held as deemed appropriate by SPSA.

**IV. Unsolicited Bids and Proposals.**

SPSA may publicize its needs and may encourage interested parties to submit unsolicited bids/proposals subject to the terms and conditions of the PPEA or the PPTA. When such bids/proposals are received without issuance of an IFB or RFP, the bid/proposal shall be treated as an unsolicited bid/proposal.

The following four-step procedure for evaluating unsolicited bid/proposals shall serve as SPSA's general process for encouraging the receipt and consideration of proposed projects under the PPEA or the PPTA. This procedure shall not preclude SPSA, however, from

discontinuing its evaluation of any bid/proposal at any time. Furthermore, if SPSA determines that it is in SPSA's interest to do so with respect to any unsolicited bid/proposal, SPSA may cease or eliminate review at the conceptual phase and proceed directly to the detailed review phase.

**A. Step One: Decision to Accept and Consider an Unsolicited Bid/Proposal.**

1. Delivery of Initial Submission.

- (a) Any private entity seeking to submit an unsolicited bid/proposal under the PPEA or the PPTA to SPSA shall deliver six (6) complete copies, as provided below, to the SPSA Purchasing Administrator at the address provided above. The term "Public Private Education Facilities and Infrastructure Proposal" or "Public Private Transportation Proposal" must be clearly labeled on the outside of the envelope or package. A working group may be designated by SPSA to review and evaluate any such bid/proposal. A list of all local jurisdictions being provided a copy of the bid/proposal must accompany the conceptual proposal with the name and address of recipient and date delivered.
- (b) Upon receipt of any unsolicited bid/proposal, accompanied by the required fee, SPSA shall determine whether to accept the unsolicited bid/proposal for publication and conceptual phase consideration, as described below. If SPSA determines not to accept the bid/proposal at this phase, the SPSA Purchasing Administrator shall notify the proposer and Governing Body, with an explanation of why no further consideration is warranted.

2. Contents of Initial Submission.

- (a) An unsolicited bid/proposal must contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. Suggested format and information to satisfy these requirements are included in Subsection IV.C.5 below. The information should be adequate to enable SPSA to evaluate the practicality and sufficiency of the bid/proposal. The private entity may request that SPSA consider a two part proposal process consisting of an initial conceptual submission (Step Three (Section IV.C) below) to be followed by a more detailed submission (Step Four (Section IV.D) below).
- (b) Each unsolicited bid/proposal should provide a concise description of the proposer's capability to complete the proposed qualifying project and the benefits to be derived from the project by SPSA. Project benefits to be considered may include benefits to be realized during the construction, renovation, expansion or improvement phase as well as during the life cycle of the project. Bids/proposals also should include a comprehensive scope of work and a financial plan for the project containing enough detail to allow an analysis by SPSA of the financial

feasibility of the proposed project, including but not limited to: (a) identity of any parties expected or provide financing for the project; and (b) a statement indicating whether the proposer intends to request SPSA to provide resources for financing the project and the nature and extent of any such resources.

- (c) To become subject to the evaluation and selection process under the PPTA, the bid/proposal must comply with the following additional criteria. First, the bid/proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance, and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods. Third, the bid/proposal must be submitted to the public entity which currently has or may assert the power itself to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.
- (d) SPSA may require additional submissions to clarify information previously provided or to address other areas of concern to SPSA.

**B. Step Two: Decision to Proceed With Conceptual Phase Review Notice.**

1. Upon review of the proposer's initial submission, SPSA may choose to accept an unsolicited bid/proposal for conceptual phase consideration and will so notify the proposer of its decision.
2. If SPSA chooses not to accept an unsolicited bid/proposal for conceptual phase consideration, SPSA shall promptly return the initial review fee to the proposer.
3. Upon a determination to accept an unsolicited bid/proposal for conceptual phase consideration, the SPSA Purchasing Administrator shall post and publish a notice of SPSA's decision to accept the bid/proposal for conceptual phase consideration. Such notice is intended to encourage competition and must be posted in a public area regularly used by SPSA for the posting of public notices for a period of not less than forty-five (45) days. In addition, the SPSA Purchasing Administrator shall also publish the same notice once a week for four (4) successive weeks in one or more newspapers of general circulation in SPSA to notify any parties that may be interested in submitting competing unsolicited bid/proposal. Said notices shall state that SPSA: (i) has received and accepted an unsolicited bid/proposal under the Act; (ii) intends to evaluate the bid/proposal; (iii) may negotiate an interim and/or comprehensive agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than forty-five (45) days, any competing bids/proposals that comply with SPSA regulations. The notice shall also summarize the proposed qualifying project and identify its proposed location.

4. During the forty-five (45) day period for receiving competing unsolicited bid/proposals, SPSA may continue to evaluate the original unsolicited bid/proposal. Representatives of SPSA are encouraged to answer questions from private entities that are contemplating submission of competing unsolicited bids/proposals.

**C. Step Three: Conceptual Phase Review.**

1. Only bids/proposals complying with the requirements of the PPEA or the PPTA and this Section IV.C, that contain sufficient information for a meaningful evaluation, and that are provided in an appropriate format, as described below, will be considered by SPSA for further review at the conceptual phase.
2. SPSA will determine at this point whether it will proceed, using:
  - (a) Procurement through competitive sealed bidding, as defined in Section 2.2-4301 of the Code of Virginia; or
  - (b) Procedures for competitive negotiation, as defined in Section 2.2-4301 of the Code of Virginia. SPSA may only use competitive negotiation upon a written determination by SPSA that doing so would likely be advantageous to SPSA and the public based upon either (i) the probably scope, complexity, or priority of need; (ii) risk sharing including guaranteed cost of completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue or economic benefit from the project that would not otherwise be available.
3. After reviewing the unsolicited bid/proposal and any competing unsolicited bids/proposals submitted during the notice period, SPSA may determine: (i) not to proceed further with any bid/proposal; (ii) to proceed to the detailed review phase with the original bid/proposal; (iii) to proceed to the detailed review phase with a competing bid/proposal; or (iv) to proceed to the detailed review phase with multiple bids/proposals.
4. Discussions between SPSA and private entity about the need for infrastructure improvements shall not limit the ability of SPSA to later determine to use standard procurement procedures to meet its infrastructure needs. SPSA retains the right to reject any bid/proposal at any time for any reason prior to the execution of an interim or comprehensive agreement.
5. Format for Submissions at the Conceptual Phase. Unsolicited bids/proposals at the conceptual phase shall contain information in the following areas: qualifications and experience, project characteristics, project financing, and anticipated public support and/or opposition. The following are suggestions for the format and content of the bid/proposal at this phase. SPSA may request such additional information as it deems appropriate.

(a) Qualification and Experience.

- (1) Identify the legal structure of the firm or consortium of firms making the bid/proposal (e.g., corporation, partnership, joint venture, limited liability company, etc.). Identify the organizational structure for the project, the management approach, and how each principal (e.g., major shareholder, member, partner, etc.) and major subcontractor in the structure fit into the overall team.
- (2) Describe the experience of the firm or consortium of firms making the bid/proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. 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.
- (3) Provide the names, addresses, and telephone numbers of persons who may be contacted for further information.
- (4) Provide a current or most recently audited financial statement of the firm or firms and each partner, member or shareholder with an equity interest of twenty percent (20%) or greater.
- (5) 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 Virginia State and Local Government Conflict of Interest Act (Va. Code § 2.2-3100 *et seq.*).

(b) Project Characteristics.

- (1) 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.
- (2) Identify and fully describe any work to be performed by SPSA or any private entity other than the proposer.
- (3) 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.

- (4) Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate such impacts.
- (5) Identify the projected positive social, economic and environmental impacts of the project.
- (6) Identify the proposed schedule for the work on the project, including the estimated time for completion.
- (7) Propose allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- (8) State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on SPSA's use of the project.
- (9) Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- (10) Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
- (11) Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property for which condemnation may be necessary.

(c) Project Financing.

- (1) Provide a preliminary estimate and describe the estimating methodology of the cost of the work by phase, segment, or both.
- (2) 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.
- (3) Include a list and discussion of assumptions underlying all major elements of the plan.
- (4) Identify the proposed risk factors and methods for dealing with these factors.
- (5) Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total

commitment, if any, expected from governmental sources (and identify of each such source) and the timing of any anticipated commitment.

- (6) Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the proposer contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
- (7) Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

(d) Project Benefit and Compatibility.

- (1) Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of SPSA, and identify who will benefit from the project and how they will benefit.
- (2) Identify any anticipated public support or opposition as well as any anticipated government support or opposition, for the project.
- (3) Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- (4) State whether the project is likely to attract (or maintain) industries and businesses to the surrounding region and, if so, explain how.
- (5) State whether the project is compatible with the comprehensive plan(s) for any affected jurisdiction or affected local jurisdiction, infrastructure development plans, capital improvements projects program, or other government spending plans and, if so, explain how.
- (6) For PPTA projects, explain whether the proposed improvements are compatible with present and planned transportation systems and whether the project will provide continuity with existing local and state facilities.

**D. Step Four: The Detailed Review Phase.**

1. If SPSA decides to proceed to the detailed review phase with one or more unsolicited bids/proposals, then the following information shall be provided by each included proposer unless contained in the conceptual phase proposal or expressly waived by SPSA:

- (a) A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project.
- (b) 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.
- (c) A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property for which condemnation may be necessary.
- (d) A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
- (e) A total life-cycle cost specifying methodology and assumptions of the project or projects 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.
- (f) A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- (g) 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.
- (h) Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- (i) Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
- (j) Identification of any known conflicts of interest or other disabilities that may impact SPSA's consideration of the bid/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 Interests Act (Va. Code § 2.2-3100 *et seq.*).
- (k) Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by SPSA.

Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to SPSA, and all underlying data supporting any conclusions reached in the analysis or the selection by the proposer of the financing plan proposed for the project.

- (l) Such additional material and information as SPSA may request.

**V. Proposal Evaluation and Selection Criteria.**

In addition to evaluation of materials and information described in Article IV above, some or all of the following matters may be considered in the evaluation and selection of PPEA or PPTA bids/proposals.

**A. Qualifications and Experience.**

Factors to be considered to determine whether the proposer possesses the requisite qualifications and experience may include but shall not be 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.
7. Project ownership.

**B. Project Characteristics.**

Factors to be considered in determining the project characteristics may include but shall not be limited to:

1. Project definition.
2. Proposed project schedule.
3. Operation of the project.
4. Technological, technical feasibility.
5. Conformity to laws, regulations, and standards.
6. Environmental impacts.
7. Condemnation impacts.

8. State and local permits.
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 may include but shall not be limited to:

1. Cost and cost-benefit to SPSA.
2. Financing and the impact on the debt or debt burden of SPSA.
3. Financial plan.
4. Estimated cost.
5. Life-cycle cost analysis.
6. The identity of any third party that will provide financing for the project and the nature and timing of its commitment.

**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 may include but shall not be limited to:

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

**E. Other Factors.**

Other factors that may be considered by SPSA in the evaluation and selection of PPEA and PPTA bids/proposals include:

1. The proposed cost of the qualifying project or qualifying transportation facility.
2. The general reputation, industry experience, and financial capacity of the private entity.
3. The proposed design of the qualifying project or qualifying transportation facility.

4. The eligibility of the project for accelerated documentation, review, and selection.
5. Local citizen and government comments.
6. Benefits to the public.
7. Such other criteria that SPSA deems appropriate.

**VI. Interim and Comprehensive Agreements.**

Prior to developing or operating the qualifying project or qualifying transportation facility, the selected private entity shall enter into a comprehensive agreement with SPSA and may enter into an interim agreement as described in Section VI.A below. SPSA may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of SPSA and the selected proposer with regard to the project. Any such interim or comprehensive agreement, and any amendment thereto, must be approved by the Governing Body to be effective. In addition, any such interim or comprehensive agreement relating to a qualifying project under the PPEA, and any amendment thereto, must be approved by the appropriating body. The appropriating body shall have a reasonable period of time to review and consider such interim or comprehensive agreement, as agreed upon by the appropriating body and SPSA, but in no case shall such period be shorter than fourteen (14) days.

**A. Interim Agreement Terms.**

Prior to entering into a comprehensive agreement with SPSA, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The scope of an interim agreement may include but shall not be limited to:

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

**B. Comprehensive Agreement Terms.**

The scope of a comprehensive agreement shall include but shall not be limited to:

1. 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 or qualifying transportation facility, in the forms and amounts satisfactory to SPSA.
2. Review and approval of plans and specifications for the qualifying project or qualifying transportation facility by SPSA.
3. The right of SPSA to inspect the qualifying project or qualifying transportation facility to ensure compliance with the comprehensive agreement.
4. Maintenance of a policy or policies of liability insurance or self-insurance in a form and amount satisfactory to SPSA and reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project or qualifying transportation facility.
5. Monitoring and acting upon the practices of the operator by SPSA to ensure proper maintenance.
6. The terms under which the private entity will reimburse SPSA for services that SPSA will provide.
7. Policies and procedures governing the rights and responsibilities of SPSA and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the private entity by SPSA and the transfer or purchase of property or other interests of the private entity by SPSA.
8. Filing by the private entity of 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, subject to applicable laws controlling SPSA's ability to set or charge fees, shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. In addition:
  - (a) A copy of any service contract shall be filed with SPSA.

- (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 SPSA may contribute financial resources, if any, for the qualifying project or qualifying transportation facility.
  11. The terms and conditions under which existing site conditions will be assessed and addressed, including indemnification of SPSA for conducting the assessment and taking necessary remedial action.
  12. Any changes to the terms of the interim or comprehensive agreement may be agreed upon by the parties from time to time and shall be added to the interim or comprehensive agreement only by written amendment.
  13. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.
  14. Other requirements of the PPEA, the PPTA, and other applicable law.

**C. Comprehensive Agreement Provisions Relating to Construction Projects.**

With respect to construction projects considered under the PPEA or the PPTA, SPSA generally anticipates addressing the following in the comprehensive agreement. Private entities are encouraged to include a discussion of these matters in bids/proposals relating to construction projects.

1. SPSA prefers the design-build project delivery system. In design-build construction projects, the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, SPSA expects the private entity to perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement. SPSA may consider assuming part or all of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.
3. SPSA encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.

**D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure.**

SPSA is willing to enter into comprehensive agreements with private entities which have formed business associations such as joint ventures and limited liability companies. In such cases, however, SPSA will expect one or more of the principal members of the business association to provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Every individual, corporation and/or other business interested in entering into a public-private partnership with SPSA under the provisions of the PPEA or the PPTA must be willing to provide this security if its bid/proposal is submitted as part of a joint venture, limited liability company or other business entity that limits the liability of its members, owners or partners.