



ALEXANDRIA CITY PUBLIC SCHOOLS

**GUIDELINES FOR THE IMPLEMENTATION OF THE PUBLIC-PRIVATE
EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002,
AS AMENDED**

November 11, 2021

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I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575 et seq.) (“PPEA”) authorizes the Alexandria City School Board dba Alexandria City Public Schools (hereinafter referred to as “ACPS”), to enter into public-private partnership agreements to develop needed qualifying projects in a more timely and/or less costly manner.

Private entities may include innovative technical and financing methods in their proposals and shall be strictly accountable for their representations and information.

All definitions including information regarding the definition of qualifying projects eligible for project consideration under these guidelines, applicability of the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*) (“FOIA”) to submissions, the ACPS’s reservation of rights, conditions on use of public funds, and applicability of other laws can be found in **APPENDIX A. General Provisions** of these guidelines.

The ACPS adopted these Guidelines on November 11, 2021 (the “Guidelines”). ACPS staff shall seek authorization from the Board prior to executing any Interim Agreement or Comprehensive Agreement. ACPS staff will follow these Guidelines in receiving and evaluating any Proposal submitted to APCS under the provisions of the PPEA. ACPS staff will make recommendations to the Board regarding whether to accept or reject any Unsolicited PPEA Proposal, or to proceed with solicitation for a Qualifying Project in the absence of an Unsolicited PPEA Proposal, but only the Board may authorize the ACPS Procurement Officer to enter into an Interim Agreement or a Comprehensive Agreement with a Private Entity.

II. UNSOLICITED PPEA PROPOSALS

A. Proposal Submission

An Unsolicited PPEA Proposal may be submitted by a Private Entity (“Proposing Private Entity”) to ACPS at any time. The Proposal shall be clearly identified as an “Unsolicited PPEA Proposal.” To be considered, one (1) original hard copy and one (1) electronic copy of any Unsolicited PPEA Proposal must be submitted along with the applicable Proposal Review Fee to the Office of Procurement and General Services, Procurement Director, 1340 Braddock Road, Suite 620, Alexandria, Virginia 22314. It shall be the responsibility of the Proposing Private Entity submitting an Unsolicited PPEA Proposal to make sure that the Unsolicited PPEA Proposal is received in the correct office at this address.

B. Minimum Required Content of Unsolicited PPEA Proposals

1. Unsolicited PPEA Proposals should be prepared simply and economically, providing a concise description of the capabilities of the Proposing Private Entity to complete the Proposed Project and the benefits to be derived from the Proposed Project by ACPS.
2. At a minimum, an Unsolicited PPEA Proposal shall contain the following information, any portion of which may be waived by ACPS in its sole discretion upon request:
 - a. A topographic map (1:2,000 or other appropriate scale) indicating the location of the Proposed Project;
 - b. A description of the Proposed Project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the Proposed Project to include the

- proposed major responsibilities and timeline or activities to be performed by both ACPS and the Proposing Private Entity;
- c. A description of the anticipated benefit to ACPS from proceeding with the Proposed Project, including a Cost-Benefit Analysis;
 - d. A statement setting forth the method by which the Proposing Private Entity proposes to secure necessary property interests required for the Proposed Project;
 - e. A list of all permits and approvals required for the Proposed Project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
 - f. A list of public utility facilities, if any, that will be crossed by the Proposed Project and a statement of the plans of the Proposing Private Entity to accommodate such crossings;
 - g. A statement setting forth the Proposing Private Entity's general plans for financing the Proposed Project including the sources of the Private Entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the Proposing Private Entity, containing enough detail to allow an analysis by ACPS of the financial feasibility of the Proposed Project;
 - h. A statement of the steps which have been taken to identify anticipated public support and opposition, a description of such support and opposition, or both, and a statement of the steps which have been taken in the Proposal to address such opposition;
 - i. Detailed information on the qualifications and experience needed for the Proposed Project to succeed and how the Proposing Private Entity satisfies those standards;
 - j. The names and addresses of the persons who may be contacted for further information concerning the request;
 - k. User Fees, Lease Payments, and other Service Payments over the term of the Interim Agreement or Comprehensive Agreement and the methodology and circumstances for changes to such User Fees, Lease Payments, and other Service Payments over time; and
 - l. Such additional material and information as ACPS may reasonably request.

C. Review and Evaluation of Unsolicited PPEA Proposals

1. Proposal Review Fee for Unsolicited PPEA Proposals

The PPEA authorizes ACPS to charge a reasonable fee to cover the costs of processing, reviewing and evaluating Unsolicited PPEA Proposals. The Proposal Review Fee may be applied by ACPS to cover the costs of such analysis. Any fee charged for such review of an Unsolicited PPEA Proposal should be reasonable in comparison to the level of expertise required to review the Unsolicited PPEA Proposal and should not be greater than the direct costs associated with evaluating the Proposed Project. These costs may include the fees and costs of outside professionals. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the Unsolicited PPEA Proposal and (ii) the amounts paid to the outside professionals. If the total of the analysis costs is estimated to exceed the initial Proposal Review Fee, or the final cost exceeds the Proposal Review Fees previously paid by the Proposing Private Entity, the Proposing Private Entity shall pay such additional fees before ACPS will continue to process, review and evaluate the Unsolicited PPEA Proposal.

- a. A Proposal Review Fee of Two Thousand Five Hundred Dollars (\$2,500.00) shall accompany an initial Unsolicited PPEA Proposal. Such Initial Fee shall be paid with certified funds.

2. ACPS shall, within sixty (60) days from receipt of the Unsolicited PPEA Proposal and the Proposal Review Fee, make a “pre-evaluation determination” whether the Proposed Project is reasonably likely, subject to further review, to be a Qualifying Project and if so whether ACPS has sufficient interest to pursue further review. If the Proposed Project either is not reasonably likely to be a Qualifying Project or ACPS is not interested in further review of the Proposed Project, the Proposing Private Entity shall be so notified and the Proposal, all documents submitted therewith, and the Proposal Review Fee, shall be returned to the Proposing Private Entity.
3. If ACPS determines that the Proposed Project is reasonably likely to be a Qualifying Project and that ACPS has sufficient interest to pursue further review, the Proposing Private Entity shall be so notified and the Proposal Review Fee may be applied to cover the costs of processing, reviewing and evaluating the Unsolicited PPEA Proposal.
4. Proposing Private Entities submitting an Unsolicited PPEA Proposal may be required to follow a two-part, Conceptual State and evaluation, Unsolicited PPEA Proposal submission process. All Unsolicited PPEA Proposals shall be considered Conceptual Stage PPEA Proposals. The purpose of the Conceptual Stage is to permit ACPS to determine if the Proposed Project is a Qualifying Project which ACPS is interested in pursuing. ACPS may require the Proposing Private Entity to submit further information or respond to questions with such additional detail as ACPS in its sole discretion may determine is necessary in order to complete its Conceptual Stage review and evaluation.
5. To evaluate an Unsolicited PPEA Proposal, ACPS shall conduct an analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs and cost benefits of the Proposed Project. This review and evaluation shall include, but is not limited to:
 - a. A determination whether there is a public need for or benefit derived from the Proposed Project sufficient to justify further consideration;
 - b. The estimated cost of the Proposed Project in relation to similar facilities;
 - c. Whether the information provided supports a conclusion that the Unsolicited PPEA Proposal will result in the timely development or operation of the Proposed Project;
 - d. Whether the Proposing Private Entity appears to be financially responsible and competent to carry out the Unsolicited PPEA Proposal;
 - e. Whether the Unsolicited PPEA Proposal complies with the requirements of the PPEA and of these Guidelines.
 - f. If ACPS determines in writing that it has in its employ staff with sufficient expertise to conduct the necessary analysis, such analysis may be conducted by ACPS staff. Otherwise, ACPS shall, or even if it has sufficient expertise in its employ may, engage the services of qualified professionals not otherwise employed by ACPS, such as but not limited to attorneys, financial advisors, architects, professional engineers, certified public accountants, or other consultants as ACPS may in its sole discretion determine are necessary for a proper evaluation of the Unsolicited PPEA Proposal.
 - g. The Proposal Review Fee may be applied to all costs incurred in this review and evaluation process, including without limitation reasonable attorneys’ fees and fees for financial, technical, and other necessary advisors or consultants and reasonable compensation to ACPS for its staff time devoted to such review and evaluation.

6. Within ninety (90) days from notification to the Proposing Private Entity that ACPS intends to proceed with further review of the Unsolicited PPEA Proposal, ACPS shall make an initial determination whether to proceed with the Unsolicited PPEA Proposal for a Qualifying Project. Failure to render a determination within such time, or to notify the Proposing Private Entity that the time for making such determination is being extended to a specified date not to exceed an additional sixty (60) days shall be deemed a determination that ACPS does not intend to proceed with the Unsolicited PPEA Proposal.
7. If ACPS determines not to proceed with an Unsolicited PPEA Proposal after the Conceptual Stage review and evaluation, ACPS shall return the Proposal, together with all unexpended fees and accompanying documentation, to the Proposing Private Entity. If the Unsolicited PPEA Proposal purports to develop specific cost savings within the meaning of Virginia Code §56-573(D), then ACPS shall specify the basis for its rejection.
8. Proposed Project benefits to be considered by ACPS in evaluating an Unsolicited PPEA Proposal are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the Proposed Project.
9. To assist in its evaluation, ACPS may require clarifications or modifications of the Unsolicited PPEA Proposal during the Conceptual Stage without requiring a complete re-submittal of a complete amended Unsolicited PPEA Proposal. Additional copies of a complete amended Unsolicited PPEA Proposal as modified may be required of the Proposing Private Entity at the conclusion of the Conceptual Stage.
10. ACPS may establish criteria pursuant to which the Proposing Private Entity may provide further details and clarification to the submission. If ACPS determines additional information is necessary before it can make a decision on whether or not to proceed, ACPS may request, and the Proposing Private Entity shall provide, a more detailed Unsolicited PPEA Proposal which should refine the Proposed Project in greater detail, contain specified deliverables, and address any questions raised by ACPS. It is solely at the discretion of ACPS to determine whether to proceed to the Detailed Stage and request additional information, or to make its decision on the basis of the information submitted in the initial Unsolicited PPEA Proposal.
11. If, following such analysis, ACPS determines that it is in the best interests of ACPS to proceed to the publication stage, further proceedings shall be as set forth in Part VI.F, “Publication of Decision to Proceed with Qualifying Project Resulting from an Unsolicited PPEA Proposal” and Part VII, “Advertisement of Solicited Bids/Proposals and of Accepted Unsolicited PPEA Proposals.” If the determination is that it is not in the best interests of ACPS to proceed to the publication stage, the Proposing Private Entity shall be so informed, any unexpended fees returned to the Proposing Private Entity, and the file closed.
12. ACPS may discontinue its evaluation of an Unsolicited PPEA Proposal at any time for any reason. If an Unsolicited PPEA Proposal is rejected after the pre-evaluation determination but before the Conceptual Stage review and evaluation is completed, the Unsolicited PPEA Proposal and all documentation submitted therewith, and all fees paid by the Proposing Private Entity, shall be returned to the Proposing Private Entity.

D. Encouraging Unsolicited PPEA Proposals

ACPS may publicize its needs for any procurement which could become a Qualifying Project without issuing an ITB/RFP in order to encourage Private Entities to submit Proposals to address those needs without issuing a complete ITB/RFP. Any Proposals received which are not in response to an issued ITB/RFP shall be processed as an Unsolicited PPEA Proposal.

E. Requirement to Solicit Competing Proposals

To ensure ACPS receives the best value for any Qualifying Project, ACPS may seek and encourage competing unsolicited Proposals before it may make any award.

F. Publication of Decision to Proceed with Qualifying Project Resulting from an Unsolicited PPEA Proposal

1. If ACPS decides to proceed with a Qualifying Project resulting from an Unsolicited PPEA Proposal, it shall, within ten (10) working days after its decision to proceed with an Unsolicited PPEA Proposal, give written notice of such Acceptance to the Proposing Private Entity and post on eVA website and in any other locations that it may use for publication of an ITB/RFP a Notice of Acceptance of Unsolicited PPEA Proposal.
2. The Notice of Acceptance of Unsolicited PPEA Proposal shall remain posted for a period of not less than ten (10) calendar days.
3. The Notice of Acceptance of Unsolicited PPEA Proposal shall state that:
 - a. ACPS will receive for simultaneous consideration any competing Proposals that comply with these Guidelines and the PPEA, and
 - b. at least one (1) copy of the Unsolicited PPEA Proposal shall be available upon request, subject to any applicable restrictions under the FOIA or the PPEA.
4. In addition to the posting requirements, at least one (1) copy of the Accepted Unsolicited PPEA Proposal shall be made available for public inspection, subject to applicable FOIA requirements and any applicable restrictions under the PPEA, at the office of the Procurement Agent. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
5. The ITB/RFP, as applicable, for the Qualifying Project shall be published contemporaneously with the Notice of Acceptance of Unsolicited PPEA Proposal as provided in Part VII.C.

III. ADVERTISEMENT OF SOLICITED BIDS/PROPOSALS AND OF ACCEPTED UNSOLICITED PPEA PROPOSALS

A. ACPS Solicitation of PPEA Proposals

ACPS may identify projects it deems to be Qualifying Projects and issue ITBs or RFPs, depending on whether the means of procurement is through competitive sealed bidding or competitive negotiation, inviting Bids/Proposals from Private Entities to acquire, construct, improve, renovate, expand, maintain or operate Qualifying Projects or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.

B. Information Regarding Format and Supporting Information for Bid/Proposal

Whether the solicitation is for a Qualifying Project initiated by ACPS or the result of Acceptance of an Unsolicited PPEA Proposal, ACPS will set forth in the ITB/RFP the format and supporting information that is required to be submitted in the Bid/Proposal, consistent with the provisions of these Guidelines, the ACPS Procurement Manual, and the PPEA. The ITB/RFP shall include the following information:

1. If the ITB/RFP is the result of an Accepted Unsolicited PPEA Proposal, a summary of the Unsolicited PPEA Proposal which has been Accepted for a Qualifying Project;
2. If the ITB/RFP is the result of an Accepted Unsolicited PPEA Proposal, the location where a copy of the Unsolicited PPEA Proposal is available for public inspection;
3. Whether any Comprehensive Agreement which may result from the Proposals submitted will be awarded through competitive sealed bidding or through competitive negotiation consistent with the procedures for procurement of “other than professional services” through competitive negotiation as set forth in the VPPA;
4. If the procedure for award of a Comprehensive Agreement is through competitive sealed bidding, the ITB shall specify the method by which the responsible Bidder submitting the lowest responsive Bid will be determined;
5. The ITB/RFP shall state that ACPS may negotiate an Interim Agreement which may lead to a Comprehensive Agreement with the successful Bidder or Offeror based on the Bid or Proposal;
6. An ITB/RFP may include requirements which vary from those set forth in these Guidelines, but no Bid/Proposal evaluation procedures or ITB/RFP requirements which are inconsistent with the general intent of these Guidelines or of the PPEA shall be included;
7. The ITB/RFP should specify, but 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;
8. The ITB/RFP should contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the Bidders/Offerors;
9. Pre-Bid/pre-Proposal conferences may be held as deemed appropriate by ACPS.
10. The ITB/RFP shall contain sufficient information as to provide potential Bidders/Offerors a reasonable basis to understand the nature, characteristics, purposes and determination of public benefit for the Qualifying Project on which they are submitting a Bid/Proposal;
11. The ITB/RFP should be publicized in the same manner provided for publication of ITBs/RFPs; and
12. Such other information and requirements as in the opinion of ACPS may be necessary to inform potential Bidders/Offerors of the nature of the Qualifying Project and of the

requirements for its performance so as to encourage potentially responsible Bidders/Offerors to participate.

C. Advertising Requirements

1. For a Qualifying Project initiated by ACPS, an ITB/RFP as determined by ACPS to be applicable may be issued at such time as determined by ACPS to be most advantageous and in compliance as applicable.
2. For an Accepted Unsolicited PPEA Proposal, within ten (10) working days following issuance by ACPS to the Proposing Private Entity of Notice of Acceptance of Unsolicited PPEA Proposal, ACPS shall, in addition to posting of the Notice of Acceptance of Unsolicited PPEA Proposal as provided in Part VI.F, commence advertisement of the ITB/RFP.

D. Procedure for Competitive Sealed Bidding

If the procedure for procurement is through competitive sealed bidding, the following procedures shall be applicable:

1. When, due to the nature or complexity of (i) the Qualifying Project, (ii) the Lease Payments, (iii) the Revenues, (iv) the Service Contract, (v) the Service Payments, (vi) the User Fees, or (vii) any other factor as reasonably determined by ACPS, it is impractical to prepare initially a purchase description to support an award based on prices, ACPS shall pre-qualify potential Bidders pursuant to the provisions of VA. CODE ANN. § 2.2-4317.
2. If following pre-qualification ACPS elects to proceed with the Qualifying Project, Bids may be solicited from the Pre-Qualified Bidders by ITB. The ITB shall set forth all factors which will be considered in determining the acceptability of the Bid as provided in VA. CODE ANN. § 2.2-4302, which may include special qualifications of potential Private Entities in addition to those satisfied by pre-qualification, life-cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, and factors particularly applicable to the form, substance and characteristics of the Qualifying Project which are helpful in determining acceptability of Bidders and Bids. The ITB also shall state how price will be determined based on Lease Payments, Revenues, Service Payments, User Fees, or any other expense to ACPS or benefit to be received by ACPS from the Qualifying Project.
3. Award, if made, shall be made to the responsible, acceptable Bidder submitting a responsive and acceptable Bid at the lowest price.
4. Award, if made, will result in a Comprehensive Agreement or an Interim Agreement followed by a Comprehensive Agreement pursuant to the provisions of Part VII, INTERIM AND COMPREHENSIVE AGREEMENTS.

E. Procedure for Competitive Negotiation

1. If the procedure for procurement is through Competitive Negotiation, ACPS may use a two-part Proposal process consisting of an initial Conceptual Stage and a Detailed Stage. It shall be at the sole discretion of ACPS whether a Detailed Stage is necessary to make a

determination whether to proceed with an Interim Agreement and/or a Comprehensive Agreement.

2. The RFP shall state how price will be determined for purposes of inclusion in the evaluation process, based on Lease Payments, Revenues, Service Payments, User Fees, or any other expense to ACPS or benefit to be received by ACPS from the Qualifying Project.
3. The RFP shall inform potential Offerors that ACPS will consider price as one factor in evaluating the Proposals received, but may provide that price is not the controlling factor. Other factors that may be identified in the RFP as to be considered in evaluating Proposals, in addition to those otherwise referenced in these Guidelines, are (i) the proposed cost of the Qualifying Project; (ii) the general reputation, industry experience, and financial capacity of the Private Entity; (iii) the proposed design of the Qualifying Project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under these Guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the Private Entity's compliance with, or good faith efforts to comply with, a participation plan for small businesses, minority owned businesses, women owned businesses, service disabled veteran-owned businesses, and employment services organizations; (viii) the Private Entity's plans to employ local contractors and residents; and (ix) other criteria that ACPS deems appropriate.
4. ACPS may determine from the content of the Conceptual Stage Proposals if any Offeror has failed to meet the requirements of the RFP to a sufficient degree that they will not be invited to participate in the Detailed Stage. The remaining Offerors will be invited to submit Detailed Stage Proposals, from which ACPS will make the determination with which Offeror or Offerors to enter into negotiations as provided in the VPPA for competitive negotiation.

IV. GUIDELINES FOR DETERMINATION OF A QUALIFYING PROJECT

- A. ACPS may grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or facility needed by ACPS, or the design or equipping of a Qualifying Project so developed or operated, if ACPS determines that the project serves the public purpose of the PPEA and these Guidelines. ACPS may determine that the development or operation of the Qualifying Project serves such public purpose if:
 1. There is a public need for or benefit derived from the Qualifying Project;
 2. The estimated cost of the Qualifying Project is reasonable in relation to similar facilities; and
 3. The Proposing Private Entity's plans will result in the timely development or operation of the Qualifying Project.

B. Necessity for Board Approval

Any approval of a Qualifying Project shall be subject to the Private Entity selected for the Qualifying Project entering into an Interim Agreement or Comprehensive Agreement with ACPS after Board approval of the proposed Interim Agreement or proposed Comprehensive Agreement.

C. Time for Completion

In connection with its approval of a Qualifying Project, ACPS shall establish a date for the commencement of activities related to the Qualifying Project. ACPS may extend such date from time to time at its sole discretion based upon all circumstances affecting the Qualifying Project.

V. GUIDELINES FOR REVIEW AND EVALUATION OF PROPOSALS OR BIDS

- A.** ACPS shall determine during the Conceptual Stage for Unsolicited PPEA Proposals, and prior to issuance of an RFP or ITB for solicited Qualifying Projects, whether award of any Comprehensive Agreement will be accomplished through:
1. Procurement through Competitive Sealed Bidding according to these Guidelines for PPEA projects and consistent with the VPPA; or
 2. Procurement through Competitive Negotiation for procurement of “other than professional services” through Competitive Negotiation and consistent with the VPPA for such form of procurement. Provided, however, ACPS may proceed using such Competitive Negotiation rather than Competitive Sealed Bidding only if it first makes a written determination that doing so is likely to be advantageous to ACPS and the public based upon either (i) the probable scope, complexity or urgency of need for the Qualifying Project, or (ii) the 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 source or other economic benefit that would not otherwise be available.
- B.** In reviewing the Unsolicited PPEA Proposal and any competing Proposals submitted in accordance with any solicitation or invitation, and in reviewing any Bids/Proposals submitted in response to an ITB/RFP, ACPS shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by ACPS, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a Private Entity for approval of a Qualifying Project unless ACPS makes a written determination that such analysis of an Unsolicited PPEA Proposal shall be performed by employees of ACPS.
- C.** ACPS at all times retains the right to reject any Proposal at any time for any reason whatsoever, including but not limited to a decision that it no longer wishes to proceed with the Proposed Project or the solicited Qualifying Project.

V. PROPOSAL PREPARATION AND SUBMISSION

- A.** Only Proposals complying with the requirements of these Guidelines and the PPEA, that contain sufficient information for a meaningful evaluation, and that are provided in an appropriate format in substantial compliance with the requirements of the ITB/RFP if applicable may be considered by ACPS for further review at the Conceptual Stage.
- B. Format for Submission of Proposals**
1. Unsolicited PPEA Proposals and Bids/Proposals in response to an ITB/RFP, collectively included in the term “Proposals,” shall contain information in the following areas: (i)

qualifications and experience, (ii) Project characteristics, (iii) Project financing, (iv) anticipated public support or opposition, or both, (v) Project benefit and compatibility and (vi) any additional information as ACPS may reasonably request including, but not limited to, information to comply with the requirements of the PPEA. All information required to be submitted in response to an ITB/RFP, will be set forth with specificity in the ITB/RFP. The Bid/Proposal information required by any such ITB/RFP will comply with the applicable requirements of the PPEA in effect at the time ACPS issues the ITB/RFP, and should not vary substantially from Bid/Proposal information required of a Bid/Proposal in these Guidelines.

2. ACPS has a standard form Comprehensive Agreement and General Conditions which shall be incorporated into any Unsolicited PPEA Proposal submitted to ACPS. Copies of these standard form documents are available by request from the Procurement Agent. These standard form documents may be modified by ACPS to accommodate the specific Qualifying Project identified in an ITB/RFP, or to accommodate the Proposed Project in an Unsolicited PPEA Proposal. A Proposing Private Entity may suggest modifications to the standard form documents as part of an Unsolicited PPEA Proposal. All such proposed modifications shall be identified with specificity in a separate attachment to the Unsolicited PPEA Proposal, with the justification for such change, including but not limited to any benefit to ACPS resulting therefrom, set forth in the attachment.
3. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding qualifications and experience should contain at least the following:
 - a. Identify the legal structure of the Proposing Private Entity.
 - b. Identify the organizational structure for the Project, the management approach and how each Private Entity in the organizational structure fits into the overall team assembled by the Proposing Private Entity to perform the Proposed Project (“Project Team”). The Proposing Private Entity should identify any Major Subcontractor (a “Major Subcontractor” is a Private Entity responsible for 10% or more of the reasonably anticipated cost of the Proposed Project that is proposed as a part of the initial Project Team), and those architecture/engineering firms which will be providing design services. All intended members of the Project Team (“Team Members”) known at the time the Proposal is submitted for the Conceptual Stage must be identified. Identified Team Members may not be substituted or replaced once an Unsolicited PPEA Proposal has been Accepted or a Bid/Proposal has been submitted to ACPS without the written approval of ACPS.
 - c. For each Team Member, a certification that it is authorized to transact business in the Commonwealth of Virginia as a domestic or foreign business entity if so required by Title 13.1 or Title 50 of the Virginia Code, including the identification number issued to it by the State Corporation Commission (SCC) or, if the Team Member is not required to be authorized to transact business in Virginia by the SCC a statement of the reasons why.
 - d. The Virginia contractor’s license or certificate for each Team Member required by law to be so licensed, including the number, issue date, expiration date, and classification(s). For any Team Member not required to have a Virginia contractor’s license or certificate, a statement of the reasons why.

- e. Describe the relevant experience of each Team Member and of the key personnel to be 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 each Team Member. Include the identity of any Team Members that will provide design, construction and completion, or financial guarantees and warranties and a description of such guarantees and warranties.
- f. Provide the names, addresses, and telephone numbers of persons within each Team Member who may be contacted for further information.
- g. Provide a current or most recently audited financial statement for each Team Member and for each owner of each such Team Member with an equity or controlling interest of twenty percent (20%) or greater.
- h. Identify any persons affiliated with any Team Member who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 et seq.
- i. Provide for each Team Member a statement listing all of the Team Member's prior projects and clients for the past five (5) years and contact information for same (name, address, telephone number and e-mail address). If a member of the Project Team has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the Proposed Project and, second, it shall include as many of its most recent projects as the required number permit.
- j. For each Team Member provide a brief summary of the safety performance record and current safety capabilities, including a summary of state and federal OSHA citations and records during the past five (5) years. ACPS reserves the right to determine, in its sole discretion, the extent to which safety records impact the qualifications of any Team Member.
- k. For each Team Member provide the following information:
 1. A sworn certification by an authorized representative of the Team Member attesting to the fact that the Team Member currently is not debarred or suspended by any federal, state or local government Entity;
 2. A mandatory disclosure and description by the Team Member for the past five (5) years of any of the following conduct or action taken by or against the Team Member:
 - a) Bankruptcy filings.
 - b) Assessing and/or being assessed liquidated damages.
 - c) The imposition of any fines, penalties or assessments.
 - d) Any judgments or decrees.
 - e) Legal claims or lawsuits filed by or against the Team Member, including both judicial proceedings and arbitrations.
 - f) Contract terminations (whether for default, convenience or otherwise).
 - g) License evocations, suspensions or other disciplinary actions.

- h) Prior debarments or suspensions by a non-governmental Entity.
 - i) Denials of prequalification.
 - j) Findings of non-responsibility.
 - k) Violations of any federal, state or local criminal or civil law.
 - l) Criminal indictments or investigations of the Team Member or any principals, officers, directors or owners of the Team Member.
4. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding Proposed Project characteristics should contain at least the following:
- a. Provide a description of the Proposed Project, including the conceptual design. Describe the Proposed Project in sufficient detail so that type and intent of the Proposed Project, the location, and the communities or areas that may be affected are clearly identified.
 - b. Identify and fully describe any work to be performed by ACPS.
 - c. Include a list of all federal, state and local permits and approvals required for the Proposed Project and a schedule for obtaining such permits and approvals.
 - d. Identify any anticipated adverse social, economic and environmental impacts of the Proposed Project. Specify the strategies or actions to mitigate known impacts of the Proposed Project.
 - e. Identify the projected positive social, economic and environmental impacts of the Proposed Project.
 - f. Identify the proposed schedule for the work on the Proposed Project, including the estimated time for completion.
 - g. Propose allocation of risk and liability for work completed beyond the Proposed Project's completion date to be included in the Comprehensive Agreement.
 - h. State assumptions related to ownership, legal liability, law enforcement and operation of the Proposed Project and the existence of any restrictions on ACPS's use of the Proposed Project.
 - i. Provide information relative to phased or partial openings of the Proposed Project prior to completion of the entire work.
5. Formatting and substantive information to be included in Proposals at the Conceptual Stage regarding Project Financing shall include at least the following information:
- 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 (as applicable) of the Proposed Project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan (if applicable) should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports such as but not limited to feasibility studies.
 - c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with

financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

- d. Identify the proposed risk factors and methods for dealing with these factors.
 - e. Identify any local, state or federal resources that the Proposing Private Entity contemplates requesting for the Proposed Project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of ACPS's credit or revenue.
 - f. Identify the amounts and the terms and conditions for any revenue sources.
 - g. Identify any aspect of the Proposed Project that could disqualify the Proposed Project from obtaining tax-exempt financing.
6. Formatting and substantive information to be included in Conceptual Stage Proposals regarding Project Benefit and Compatibility shall include at least the following information:
- a. Identify who will benefit from the Proposed Project, how they will benefit and how the Proposed Project will benefit the overall community, region, or state.
 - b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the Proposed Project.
 - c. 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 Proposed Project.
 - d. Describe the anticipated significant benefits to the community, region or state including anticipated benefits to the economic condition of ACPS and whether the Proposed Project is critical to attracting or maintaining competitive industries and businesses to the surrounding region.
 - e. Describe the Proposed Project's compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other government spending plan.
 - f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with the Proposed Project with regard to the following types of businesses: (i) minority-owned businesses; (ii) women-owned businesses, (iii) small businesses; (iv) service disabled veteran owned businesses; (v) employment service organizations.
7. Any additional information as ACPS may reasonably request or require.

C. Format for Submissions at Detailed Stage

If ACPS decides to proceed to the Detailed Stage of review with one or more Proposals submitted in response to an ITB/RFP, or determines the Detailed Stage of review is necessary prior to making an Acceptance determination for an Unsolicited PPEA Proposal, the following information should be provided by the Proposing Private Entities even if previously waived or deferred by ACPS, unless waived for the Detailed Stage review by ACPS or as otherwise requested by ACPS or set forth in an ITB/RFP issued by ACPS:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the Proposed Project.
2. A list of public utility facilities, if any, that will be crossed by the Proposed Project and a statement of the plans of the Proposing Private Entity to accommodate such crossings.
3. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the Proposing Private Entity intends to request ACPS to condemn.
4. Identify each Major Subcontractor and describe its scope of work, the qualifications and experience with respect to such scope of work and the Proposed Project, and how it fits into the overall Project Team.
5. For each Private Entity which or who has become a Team Member subsequent to submission of the Conceptual Stage Proposal, or for whom or for which the information required for Team Members was not provided as part of the Conceptual Stage Proposal, or for whom or for which such information was provided but no longer is correct, provide all current information required for Team Members as specified above.
6. 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 if in any way different from the Team Members with such responsibilities previously identified.
7. Detailed resumes for all key personnel for each Team Member.
8. A total life-cycle of costs, specifying methodology and assumptions of the Proposed Project and the proposed start date for the Proposed Project. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of Proposed Project revenues and Proposed 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. A sensitivity analysis should also be included to show the positive and adverse effects of significant variables, risks, and uncertainties on the projected cash flows, if applicable, and life-cycle costs.
9. A detailed discussion of assumptions about Lease Payments, Revenues, Service Contracts, Service Payments, User fees, and usage of the Proposed Project.
10. Identification of any known government support or opposition, or general public support or opposition for the Proposed 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 local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.

12. Explanation of how the Proposed Project would impact local development plans of each affected local area of the City of Alexandria.
13. Identification of any known conflicts of interest or other disabilities that may impact ACPS's consideration of the Proposal, including the identification of any persons in any way affiliated with any Team Member or the Proposed Project known to the Proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the Proposed Project pursuant to The Virginia State and Local Government Conflict of Interest Act, VA. CODE ANN. §§ 2.2-3100 et seq.
14. Each Team Member may be required to submit any or all performance evaluation reports or other documents which are in its possession evaluating the Team Member's performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful development, operation and completion of a project.
15. Additional material and information as ACPS may reasonably request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

The following are factors that may be considered by ACPS in the evaluation and selection of Unsolicited PPEA Proposals or Bids/Proposals in response to an ITB/RFP. In the event that an ITB/RFP is issued by ACPS, the factors to be considered will be set forth in the ITB/RFP and they may vary from those set forth in these Guidelines but will in any event be consistent with the intent of these Guidelines and in compliance with the applicable requirements of the PPEA in effect at the time ACPS issues the ITB/RFP.

A. Qualifications and Experience

Factors to be considered in either phase of ACPS's review to determine whether the Proposing Private Entity and its Project Team possess the requisite qualifications and experience may include, but shall not be limited to:

1. Experience, training and preparation with similar projects.
2. Demonstration of ability to perform work.
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plan, specifications, applicable laws and codes, quality of workmanship, cost-control and project safety.
4. Leadership structure.
5. Project manager's experience and the experience and capabilities of the Team Members and their key personnel.
6. Management approach.
7. Project staffing plans, the skill levels of the proposed workforce and the proposed safety plans for the Proposed Project.
8. Financial condition, bonding capacity, and insurance coverage of the Proposing Private Entity and other Team Members.

9. Proposed Project ownership.

B. Project Characteristics

Factors to be considered in determining the Proposed Project characteristics may include, but are not limited to:

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

C. Project Financing

Factors to be considered in determining whether the proposed financing for the Proposed Project allows adequate access to the necessary capital to finance the Proposed Project may include, but are not limited to:

1. Cost and cost benefit to ACPS.
2. Financing and the impact on the budget requirements of ACPS.
3. Financial plan, including the degree to which the Proposing Private Entity has conducted due diligence investigation and analysis of the proposed financial plan (including risk assessment and mitigation) and the results of any such inquiries or studies (including feasibility studies and forecasted cash flow sensitivity analyses).
4. Opportunity Cost assessment.
5. Estimated cost.
6. Life-Cycle Cost Analysis.
7. The identity, credit history, and past performance of any third party that will provide financing for the Proposed Project and the nature and timing of their commitment, as applicable.

8. Such other items as ACPS deems appropriate.

D. Project Benefit and Compatibility

Factors to be considered in determining the Proposed Project's compatibility with the appropriate local or regional comprehensive or development plans include, but are not 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 ACPS in the evaluation and selection of Unsolicited PPEA Proposals or a Bid/Proposal submitted in response to an ITB/RFP include, but are not limited to:

1. The proposed cost of the Proposed Project.
2. The general reputation, industry experience, and financial capacity of each firm included on the Project Team.
3. The proposed design of the Proposed Project.
4. The eligibility of the Proposed Project for accelerated documentation, review, and selection.
5. Local citizen and government comments.
6. Benefits to the public, including financial and nonfinancial.
7. The Proposing Private Entity's compliance with a participation plan or good faith efforts to comply with the goals of such a plan for the participation of small businesses, minority-owned businesses, women-owned businesses, service disabled veteran-owned businesses, and employment services organizations.
8. The Proposing Private Entity's plans to employ local contractors and residents.
9. Other criteria that ACPS deems appropriate.

F. Public Hearing During Proposal Review Process; Notice and Posting Requirements

1. At least thirty (30) days prior to entering into an Interim Agreement or Comprehensive Agreement, ACPS shall hold a public hearing on the Proposals that have been received. Such public hearing shall be conducted by the Procurement Agent or his designee.

2. Notice of the public hearing before the Procurement Agent or his designee shall be posted on eVA website and in any other locations that it may use for publication of an ITB/RFP, shall state the date, time and location of the public hearing, and shall be posted at least ten (10) days prior to the hearing date.
3. Once the negotiation phase for the development of an Interim Agreement or a Comprehensive Agreement is complete, but before an Interim Agreement or a Comprehensive Agreement is entered into, ACPS shall make available the proposed Interim Agreement or Comprehensive Agreement by posting notice of the proposed Interim Agreement or Comprehensive Agreement on eVA's website and in any other locations that it may use for publication of an ITB/RFP. Such notice shall provide:
 - a. A brief description of the Proposed Project.
 - b. A statement that ACPS is prepared to submit the proposed Interim Agreement or Comprehensive Agreement to the Board for acceptance.
 - c. That at least one (1) copy of the proposed Interim Agreement or Comprehensive Agreement is available for inspection in the office of the Procurement Director, subject to any applicable restrictions under the FOIA or the PPEA. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
 - d. That the proposed Interim Agreement or Comprehensive Agreement will be considered for acceptance by the Board at a public meeting to be held not less than ten (10) days after the posting of the Notice, with the date, time and location of the Board meeting included.
4. All posting and public inspection requirements shall be subject to applicable restrictions of FOIA or the PPEA.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the Qualifying Project, the selected Proposing Private Entity shall enter into a Comprehensive Agreement with ACPS. Prior to entering into a Comprehensive Agreement, an Interim Agreement may be entered into that permits a Private Entity to perform compensable activities related to the Qualifying Project. ACPS may designate a working group to be responsible for negotiating any Interim Agreement or Comprehensive Agreement but an Interim Agreement or Comprehensive Agreement must be approved by the Board before it may be signed by ACPS. Each Interim Agreement or Comprehensive Agreement shall define the rights and obligations of ACPS and the selected Private Entity with regard to the Qualifying Project.

A. Interim Agreement Terms

The scope of an Interim Agreement may include, but is not limited to:

1. Project planning and development.

2. Design and engineering.
3. Environmental analysis and mitigation.
4. Survey.
5. Ascertaining the availability of financing for the proposed Qualifying Project through financial and revenue analysis.
6. Establishing a process 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 that the parties may deem appropriate prior to the execution of a Comprehensive Agreement.

B. Comprehensive Agreement Terms

The terms of the Comprehensive Agreement shall include, but not be limited to, the following:

1. The delivery of maintenance, warranty, 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.
2. The review of plans and specifications for the Qualifying Project by ACPS, and incorporation of modifications as suggested or directed by ACPS.
3. The rights of ACPS to inspect the Qualifying Project at all stages of its development and/or construction to ensure compliance with the Comprehensive Agreement.
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the Qualifying Project and the tort liability to the public and employees, and to enable the continued operation of the Qualifying Project.
5. The monitoring of the practices of the Operator by ACPS to ensure proper maintenance.
6. The terms under which the Operator will reimburse ACPS for services provided if applicable.
7. The policy and procedures that will govern the rights and responsibilities of ACPS 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 ACPS and the transfer or purchase of property or other interests of the Operator by ACPS.
8. The terms under which the Operator will file appropriate financial statements on a periodic basis.

9. The mechanism by which Lease Payments, Service Payments, or User Fees, if any, may be established from time to time upon agreement of the parties. Any Lease Payments, Service Payments, or User 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. The execution of the Comprehensive Agreement or any amendment thereto shall constitute conclusive evidence that the Lease Payments, Service Payments, or User Fees provided for comply with this provision. User Fees or Lease Payments established in the Comprehensive Agreement as a source of Revenues may be in addition to, or in lieu of, Service Payments.
10. Requiring a copy of any Service Contract to be filed with ACPS and providing that 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.
11. The terms and conditions under which ACPS may contribute financial resources, if any, for the Qualifying Project.
12. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the party responsible for conducting the assessment and taking necessary remedial action.
13. The terms and conditions under which ACPS will be required to pay money to the Private Entity and the amount of any such payments for the Project.
14. The Comprehensive Agreement shall incorporate the duties of the Private Entity under the PPEA and may contain such other terms and conditions that ACPS determines serve the public purpose of the PPEA as applicable to the Qualifying Project. Without limitation, the Comprehensive Agreement may contain provisions under which ACPS agrees to provide notice of default and cure rights for the benefit of the Private Entity and the persons specified therein as providing financing for the Qualifying Project.
15. The Comprehensive Agreement may contain such other lawful terms and conditions to which the Private Entity and ACPS may mutually agree.
16. The Comprehensive Agreement may also contain provisions where the authority and duties of the Operator and Private Entity shall cease and the Qualifying Project is dedicated to ACPS for public use.
17. The Comprehensive Agreement may provide for the development or operation of phases or segments of a Qualifying Project.
18. Any other provisions required by applicable law or as ACPS may deem appropriate.

Conditions precedent to the validity of any changes in the terms of the Comprehensive Agreement as may be agreed upon by the parties from time to time shall be that they be made or added to the Comprehensive Agreement only by written amendment and have received prior approval by the Board.

Appendix A. General Provisions

A1. DEFINITIONS

“Acceptance, or Accepted” regarding an Unsolicited PPEA Proposal which means that ACPS has reviewed and determined that the Proposed Project is a Qualifying Project, this phase is an interim step in the process, which does not constitute an award.

“ACPS” means Alexandria City Public Schools and all of its employees and appointed officials.

“Bid” means a bid submitted to ACPS by a Private Entity in response to an Invitation to Bid for a Qualifying Project being procured through Competitive Sealed Bidding.

“Bidder” is a Private Entity submitting a Bid in response to an ITB.

“Board” means Alexandria City School Board.

“Comprehensive Agreement” means the written comprehensive agreement or contract between the Private Entity and ACPS that is required prior to the development of a Qualifying Project.

“Conceptual Stage” means the initial phase of Project evaluation when ACPS makes a determination whether the Unsolicited PPEA Proposal serves a public purpose, meets the criteria for a Qualifying Project, assesses the qualifications and experience of a Proposing Private Entity, reviews the Project for financial feasibility, and determines whether or not the Unsolicited PPEA Proposal should be Accepted. The Conceptual Stage also is the stage at which Bids or Proposals in response to an Invitation to Bid or Request for Proposal are received, reviewed and evaluated.

“Cost-Benefit Analysis” means an analysis that weighs expected costs against expected benefits in order to choose the best option. An example is comparing the costs and benefits of constructing a new building to those of renovating and maintaining an existing structure serving the same purpose in order to select the most financially advantageous option.

“Detailed Stage” means the second phase of Project evaluation where (i) for an Unsolicited PPEA Proposal ACPS has completed the Conceptual Stage and Accepted the Unsolicited PPEA Proposal and has proceeded with solicitation of competing Proposals, and (ii) for Bids/Proposals received in response to an ITB/RFP has completed the review and evaluation of Bids/Proposals and requested additional information and where applicable has entered into Competitive Negotiations with one or more Private Entities to develop an Interim or Comprehensive Agreement.

“Develop” or “development” means to plan, design, develop, finance, lease, acquire, install, construct, or expand.

“FOIA” means the Virginia Freedom of Information Act, VA. CODE ANN. §§ 2.2-3700, et seq.)

“Guidelines” means the Guidelines for the Implementation of the PPEA adopted by the Board and any amendments thereto adopted by the Board.

“Interim Agreement” means a written agreement between a Private Entity and ACPS 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 preceding a Comprehensive Agreement.

“ITB” means Invitation to Bid, the initiation of a public procurement by ACPS when the means of procurement is by competitive sealed bidding as provided in the VPPA.

“Lease Payment” means any form of payment, including a land lease, by ACPS to the Private Entity for the use of a Qualifying Project.

“Life-Cycle Cost Analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one Proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered.

“Major Subcontractor” is a Private Entity to be identified in an Unsolicited PPEA Proposal, a Bid, or a Proposal, as applicable, responsible for 10% or more of the reasonably anticipated cost of the Proposed Project, and is proposed as part of the initial Project Team.

“Material Default” means any default by the Private Entity in the performance of its duties under VA. CODE ANN. § 56-575.8.E, or in the performance of any other contract or legal duty, which jeopardizes adequate service to ACPS or to the public from a Qualifying Project.

“Notice of Acceptance of Unsolicited PPEA Proposal” means the written notice issued by ACPS informing a Proposing Private Entity that its Unsolicited PPEA Proposal has been Accepted.

“Offeror” is a Private Entity submitting a Proposal in response to a RFP.

“Operate” means to finance, maintain, improve, equip, modify, repair, or operate.

“Operator” means the Private Entity responsible for operating the completed Qualifying Project.

“Opportunity Cost” means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

“PPEA” means the Public-Private Education Facilities and Infrastructure Act of 2002, VA. CODE ANN. §§ 56-575.1, et seq., as may be amended by the General Assembly

“Private Entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“Project Team” the Private Entities assembled by the Proposing Private Entity and identified in the Unsolicited PPEA Proposal, Proposal or Bid, as applicable, as the overall team to perform the Proposed Project

“Proposal” is a written Proposal submitted to ACPS by a Private Entity, either unsolicited requesting Acceptance of a Proposed Project as a Qualifying Project or in response to a Request for Proposal for a Qualifying Project.

“Proposal Review Fee” is as defined in Part VI.C in these Guidelines.

“Proposed Project” means the project proposed by an Unsolicited PPEA Proposal or identified as a Qualifying Project in an ITB/RFP.

“Proposing Private Entity” means the Private Entity submitting to ACPS an Unsolicited PPEA Proposal or a Bid or Proposal in response to an ITB or to a RFP.

“Procurement Agent” is the employee of ACPS authorized to act on behalf of the Owner in contractual matters. The Procurement Agent may designate in writing others to act on his behalf, and such designation shall state any limitations on the authority of such designee. No Private Entity shall rely upon and ACPS shall not be bound by any statement or representation made on behalf of ACPS by any person not designated by the Procurement Agent to the Private Entity in writing as authorized to so act on behalf of the Procurement Agent. It shall be the responsibility of the Private Entity to establish the authority to act regarding any communication or action by any person other than the Procurement Agent. Use of the term Procurement Agent in any writing issued by ACPS related to any Proposed Project or Qualifying Project shall be deemed to include such properly authorized designee within the scope of that designee’s authorization. The Procurement Agent is also referred to as the Procurement Director/Director of Procurement. Prior to July 1, 2019 was referred to as the Purchasing Agent.

“Qualifying Project” means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for ACPS; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by ACPS; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of ACPS through the use of technology or other means; or (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools.

“Revenues” means all revenues, income, earnings, User Fees, Lease Payments or other Service Payments arising out of or in connection with supporting the development or operation of a Qualifying Project, including without limitation, money received as grants or otherwise from the United States of America, from any public body, agency or department, or from any agency or instrumentality of the foregoing in aid of such facility.

“RFP” means Request for Proposal, the initiation of a public procurement by ACPS when the means of procurement is by Competitive Negotiation of “other than professional services” as provided in the VPPA.

“Service Contract” means a written contract entered into between ACPS and the Private Entity for the delivery of services to be provided as part of a Qualifying Project in exchange for such service payments and other consideration as ACPS may deem appropriate.

“Service Payments” means payments to the Private Entity of a Qualifying Project pursuant to a Service Contract.

“Team Member” means all members of the Project Team required to be identified in an Unsolicited PPEA Proposal, a Proposal, or a Bid, as applicable, as set forth in Part X, PROPOSAL PREPARATION AND SUBMISSION of these Guidelines or as further specified in an ITB/RFP.

“Unsolicited PPEA Proposal” means a Proposal submitted to ACPS by a Private Entity proposing a Project for Acceptance as a Qualifying Project not in response to an Invitation to Bid or Request for Proposal.

“User Fees” mean the rates, fees or other charges imposed by the Private Entity of a Qualifying Project for use of all or a portion of such Qualifying Project pursuant to the Comprehensive Agreement.

“VPPA” means the Virginia Public Procurement Act, VA. CODE ANN. §§ 2.2-4300, et seq.

A.2. FREEDOM OF INFORMATION ACT (“FOIA”)/PUBLIC DISCLOSURE REQUIREMENTS

A. General Applicability of Disclosure Provisions

1. Proposal documents submitted by a Proposing Private Entity in support of an Unsolicited PPEA Proposal, and Bid or Proposal documents submitted in response to an ITB/RFP, are subject to the Virginia Freedom of Information Act (“FOIA”) unless an exemption applies including but not limited to such exemptions under Va. Code Ann. 2.2-4342 as may be applicable. Under the FOIA, documents submitted by a Private Entity to ACPS are releasable upon a request properly submitted pursuant to the FOIA. The FOIA makes provision for exemption from disclosure for certain confidential proprietary information submitted to ACPS by a Private Entity in a Proposal submitted pursuant to the PPEA. FOIA exemptions are discretionary, and ACPS may elect to release some or all of any documents asserted to be confidential or proprietary, except to the extent such documents are:
 - a. Trade secrets of the Private Entity as defined in the Uniform Trade Secrets Act (currently VA. CODE ANN. §§ 59.1-336, et seq.);
 - b. Financial records of the Private Entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
 - c. Other information submitted by a Private Entity, where if the record or document were made public prior to the execution of an Interim Agreement or a Comprehensive Agreement the financial interest or bargaining position of ACPS or the Private Entity would be adversely affected.
2. ACPS must comply with any court order regarding disclosure of Proposal documents regardless of any confidentiality or proprietary protection asserted by the Private Entity submitting the Proposal.

B. Protection from Mandatory Disclosure for Certain Documents Submitted by a Private Entity

1. As a condition precedent to any document being withheld from disclosure, the Private Entity submitting the document must make a written request to ACPS at the time the documents are submitted designating with specificity the documents for which the

protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three (3) categories specified above. A general request for withholding of an entire Proposal will be deemed a failure to comply with this requirement to designate with specificity.

2. Upon receipt of a written request for nondisclosure, ACPS shall determine whether the specified documents contain (i) trade secrets, (ii) protected financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of ACPS or the Private Entity as set forth above. ACPS shall submit to the Private Entity its written determination of the nature and scope of the protection to be afforded by ACPS under this Subsection within fifteen (15) Days after receipt of the Private Entity's written request. If the written determination provides less protection than the Private Entity's request, then the Private Entity will be given a reasonable opportunity to clarify, modify, or further justify its request. Upon a final determination by ACPS to provide less protection than requested by the Private Entity, the Private Entity will be given an opportunity to withdraw its Proposal and if it chooses to withdraw the Proposal all documents will be returned to the Private Entity.
3. If a Proposing Private Entity fails to designate information, records or documents as trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

C. Protection from Mandatory Disclosure for Certain Documents Generated by ACPS

1. ACPS may withhold from disclosure memoranda, staff evaluations, or other records prepared by ACPS, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of PPEA Proposals where (i) if such records were made public prior to or after the execution of an Interim or a Comprehensive Agreement, the financial interest or bargaining position of ACPS would be adversely affected, and (ii) the basis for such determination is documented in writing by ACPS.
2. Cost estimates relating to a proposed procurement transaction prepared by or for ACPS shall not be open to public inspection.

D. Disclosure After Execution of Interim or Comprehensive Agreement

Once an Interim Agreement or a Comprehensive Agreement has been entered into, ACPS shall make procurement records available for public inspection, upon request. Provided, however,

1. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse effect on the financial interest or bargaining position of ACPS or the Private Entity.
2. Such procurement records shall not include (i) trade secrets of the Private Entity as defined in the Uniform Trade Secrets Act (VA. CODE ANN. §§ 59.1-336, et seq.); (ii) financial records, including balance sheets or financial statements of the Private Entity that are not generally available to the public through regulatory disclosure or

otherwise; (iii) cost estimates relating to the Proposed Project or any other procurement transaction prepared by or for ACPS.

3. These public disclosure requirements shall apply to Accepted Proposals regardless of whether the process of bargaining will result in an Interim Agreement or a Comprehensive Agreement.

A.3. USE OF PUBLIC FUNDS

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any Interim Agreement or Comprehensive Agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be deemed to be incorporated into planning for any PPEA project.

A.4. APPLICABILITY OF OTHER LAWS

- A. Nothing in the PPEA shall affect the duty of ACPS to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act is as set forth in the PPEA.
- B. ACPS shall not solicit, contract for, erect or otherwise acquire any public school building, or make any addition or alteration thereto, for either permanent or temporary use, until the plans and specifications therefor (i) have been approved in writing by the Superintendent; (ii) are accompanied by a statement by an architect or professional engineer licensed by the Commonwealth of Virginia Department of Professional and Occupational Regulation Board for Architects, Professional Engineers, Land Surveyors, Certified Interior Designers and Landscape Architects that such plans and specifications are, in that person's professional opinion and belief, in compliance with the regulations of the Commonwealth of Virginia Board of Education and the Uniform Statewide Building Code; and (iii) have been reviewed by an individual or entity with professional expertise in building security and crime prevention through building design. The Superintendent's approval, architect's or engineer's statement, all reviewers' comments, and a copy of the final plans and specifications shall be submitted to the Commonwealth of Virginia Superintendent of Public Instruction.