

City of Suffolk

Implementation Procedures and Guidelines

for the

Public-Private Education Facilities and Infrastructure

Act of 2002

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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575.1 to -575.16 (LNMB Supp. 2002) (the “PPEA”), grants a public entity, the City of Suffolk, the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion.

Section 56-575.16 of the PPEA provides that a public entity having the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project (a “responsible public entity”) may not consider any unsolicited proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with the PPEA. Accordingly, the City Council (the “Council”) of the City of Suffolk adopted these procedures and guidelines on August 18, 2004.

The PPEA contains a broad definition of a qualifying project that includes public buildings and facilities of all types; for example:

- (i) An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) A building or facility for principal use by any public entity;
- (iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility and telecommunications and other communications infrastructure;
- (v) A recreational facility;
- (vi) Technology infrastructure; or
- (vii) Certain service contracts (i.e. an operator for transportation services to be provided by a qualifying transportation facility in exchange for such service payments and other considerations as the City deems appropriate.)

This definition includes not only facilities for use for K-12 education and at colleges and universities, but also public buildings and facilities of all types, including offices, hospitals, fire and rescue facilities, dormitories, water and wastewater treatment plants,

fiber optic and broadband communications systems, sports complexes and others. The statute does not limit the type of activity to a new construction, but also includes renovation, expansion, operation, and maintenance of a qualifying project.

II. GENERAL PROVISIONS

A. Proposals

1. Pursuant to Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Bid/Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). In either case, any such proposal shall be clearly identified as a “PPEA Proposal.”

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the City for that particular proposal and shall be consistent with all applicable provisions of the PPEA.

3. Any Unsolicited Proposal shall be submitted to the City by delivering one original and six (6) complete copies, together with the required initial review fee, to the Department of Finance, Purchasing Division, 441 Market Street, Suffolk, VA 23434. Other requirements for an Unsolicited Proposal are as set forth below in § IV. The City Manager is authorized to designate a working group to be responsible for reviewing and evaluating all unsolicited proposals.

4. The City may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.

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

B. Affected Local Jurisdictions

1. The term “affected local jurisdiction” includes any county, city or town in which all or a portion of a qualifying project is located.

2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the City as the responsible public entity for a qualifying project must provide

any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the City. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the City and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction's local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The City will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the City may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

C. Review Fees

1. A review fee will be charged a private entity submitting an Unsolicited Proposal to the City, to cover the City's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to City staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, and financial advisors, used by the City in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the City's costs.

2. Such fees shall be imposed based on the reasonably anticipated costs to the City in accordance with the following schedule:

a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the City in order for the City to proceed with its review. The initial fee shall be one percent (1%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 nor more than \$25,000, regardless of the anticipated total cost. Such sum shall be paid with certified funds.

b. Additional fees. If the City determines that the proposal is a qualifying project as described above, and to proceed with publications and further stages of review, additional fees may apply. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the City reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The City will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the City will continue to process, review, and evaluate the proposal.

c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the City's total costs incurred in processing, reviewing, and

evaluating the proposal, the City shall reimburse the difference. Otherwise, the City shall retain all fees paid.

D. Virginia Freedom of Information Act

1. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act (“FOIA”) except as provided by § 56-575.4(G) of the PPEA.

2. To prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to § 56-575.4(G) of the PPEA, the private entity submitting the information must (i) invoke the exclusion from FOIA when the data or materials are submitted to the City or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the City as to the anticipated scope of protection prior to submitting the proposal. The City is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire 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 designated portions of a proposal be protected from disclosure as confidential and proprietary, the City 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 or the scope thereof differs from the private entity’s request, then the City will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the City to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration.

E. Use of Public Funds

Virginia constitutional and statutory requirements and City ordinances and policies as they apply to appropriation and expenditure of public funds apply to any 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.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the City to comply with all other applicable law not in conflict with the PPEA. Article 6 *Ethics in Public Contracting* of the Virginia Public Procurement Act (the VPPA) is hereby incorporated herein by reference. Otherwise, the applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA and herein.

III. SOLICITED BID/PROPOSALS

The City may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying facilities. Such bids or proposals may invite private entities to identify projects or may solicit proposals on individual projects identified by the City. The City 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 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 bids and proposals, including the City's website. 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. Pre-proposal conferences may be held as deemed appropriate by the City.

IV. UNSOLICITED PROPOSALS

The PPEA permits the City to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate a qualifying facility.

The process for evaluating an Unsolicited Proposal, described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the City's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the City will give public notice of the Unsolicited Proposal, and allow for submission of other competing proposals. In step three the City will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The City shall be afforded sufficient time as it deems necessary for complete review and evaluation of all proposals submitted; proposals shall remain valid and not revised, other than by the stated procedure, during this period. However, the City may, at its sole

discretion, discontinue its evaluation of any proposal at any time. Furthermore, if the City determines that it is in the City's interest to do so with respect to any Unsolicited Proposal, the City may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

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

2. If the City chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall post a notice on the bid board regularly used by the City for posting bids and proposals and on the City's web site for a period of not less than 45 days. The City shall also publish the same notice in a newspaper of general circulation in the City to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have adequate time as specified in the notice, but in no event less than 45 days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the City (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the private entity based on the proposal, and (iv) will accept for simultaneous consideration any competing unsolicited proposals that comply with the procedures adopted by the City and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. During the 45-day period for receiving competing Unsolicited Proposals, the City may continue to evaluate the original Unsolicited Proposal.

B. Contents of Initial Submission

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable the City to evaluate the practicality and sufficiency of the proposal. The private entity may request that the City consider a two-step proposal process, consisting of an initial conceptual submission to be followed by a more detailed submission.

2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the City. Project benefits to be considered may occur during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the City of the financial feasibility of the proposed project, including but not limited to (a) the identity of

any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the City to provide resources for financing the project and the nature and extent of any such resources. The scope of work shall be of sufficient detail to identify the level of quality of the project commensurate with recognized design standards or by project qualities established or prescribed by the City of Suffolk for a given project.

3. The City may require additional submissions to clarify information previously provided or to address other areas of concern to the City.

C. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the City for further review at the conceptual stage.

2. The City will determine at this initial stage of review whether it will proceed using procurement through competitive sealed bidding as defined in the VPPA or procedures developed by the City that are consistent with procurement of other than professional services through competitive negotiation as defined in the VPPA.

3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the City may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. At all times the City retains the right to reject any proposal at any time for any reason whatsoever.

D. Format for Submissions at the Conceptual Stage

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the City may request:

1. Qualifications 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 (over \$1,000,000) in the structure fits into the overall team. All members of the operator's team, including major subcontractors (over \$1,000,000) known to the private entity must be identified at the time a proposal is submitted for the Conceptual Stage. Identified team members, including major subcontractors (over \$1,000,000), may not be substituted or replaced once a project is approved and comprehensive agreement entered into, without the written approval of the

City. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor.

b. Describe the experience of the firm or consortium of firms making the proposal and the key principals and project managers involved in the proposed project including experience with projects of comparable size, value, quality and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the firm or consortium of firms. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses 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 or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.

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

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

The State and Local Government Conflict of Interests Act, at Virginia Code § 2.2-3101, defines “parent-subsiary relationship” as “a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation.” In the same Code section, the Act defines “affiliated business entity relationship” as “a relationship, other than parent-subsiary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities.”

g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

h. Identify all known contractors or service providers, including but not limited to the providers of architectural services, real estate services, financial services, and legal services, provide the following information:

(1) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

(2) A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years any of the following conduct:

- (A) Bankruptcy filings
- (B) Liquidated damages
- (C) Fines, assessments or penalties
- (D) Judgments or awards in contract disputes
- (E) Contract defaults, contract terminations
- (F) License revocations, suspensions, other disciplinary actions
- (G) Prior debarments or suspensions by a governmental entity
- (H) Denials of prequalification, findings of non-responsibility
- (I) Safety past performance data, including fatality incidents, “Experience Modification Rating,” “Total Recordable Injury Rate” and “Total Lost Workday Incidence Rate”
- (J) Violations of any federal, state or local criminal or civil law
- (K) Criminal indictments or investigations
- (L) Legal claims filed by or against the firm

i. Worker Safety Programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

2. Project Characteristics

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

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

c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.

d. Identify any anticipated adverse social, economic and environmental impacts of the project measured against the City's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental assessment has been completed.

e. Identify the projected positive social, economic and environmental impacts of the project measured against the City's comprehensive land use plan and applicable ordinance and design standards.

f. Identify the proposed schedule for the work on the project, including sufficient time for the City's review and the estimated time for completion.

g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the City'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. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet. Define applicable quality standards to be adhered to for achieving the desired product outcome(s).

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.

c. Include a list and discussion of assumptions underlying all major elements of the plan.

d. Identify all anticipated 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 private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment, both one-time and on-going.

f. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

g. Outline what impact, if any, a drop in interest rates would have on the ultimate project cost. Indicate if there is a method to refinance for cost savings. Indicate who would receive the benefit of any cost savings from a refinancing. Would the savings go to the City, would the savings be shared to what extent, or does the firm only receive benefit of this potential?

h. Outline the financial penalties, if any, that would result should the City wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.

i. If the firm has already chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(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. if the firm has not yet chosen an underwriter(s), the City reserves the right to have input into the selection of that underwriter(s).

4. Project Benefit and Compatibility

a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the City, including tax revenue to be generated, the number of jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.

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 timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

d. Explain whether and, if so, how the project is critical to attracting or maintaining competitive industries and businesses to the City or the surrounding region.

e. Explain whether and, if so, how the project is compatible with the City's comprehensive plan (including related environmental and land use ordinances, where applicable), infrastructure development plans, transportation plans, capital improvements budget and capital budget or other government spending plan.

f. Explain how quality standards of the project will be satisfied in comparison with the qualities anticipated or proposed by the City of Suffolk for the project.

g. Provide rationale for pursuing this project under the PPEA versus the City's traditional methods of procurement.

E. Format for Submissions at the Detailed Stage

If the City decides to proceed to the detailed phase of review with one or more Unsolicited Proposals, then the following information must be provided by the private entity unless waived by the City:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site.

3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;

4. Detailed description of the proposed participation, use and financial involvement of the City. Include the proposed terms and conditions for the project;

5. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.

6. A statement and strategy setting out the plans for securing all necessary property and easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the City or affected jurisdiction to condemn.

7. A detailed listing of all firms, to include 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 for performance.

8. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), 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.

9. 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.

10. 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.

11. Demonstration of consistency with appropriate City and/or affected jurisdiction comprehensive or infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.

12. Sufficient design and engineering detail to establish floor plans, elevations, and site characteristics.

13. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.

14. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders and legal compliance.

15. Identify the officers and directors of the firm or firms submitting the proposal and any known conflicts of interest or other factors that may impact the City's consideration of the proposal

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

The State and Local Government Conflict of Interests Act, at Virginia Code § 2.2-3101, defines "parent-subsidary relationship" as "a relationship that exists when one corporation directly or indirectly owns shares possessing more than 50 percent of the voting power of another corporation." In the same Code section, the Act defines "affiliated business entity relationship" as "a relationship, other than parent-subsidary relationship, that exists when (i) one business entity has a controlling ownership interest in the other business entity, (ii) a controlling owner in one entity is also a controlling

owner in the other entity, or (iii) there is shared management or control between the business entities. Factors that should be considered in determining the existence of an affiliated business entity relationship include that the same person or substantially the same person own or manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees or otherwise share activities, resources or personnel on a regular basis; or there is otherwise a close working relationship between the entities.”

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

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

19. Additional material and information as the City may request.

V. PROPOSAL EVALUATION AND SELECTION CRITERIA

The following items, along with the required specified information shall be considered in the evaluation and selection of PPEA proposals. However, the City retains the right to reject any proposal at any time for any reason whatsoever.

A. Qualifications and Experience

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

1. Experience with similar projects of comparable scope & value;
2. Demonstration of ability to perform work at the appropriate level of quality standards;
3. Demonstrated record of successful past performance, including timeliness of delivery of project, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;

5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
9. Financial condition; and
10. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics along with information already specified include:

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

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 are not necessarily limited to:

1. Cost and cost benefit to the City;
2. Financing and the impact on the debt or debt burden of the City;
3. Financial plan including overall feasibility and reliability of plan; default implications; operators past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquires or studies.
4. Estimated cost; including debt source, operating costs, etc.;
5. Life-cycle cost analysis; and
6. The identity of any third party that will provide financing for the project and the nature and timing of their commitment.
7. Comparable costs of other project delivery methods.

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 are not necessarily limited to:

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with City, regional, and state economic development efforts.
6. Compatibility with City and affected jurisdiction's land use and transportation plans.
7. Fiscal impact to the City of Suffolk in terms of revenues and expenditures.

8 Economic output of the project in terms of jobs and total economic impact on the local economy.

VI. COMPREHENSIVE AGREEMENT

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the City as provided by the PPEA. Any such comprehensive agreement, and any amendment thereto, must be approved by the City Council before it is entered into on behalf of the City.

As provided by the PPEA, the terms of the comprehensive agreement shall include but 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, in the forms and amounts satisfactory to the City and in compliance with Virginia Code §2.2-4337 for those components of the qualifying project that involve construction.
2. Review and approval of plans and specifications for the qualifying project by the City;
3. The right of the City to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. Maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. Monitoring of the practices of the operator by the City to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the operator will reimburse the City for services provided by the City;
7. The terms under which the operator will file appropriate financial statements on a periodic basis;
8. Policies and procedures governing the rights and responsibilities of the City and the operator 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 operator by the City and the transfer or purchase of property or other interests of the operator by the City;

9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made.

10. A copy of any service contract shall be filed with the City

11. A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.

12. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project; and

13. Any other provisions required by applicable law.

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

VII. GOVERNING PROVISIONS

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