

Virginia Tech Board of Visitors Meeting December 12, 2007

Minutes

A: [Resolution](#) Executive Compensation

B: [Resolution](#) To Delegate Authority

C: [Resolution](#) Adoption of Guidelines for Projects Under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002

MINUTES
December 12, 2007

The Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University met on Wednesday, December 12, 2007, at 11:00 a.m. at the Troutman Sanders offices at 1001 Haxall Point in Richmond, Virginia.

Present

Mr. Michael Anzilotti* (by telephone)
Mr. Ben J. Davenport, Jr.
Mr. John R. Lawson, II
Ms. Sandra Stiner Lowe.
Mr. Jacob A. Lutz, III
Mr. Philip S. Thompson* (by telephone)

Absent

Also present were President Charles Steger (on site) and Ms. Kay Heidbreder, Esq. (by telephone).

*Note that the public was given appropriate notice of the official meeting location and the locations of both members that participated telephonically.

Rector Lutz convened the meeting.

Motion to begin Closed Session

Mr. Lawson moved that the Executive Committee convene in a closed meeting, pursuant to § 2.2-3711(A)(1), (7) and (8) Code of Virginia, as amended, for the purposes of discussing:

1. Performance and individual salaries of specific employees.
2. A proposed research contract between Virginia Tech and another party.
3. The status of current litigation.

The motion was seconded and passed unanimously.

Motion to Return to Open Session

Following the Closed Session, Rector Lutz called the meeting to order and asked Mr. Lawson to make the motion to return to open session. [Note: There were no members of the public present to attend the open session.]

Mr. Lawson made the following motion:

WHEREAS, the Board of Visitors of Virginia Polytechnic Institute and State University has convened a closed meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of The Virginia Freedom of Information Act; and

WHEREAS, Section 2.2-3712 of the Code of Virginia requires a certification by the Board of Visitors that such closed meeting was conducted in conformity with Virginia law;

NOW, THEREFORE, BE IT RESOLVED that the Board of Visitors of Virginia Polytechnic Institute and State University hereby certifies that, to the best of each member's knowledge, (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the closed meeting to which this certification resolution applies, and (ii) only such public business matters as were identified in the motion convening the closed meeting were heard, discussed or considered by the Board of Visitors.

The motion was seconded and passed unanimously.

[Note: Mr. Anzilotti had to leave the meeting (telephone call) before the following votes were cast.]

Motion was made and seconded, and unanimous approval was given by the Executive Committee on behalf of the full Board to the **Resolution Regarding Executive Compensation**, effective November 25, 2007, as considered in Closed Session. (Copy filed with the permanent minutes and marked Attachment A.)

The motion to approve the following resolution was made, seconded, and approved unanimously.

Resolution to Delegate Authority

That on behalf of the full Board, the Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University hereby delegates to the President of the University all authorities previously granted by the Board to the Executive Vice President and Chief Operating Officer or to James A. Hyatt; and

Further that the President of the University may further delegate those authorities to other university officials or appoint university officials to relevant positions on boards and commissions, as he determines appropriate; and

And further that at the next meeting of the full Board, formal resolutions delegating to specific university officials the authorities formerly held by the Executive Vice President and Chief Operating Officer and filling positions on boards and commissions will be presented to the Board of Visitors for approval. (Copy filed with the permanent minutes and marked Attachment B.)

The motion to approve the following resolution was made, seconded, and approved unanimously.

Resolution for Adoption of Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002

That on behalf of the full Board, the Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University hereby adopts the attached "Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002." (Copy filed with the permanent minutes and marked Attachment C.)

* * * * *

Note: As stipulated in the By-laws of the Board of Visitors of Virginia Polytechnic Institute and State University, Article 1, Section 6a:

[The Executive] Committee, in the interim between meetings of the Board, has full power to take actions on behalf of the Board. All actions taken by the Executive Committee are subject to ratification by the full Board at its next meeting

* * * * *

The date for the next full Board meeting is March 30-31, 2008, on the Virginia Tech campus, Blacksburg, Virginia.

* * * * *

The meeting adjourned at 1:15 p.m.



MOTION REGARDING EXECUTIVE COMPENSATION

I move that the proposed compensation packages for the President and the University Provost and Vice President for Academic Affairs be approved, with an effective date of November 25, 2007.

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Resolution to Delegate Authority

WHEREAS the Board of Visitors has delegated to the Executive Vice President and Chief Operating Officer or to the incumbent authority for a multitude of functions; and

WHEREAS the Board of Visitors has appointed the Executive Vice President and Chief Operating Officer or the incumbent to a number of boards and commissions; and

WHEREAS the By-laws of the Virginia Tech Board of Visitors stipulate that the Executive Committee of the Board, in the interim between meetings of the full Board, has full power to take actions on behalf of the Board, and that all actions taken by the Executive Committee are subject to ratification by the full Board at its next meeting;

NOW, THEREFORE, BE IT RESOLVED that on behalf of the full Board, the Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University hereby delegates to the President of the University all authorities previously granted by the Board to the Executive Vice President and Chief Operating Officer or to James A. Hyatt; and

BE IT FURTHER RESOLVED that the President of the University may further delegate those authorities to other university officials or appoint university officials to relevant positions on boards and commissions, as he determines appropriate; and

BE IT FURTHER RESOLVED THAT at the next meeting of the full Board, formal resolutions delegating to specific university officials the authorities formerly held by the Executive Vice President and Chief Operating Officer and filling positions on boards and commissions will be presented to the Board of Visitors for approval.

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Resolution for Adoption of Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002

WHEREAS the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion; and

WHEREAS for the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Polytechnic Institute and State University (Virginia Tech), is a “responsible public entity” that has the power to develop or operate the applicable qualifying project; and

WHEREAS pursuant to the *Code of Virginia*, the governing board of the university must adopt guidelines in compliance with the PPEA in order to pursue any qualifying project; and

WHEREAS the By-laws of the Virginia Tech Board of Visitors stipulate that the Executive Committee of the Board, in the interim between meetings of the full Board, has full power to take actions on behalf of the Board, and that all actions taken by the Executive Committee are subject to ratification by the full Board at its next meeting;

NOW, THEREFORE, BE IT RESOLVED that on behalf of the full Board, the Executive Committee of the Board of Visitors of Virginia Polytechnic Institute and State University hereby adopts the attached “Virginia Polytechnic Institute and State University Guidelines for Projects under the Public-Private Education Facilities and Infrastructure Act (PPEA) of 2002.”

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Virginia Polytechnic Institute and State University

**Guidelines for Projects under the Public-Private Education
Facilities and Infrastructure Act of 2002**

(PPEA)

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Public-Private Education Facilities and Infrastructure Act of 2002

The Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entities determine there is a need for the project and that the private involvement may provide the project to the public in a timely or cost-effective fashion. For the purposes of the PPEA, the Commonwealth of Virginia, its agencies and institutions taken together, including Virginia Polytechnic Institute and State University (“Virginia Tech” or “the University”), is a “responsible public entity” (“RPE”) that “has the power to develop or operate the applicable qualifying project.”

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of “qualifying project” that includes public buildings and facilities of all types; for example:

- (1) 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 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;
- (2) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (3) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be used principally by a public entity;
- (4) Utility and telecommunications and other communications infrastructure;
- (5) A recreational facility;
- (6) Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (7) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or
- (8) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

An RPE may not consider any proposal by a private entity for approval of the qualifying project until the RPE has adopted and made publically available guidelines in compliance with the PPEA. Accordingly, these guidelines are hereby adopted by the Board of Visitors of Virginia Tech by resolution, dated December 12, 2007. Virginia Tech will follow these guidelines in the review and acceptance of proposals.

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Guidelines for the review and approval of proposals and projects

I. General Provisions

These guidelines are prepared and made available publically to encourage joint efforts between Virginia Tech and private entities, as well as stimulate competition in the private sector and to make clear Virginia Tech's compliance with the PPEA.

A. Proposal Submission

Pursuant to Virginia Code Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited by Virginia Tech (a "Solicited Bid/Proposal") or delivered to Virginia Tech 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." The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the University for that particular proposal and shall be consistent with all applicable provisions of the PPEA. Any Unsolicited Proposal shall be submitted to the University by delivering 10 complete copies, together with the required initial review fee as provided below in § III(C), to the Vice President of Administrative Services, 248 Burruss Hall, Blacksburg, VA 24061. The Vice President of Administrative Services is designated as the University's contact person for all submissions, questions, and concerns regarding the proposal process under the PPEA. Likewise, any proposal should designate a contact person from the private entity to whom questions and clarifications may be directed.

Other requirements for an Unsolicited Proposal are as set forth below in § III.

Whether the private entity submits a Solicited Bid or an Unsolicited Proposal, it will follow a two-part process, consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information regarding the proposer's qualifications and experience, project characteristics, project financing,¹ anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables, namely, project benefits, scope of work, and a financial plan that contains enough specificity so that the University may fairly evaluate the financial feasibility of the qualified project. The cost analysis of a proposal should not be linked solely to the financing plan, as Virginia Tech may determine to finance the project through other available means.

B. Posting

Under the PPEA, Virginia Tech is required to make provisions for posting and publishing public notice announcing a private entity's request for approval of a qualifying project. Such notices will contain: (i) specific information and documentation to be released regarding the nature, timing, and scope of the qualifying project pursuant to subsection A of § 56-575.4; (ii) a reasonable time period of at least 45 days during which Virginia Tech shall receive competing

¹ The PPEA provides for innovative and flexible financing options. Each suggested financing arrangement will be evaluated on a case-by-case basis.

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proposals conforming to subsection A of § 56-575.4; and (iii) an advertisement of the public notice on the Commonwealth's electronic procurement website.

C. Affected Jurisdictions

Any private entity requesting approval from or submitting a conceptual or detailed proposal to Virginia Tech must provide each affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery, or hand delivery. The term "affected local jurisdiction" includes any University, city, or town in which all or a portion of a qualifying project is located. Affected jurisdictions that are not RPEs under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to Virginia Tech, directed to the Vice President of Administrative Services, and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plan, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by Virginia Tech before entering into an interim or comprehensive agreement with a private entity, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. Nothing above shall prevent Virginia Tech from proceeding with or continuing the evaluation process during the 60-day period.

D. Virginia FOIA

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") (§ 2.2-3700 et seq.) except as provided by § 56-575.4(G) of the PPEA. In order 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 University or before such submission, (ii) identify with specificity 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 University as to the anticipated scope of protection prior to submitting the proposal. The University 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.

Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the University shall 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 in writing. FOIA exemptions are discretionary, and Virginia Tech may elect to release some or all documents except to the extent the documents are:

1. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§59.1-336 et seq.);

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2. 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
3. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

If the determination regarding protection or the scope thereof differs from the private entity's request, then the University will afford the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the University to afford 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 as provided below in § III(A).

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

To the extent that access to any procurement record or other document or other information is compelled or protected by a court order, Virginia Tech shall comply with such order.

E. Use of Public Funds

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

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the University to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is set forth in the PPEA, § 56-575.16. The Restructured Higher Education Financial and Administrative Operations Act, §§ 23-38.88, 23-38.109, is also applicable.

II. Solicited Proposals

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The procedures applicable to any particular Solicited Bid/Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA, these Guidelines, and any other applicable law. The solicitation will list any documents and information that must accompany each proposal and outline the factors that will be used in evaluating submitted proposals, as well as any unique capabilities or qualifications required of private entities submitting bids.

All such solicitations shall be made by issuance of a written Invitation to Bid (“IFB”) or Request for Proposal (“RFP”). Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be an Unsolicited Proposal under these Guidelines, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal and (b) proposals received in response to publicity by the University concerning particular needs when the University has not issued a corresponding IFB or RFP, even if the University otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

III. Unsolicited Proposals

Virginia Tech may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a RFP, the proposal shall be treated as an Unsolicited Proposal. The University reserves the right to accept to reject any and all proposals at any time.

The process for evaluating an Unsolicited Proposal, which is described in detail below in § V, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the University’s first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the University will give public notice of the Unsolicited Proposal. In step three the University 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 University may discontinue its evaluation of any proposal at any time. Furthermore, if the University determines that it is in the University’s interest to do so with respect to any Unsolicited Proposal, the University may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage, provided that the public notice is made.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

Upon receipt of any Unsolicited Proposals and payment of any required fee by the private entity making the proposal, Virginia Tech will determine whether to accept the Unsolicited Proposal for the purpose of publication and conceptual-phase consideration. If the University decides not to accept the proposal and proceed to publication and conceptual-phase consideration, it will return the proposal, together with all fees and accompanying documentation, to the private entity.

B. Posting Requirements

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Conceptual proposals, whether solicited or unsolicited, shall be posted by the University on the “eVA” within ten (10) working days after acceptance of such proposals. One copy of each of the conceptual proposals will be made available for public inspection at the location and under the conditions indicated in the notice. The University will post the notice for a period of not less than forty-five (45) days the Commonwealth’s electronic procurement site (“eVA”) (www.eva.state.va.us). The notice will state that the University (i) has received an unsolicited proposal for a qualified project under the PPEA, (ii) has initially reviewed the proposal and intends to give it further consideration, (iii) may negotiate an interim or comprehensive agreement with the private entity who made the proposal, and (iv) will receive any competing proposals that comply with these Guidelines and the PPEA and will give them consideration before proceeding further with any one proposal. The notice will also contain summary descriptions of the qualifying project(s) and their proposed locations, as well as a University contact to whom questions may be addressed. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be posted, except as otherwise agreed to by Virginia Tech and the proposing private entity.

C. Review Fees

A review fee will be charged to any private entity submitting an Unsolicited Proposal to the University, to cover the University’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 University 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, financial and technical advisors, used by the University in its sole discretion. The uses and expenditures for these resources is in the sole discretion of the University. Such fees generally shall be in the amount necessary to completely cover all of the University’s costs.

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

- a. *Initial fee.* Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the University in order for the University to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 or more than \$50,000, regardless of the anticipated total cost.
- b. *Additional fees.* 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 University reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The University 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 University 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 University’s total costs incurred in processing, reviewing, and evaluating the

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

D. Initial Review by Virginia Tech at the Conceptual Stage

Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the University for further review at the conceptual stage. Virginia Tech will determine at this stage whether it will proceed by using standard VPPA procurement procedures, those it has developed under the authority of the Restructured Higher Education Financial and Administrative Operations Act, §§ 23-38.88, 23-38.109, or guidelines it develops consistent with § 2.2-4301.²

After reviewing the original proposal and any competing proposal submitted, the University will determine: (i) not to proceed further with any proposal; (ii) to proceed to the detailed phase of review with the original proposal; (iii) to proceed to the detailed phase with a competing proposal; (iv) to proceed to the detailed phase with multiple proposals; or (v) to request modifications or amendments to any proposals. If more than one proposal is considered in the detailed phase of review, Virginia Tech will reimburse the unsuccessful proposer(s) for reasonable costs. Such costs will be assessed to the successful proposer in the comprehensive agreement.

IV. Proposal Preparation and Submission

A. Format for Submissions at Conceptual Stage

Unsolicited proposals must contain the following information in the following format, as well as any further information the University may request:

1. Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. 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

² If the University chooses to develop its own guidelines other than those developed under the authority of the Restructured Higher Education Financial and Administrative Operations Act, §23-38.109, it must make a written determination that doing so is likely to be advantageous to the University and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

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any firms that will provide design, construction, and completion guarantees and warranties and a description of such guarantees and warranties.

- c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who 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 any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§2.2-3100 et seq.) of Title 2.2.

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent to the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the University.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including 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 University's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.
- k. List any contingencies that must occur for the project to be successful.

3. Project Financing

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

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include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.

- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition, 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 proposer contemplates requesting for the 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 the University's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the private entity from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involved and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the University and whether the project is critical to attracting or maintaining competitive industries and businesses to the University or the surrounding region.
- e. Describe 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 this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

B. Format for Submissions at Detailed Stage

If Virginia Tech decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the University:

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1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. 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;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to , a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimate annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the University's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§2.2-3100 et seq) of Title 2.2;
11. Additional material and information as the University might reasonably request.

V. Proposal Evaluation and Selection Criteria

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. Virginia Tech retains the right at all times to reject any proposal at any time for any reason.

A. Qualifications and Experience

The University will consider the following factors in either phase of its review to determine whether the proposer possesses the requisite qualifications and experience:

1. Experience with similar projects;
2. Demonstration of ability to perform work;

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3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

B. Project Characteristics

The University will consider the following factors in determining the project characteristics:

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

C. Project Financing

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

1. Cost and cost benefit to the University;
2. Financing and the impact on the debt or debt burden of the University;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessments;
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 project and the nature and timing of their commitment; and
8. Such other items as the University deems appropriate.

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

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility

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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 local, regional, and state economic development efforts.

E. Other Factors

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and unfinancial;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;
9. The recommendation of a committee of representatives of members of the University and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that Virginia Tech deems appropriate.

VI. Additional Review Procedures

A. Public Private Partnership Oversight Advisory Committee

Virginia Tech may, at its discretion, assemble an advisory committee or establish criteria to trigger the establishment of an advisory committee for the purpose of reviewing the terms of a proposed interim or comprehensive agreement. If the University forms a committee or establishes such criteria, the members will consist of representatives from the University and its Board of Visitors. The criteria, if formally established, should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

B. Timelines

Guidelines for determining applicable timelines are as follows:

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1. For Solicited Bids, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For Unsolicited Proposals, an estimated timeline will be developed and distributed within 60 days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the University deems a priority.

VII. Interim and Comprehensive Agreements

A. Interim Agreement Terms

Prior to or in connection with the negotiation of the comprehensive agreement, the University may enter into an interim agreement with the private entity. The scope and content of an interim agreement may include but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis;
6. Establishing a process and timing of the negotiation of the comprehensive agreement;
7. Granting permission to the private entity to commence activities for which it may be compensated relating to the qualifying project; and
8. 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

Prior to developing or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the University as provided by the PPEA. Any such comprehensive agreement and any amendment thereto, must be approved by the University's Board of Visitors before it is entered into on behalf of the University. As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project;
2. The review of plans and specifications for the qualifying project by the University;
3. The rights of the University to inspect the qualifying project to ensure compliance with the comprehensive agreement;

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4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the University to ensure proper maintenance;
6. The terms under which the private entity will reimburse the University for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the University and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity including the conditions governing assumption of the duties and responsibilities of the operator by the University and the transfer or purchase of property or other interests of the private entity by the University;
8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project;
 - a. A copy of any service contract shall be filed with the University.
 - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - c. Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the University may contribute financial resources, if any, for the qualifying project;
11. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
12. The terms and conditions under which the University will be required to pay money to the private entity and the amount of any such payments for the project;
13. Other requirements of the PPEA or other applicable law; and
14. Such other terms and conditions as the University may deem appropriate.

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

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

C. Notice and Posting requirements

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In addition to the posting requirements of Section III(B), 30 days prior to entering into an interim or comprehensive agreement, the University shall provide an opportunity for public comment on the proposals. Such public comment period may include a public hearing in the sole discretion of the University. After the end of the public comment period, no additional posting shall be required based on any public comment received.

Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the University, the University shall post the proposed agreement in on the Department of General Service's web-based electronic procurement program ("eVA"). At least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the University and the private entity. Any studies and analyses considered by the University in its review of a proposal shall be disclosed to the appropriating body at some point prior to the execution of an interim or comprehensive agreement.

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

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

VIII. Governing Provisions

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