

PROCEDURES REGARDING PROPOSALS MADE PURSUANT TO THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002

I. Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Sec. 56-575.1 through 56-575.16 (the "PPEA"), grants the Alleghany County School Board (the "School Board"), a "responsible public entity" as defined in the PPEA, the authority to create public-private partnerships for the development of a wide range of projects for public use if the School Board determines there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an "operator", as defined in the PPEA, and the School Board will define the respective rights and obligations of the School Board and the private operator.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA defines a qualifying project as follows:

- A. Any education facility, including, but not limited to, a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- B. Any building or facility for principal use by any public entity;
- C. Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- D. Utility and telecommunications and other communications infrastructure;
- E. A recreational facility; or
- F. Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.

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

Section 56-575.16 of the PPEA provides that the respective governing body of a public entity must first adopt procedures that it will follow to receive and evaluate any proposal submitted to the public entity under the provisions of the PPEA. Accordingly, the School Board will adopt the following procedures on October 16, 2006 to guide the School Board administration in implementation of the PPEA. The individual designated by the

Superintendent to respond to inquiries regarding the PPEA or these procedures and to serve as the point of contact to receive proposals submitted under the PPEA shall be the Senior Buyer.

Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon all entities, both public and private, to comply with the provisions of the PPEA.

II. General Provisions

Proposal Submission

A proposal to provide a qualifying project may be either solicited by the School Board (a "Solicited Bid/Proposal" via issuance of an "Invitation to Bid" or "Request for Proposal") or delivered by a private entity on an unsolicited basis (an "Unsolicited Proposal"), which can then involve competing Unsolicited Proposals as referred to in Section IV. In either case, any such proposal shall be clearly identified as a "PPEA Proposal."

Those entities responding to a Solicited Bid/Proposal or submitting an Unsolicited Proposal [Proposer(s) or private entity or party] will be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal must contain specified information on operator qualifications and experience, project characteristics, project financing, anticipated public support or opposition or both, and project benefit and compatibility. The detailed proposal must contain specified deliverables.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.

Proposals should be prepared simply and economically, providing a concise description of the Proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the School Board. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the School Board of the financial feasibility of the proposed project. For specific applications, the School Board may request, in writing, clarification to the submission.

The PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private operator, but also benefits to the operator through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health, safety and welfare. Accordingly, the School Board shall continue to exercise full and proper due diligence in the evaluation and selection of operators for these projects. In this regard, the qualifications, capabilities, resources and other attributes of a prospective operator and its whole team will be carefully examined for every project. In addition, Proposers proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience or other contents of their proposals, including all specific aspects of proposed plans to be performed by the operator.

Affected Local Jurisdictions

Any private entity requesting approval from, or submitting a conceptual or detailed proposal to, the School Board must provide other affected local jurisdictions as defined in the PPEA with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within 5 business days after receiving notice from the School Board that the School Board has decided to accept the proposal for consideration pursuant to Section IV hereof. Any affected local jurisdiction shall have 60 days from the receipt of its copy of the request or proposal to submit written comments to the School Board and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be considered by the School Board in evaluating the request or proposal, and no negative inference shall be drawn from the absence of comments by an affected local jurisdiction.

Proposal Fee

The School Board may seek the advice of internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity.

The School Board will charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any Unsolicited Proposal, or competing Unsolicited Proposal, submitted under the PPEA. Also, if the solicitation so indicates, the School Board may require payment of a review fee by any private entities submitting Solicited Proposals. The fee shall not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of any outside advisors or consultants, including, but not limited to, attorneys and financial advisors.

Proposals solicited by the School Board that are not in response to an Unsolicited Proposal will not be subject to proposal review fees unless so indicated in the solicitation. The School Board may determine at its discretion whether to require Proposers to pay review fees for Solicited Proposals and, if so, the amount of such fees if different than set forth below.

The fee will be administered as follows:

- A. Initial Fee: The initial fee shall be one half of one percent (0.5%), not to exceed \$25,000, of the estimated present value cost to the County of the proposal, but not less than \$5,000. Additional fees may be charged as set forth below. Payment of the initial fee in certified funds must accompany the proposal in order for the School Board to proceed with its review. However, the School Board reserves the right to specify a different initial fee amount in a solicitation issued under Section III of these procedures or for an Unsolicited Proposal and competing Unsolicited Proposals under Section IV of these procedures.
- B. Additional fees: Additional fees over and above the initial fee shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Proposal if the School Board incurs costs in excess of the initial fee paid by the private entity. The School Board will notify the private entity of the amount of such additional fees as it incurs such costs. Prompt payment of such additional fees is required before the School Board will continue to process, review, and evaluate the Proposal.
- C. Return of initial fee if Proposal not accepted for consideration: If the School Board decides not to accept the Proposal for consideration, pursuant to subsection C of §56-575.3, the School Board will return the Proposal, together with all fees and accompanying documentation, to the private entity. However, once the School Board accepts the Proposal for consideration, even if it is thereafter rejected at any subsequent time, the initial fee and all additional fees become nonrefundable and will not be returned to the private entity.

Virginia Freedom of Information Act

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("FOIA"). In accordance with Virginia Code § 22-3705(A)(56) of FOIA, such documents are releasable if requested, except to the extent permitted therein by law. The procurement records may also be made available upon request in accordance with Virginia Code § 56-575.16(5). Furthermore, the private entity must invoke such exclusion in compliance with the above code sections.

The School Board may attempt to protect only confidential proprietary information as allowed by law, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the Proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein. It is the responsibility of the Proposer to make clear what parts of a Proposal are being sought to be declared confidential and to also provide, upon request, reasons for such designation.

Use of Public Funds

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

Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the School Board or any of its officers, employees, or agents, to comply with all other applicable laws not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. Solicited Bids/Proposals

The School Board may solicit bids or proposals from private entities to acquire, construct, improve, renovate, expand, maintain or operate qualifying projects, or to design or equip such. The School Board may use a two-part process consisting of an initial conceptual phase and a detailed phase. The solicitation will set forth the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted on the School Board's website. Notices will also be published in The Roanoke Times, The Virginian Review, in other media outlets deemed beneficial by the School Board, and in any publication required by the PPEA. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting

proposals. Pre-proposal conferences may be held as deemed appropriate by School Board.

IV. Unsolicited Proposals

The PPEA permits the School Board to receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, construct, improve, renovate, expand, maintain, or operate a qualifying project or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.

The School Board may publicize its needs and may encourage interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received pursuant to this procedure, without solicitation by an Invitation to Bid or a Request for Proposals, the proposal shall be treated as a competing Unsolicited Proposal. Unsolicited and/or competing Unsolicited Proposals must be submitted to the Senior Buyer by delivering six complete copies, together with the required proposal fee.

Decision to Accept and Consider Unsolicited Proposal

- A. The School Board reserves the right to reject any and all proposals at any time.
- B. Upon receipt of any Unsolicited Proposal or group of proposals and payment of the required fee by the Proposer(s), the School Board will determine whether to accept the Unsolicited Proposal for consideration. If the School Board determines not to accept the proposal for consideration, it will only return the proposal, together with all fees and accompanying documentation, to the Proposer(s) subject to the provisions set forth in section II (C).
- C. If the School Board chooses to accept an Unsolicited Proposal for consideration, it will post the notice on the School Board's website, for a period of not less than 45 days. The School Board will also publish the

same notice once in The Roanoke Times, in any publication required by the PPEA, and The Virginian Review, not less than 45 days before competing proposals are due to be submitted for consideration by the School Board, to notify any parties that may be interested in submitting such competing Unsolicited Proposals. The notice will state that the School Board (i) has received and accepted for consideration an Unsolicited Proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the operator based on the proposal, and (iv) will accept for simultaneous consideration any competing Unsolicited Proposals that comply with the procedures adopted by the School Board and the PPEA. The notice also will summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of Unsolicited and competing Unsolicited Proposals will be available upon request, subject to the provisions of FOIA and § 56-575.4(G) of the PPEA.

- D. In the event the School Board receives an Unsolicited Proposal and subsequently receives one or more Unsolicited Proposals for the same or similar project prior to completing its review of the first Proposal and prior to accepting the first Proposal for consideration pursuant to this Section IV, the School Board may choose to (i) not accept any of the subject Proposals, (ii) accept only one of the Proposals for consideration but not necessarily the first Proposal, or (iii) accept more than one Proposal for conceptual phase consideration. In the event the School Board accepts only one Proposal for consideration, the School Board shall return the Proposals and any accompanying fees to the respective Proposers whose Proposals were not accepted so the Proposers may resubmit their Proposals as competing Unsolicited Proposals pursuant to Section IV.

Initial Review by the School Board at the Conceptual Stage

- A. 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 School Board for further review at the conceptual stage. Formatting requirements for proposals at the conceptual stage are found at Section V (A) of these procedures.

The School Board, in conjunction with the Alleghany County Board of Supervisors, reserves the right to select its own finance team, source and financing vehicle in the event any project is financed through the issuance of obligations that are deemed to be tax-supported debt of Alleghany County, or if financing such project may impact the County's debt-rating or financial position. The decision as to whether to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the County Board of Supervisors' sole discretion.

- B. The Alleghany County School Board will determine at this initial stage of review whether it will proceed using:
1. Procedures used by the School Board that are consistent with procurement through competitive sealed bidding, as defined in the VPPA; or
 2. Procedures used by the School Board that are consistent with procurement of other than professional services through "competitive negotiation" as defined in the VPPA. The School Board may proceed using such procedures only if it makes a determination in advance by the School Board or Senior Buyer, and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.
- C. After reviewing the original proposal and any competing proposals submitted during the notice period, the School Board will determine:
1. Not to proceed further with any proposal;
 2. To proceed to the detailed phase of review with the original proposal;
 3. To proceed to the detailed phase with a competing proposal; or

4. To proceed to the detailed phase with multiple proposals.

V. Proposal Preparation and Submission

Format for Submissions at Conceptual Stage

The School Board requires that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, (4) project benefit and compatibility and (5) any additional information the School Board may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at this stage include:

A. Qualification and Experience

1. 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.
2. 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 any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project,
3. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms, who may be contacted for further information,
4. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
5. Identify the officers and directors of the firm or firms submitting the proposal.
6. 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 Interests Act, § 2.2-3100, et seq., of the Code of Virginia (1950), as amended.
7. Provide a specific history of similar projects with which the Proposer has been associated. Provide specific information concerning any claims or litigation history, if any, associated with these projects.

B. Project Characteristics

1. Provide a description of the project, including the conceptual design; describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
2. Identify and fully describe any work to be performed by the School Board.
3. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
4. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
5. Identify the projected positive social, economic and environmental impacts of the project.
6. Identify the proposed schedule for the work on the project, including the estimated time for completion.
7. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
8. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
9. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
10. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet. Define applicable quality

project will meet. Define applicable quality

standards to be adhered to for achieving the desired project outcome(s).

11. List all assumptions relied on for the project to be successful.
12. List all contingencies that must occur for the project to be successful.

C. Project Financing

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment (e.g., design, construction, and operation), or both.
2. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
3. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach including, but not limited to, underwriters discount, placement agent, legal, rating agency, consultants, feasibility study, and other related fees. A complete discussion of interest rate assumptions should be included given current market conditions. Any ongoing operational fees should also be disclosed as well as any assumptions with regard to increases in such fees and escalator provisions to be required in the comprehensive agreement.
4. Identify the proposed risk factors and methods for dealing with these factors.
5. Identify any local, state or federal resources that the Proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources, including the School Board, and the timing of any anticipated commitment.
6. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment, both one-time and ongoing.
7. Clearly describe the underlying support and commitment required by the School Board and the County Board of Supervisors under the recommended plan of finance. Expectations with regard to the County Board of Supervisors providing its general obligation should be included. The underlying assumptions should address this need in detail.

D. Project Benefit and Compatibility

1. Identify who will benefit from the project, how they will benefit and how the project will benefit the School Board, the overall community, region, or state.
2. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
3. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
4. Describe the anticipated significant benefits to the School Board, the community, region or state including anticipated benefits to the economic condition of the School Board and whether the project is critical to attracting or maintaining competitive industries and businesses to the School Board or the surrounding region.
5. Explain how the project is compatible with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other government spending plan.
6. 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.

If the School Board decides to proceed to the detailed phase of review with one or more proposals, the following information must be provided by the private entity unless waived in writing by the School Board:

- A. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project electronic format may be permissible if compatible with School Board systems and may be required.
- B. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the Proposer to accommodate such crossings.
- C. A statement and strategy setting out the plans for securing all necessary property, and the estimated cost of such 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 Proposer intends to request the public entity to condemn for public use and a description of such public use.
- D. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
- E. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
- F. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- G. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
- H. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
 - I. Sufficient design and engineering detail to establish floor plans, elevations, and site characteristics.
- J. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
- K. Identification of the officers and directors of the firm or firms submitting the proposal.
- L. Identification of any known conflicts of interest or other disabilities that may impact the School Board'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 the Code of Virginia (1950), as amended.
- M. Identification of all known contractors or service providers, including but not limited to the providers of architectural services, real estate services, financial services, and legal services for the current proposal.
- N. Detailed analysis of the financial feasibility of the proposed project, including impact on similar facilities operated or planned by the School Board. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the School Board, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

- O. Detailed listing of all performance securities the Proposer will provide to guarantee success of the project, and what payments or returns will be made to the School Board if the project is not fully and successfully completed.
- P. Additional material and information as the School Board may request.

VI. Proposal Evaluation and Selection Criteria

The following items may be considered in the evaluation and selection of PPEA proposals.

Qualifications and Experience

Factors that may be considered in either phase of the School Board's review to determine whether the Proposer possesses the requisite qualifications and experience include:

- Specific experience with similar projects;
- Claims or litigation history relating to work performed on similar projects;
- Demonstration of ability to perform work;
- Leadership structure;
- Project manager's experience;
- Management approach; Financial condition;
- Project ownership; and
- Such other items as the School Board deems appropriate.

Project Characteristics

Factors that may be considered in determining the project characteristics include:

- Project definition;
- Proposed project schedule;
- Operation of the project; Technology; technical feasibility
- Conformity to laws, regulations, and standards;
- Environmental impacts; Condemnation impacts;
- State and local permits;
- Maintenance of the project; and
- Such other items as the School Board deems appropriate.

Project Financing

The School Board, in conjunction with the Allegheny County Board of Supervisors, reserves the right to select its own finance team, source, and financing vehicle in the event any project is financed through the issuance of obligations that are deemed to be tax-supported debt of Allegheny County, or if financing such project may impact the County's debt rating or financial position. The decision as to whether to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the County Board of Supervisors' sole discretion.

Along with the information required for the initial and detailed proposals, factors to be considered in determining whether the proposed project financing allows access to the necessary capital at the lowest practical cost given the project include:

- A. Cost and cost benefit to the School Board.
- B. Financing and the impact on the debt or debt burden of the School Board.
- C. Financial plan including overall feasibility and reliability of the plan, default implications, Proposer's past

performance with similar plans and similar projects, 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.

- D. Estimated cost including financing source, operating costs, etc.
- E. Life-cycle cost analysis.
- F. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment.
- G. Comparable costs of other project delivery methods.
- H. Such other items as the School Board deems appropriate.

Project Benefit and Compatibility

Factors that may be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans include:

- A. Community benefits.
- B. Community support or opposition, or both.
- C. Public involvement strategy.
- D. Compatibility with existing and planned facilities.
- E. Compatibility with local, regional, and state economic development efforts. Fiscal impact to the School Board in terms of revenues and expenditures.
- F. Economic output of the project in terms of jobs and total economic impact on the local economy.
- G. Submission of required statement regarding participation efforts that is to be undertaken with regard to minority-owned, women-owned, and small businesses.
- H. Such other items as the School Board deems appropriate.

VII. Comprehensive Agreement

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected Proposer shall enter into a comprehensive agreement with the School Board. The School Board may designate a working group to be responsible for negotiating the comprehensive agreement. Each comprehensive agreement shall define the rights and obligations of the School Board and the selected Proposer (operator) with regard to the project.

The terms of the comprehensive agreement shall include, if applicable, but not be limited to:

- A. The delivery of maintenance, performance and payment bonds or letters of credit or other security in the forms and amounts satisfactory to the School Board in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.
- B. The review and approval of plans and specifications for the qualifying Public-project by the School Board; the rights of the School Board to inspect the qualifying project to ensure compliance with the

comprehensive agreement.

- C. The maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the School Board and reasonably sufficient to insure coverage of the project and the protection from the potential tort liability to the public and others and to enable the continued operation of the qualifying project.
- D. The monitoring of the practices of the operator by the School Board to ensure proper maintenance.
- E. The terms under which the operator will reimburse the School Board for services provided.
- F. The policies and procedures that will govern the rights and responsibilities of the School Board and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the operator by the School Board and the transfer or purchase of property or other interests of the operator to or by the School Board.
- G. The terms under which the operator will file appropriate financial statements on a periodic basis.
- H. 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:
 - 1. A copy of any service contract shall be filed with the School Board:
 - 2. 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; and
 - 3. Classifications according to reasonable categories for assessment of user fees may be made.
- I. The terms and conditions under which the School Board may contribute financial resources, if any, for the qualifying project.
- J. A provision, in a form acceptable to the School Board, that will require the operator to indemnify and hold harmless the School Board and its officers, agents, employees, and volunteers from any and all claims, damages, causes of action, suits of any nature, cost, and expenses, including reasonable attorney's fees, resulting from or arising out of the operator's, or its agents or subcontractors, acts or omissions or connected in any way to the qualifying project.
- K. Any other provisions required by applicable law.
- L. The terms and conditions under which the School Board will be required to pay money to the operator and the amount of any such payments for the project.
- M. Such other terms and conditions as the School Board may deem appropriate.

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

VIII. Governing Provisions

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

Adopted: October 16, 2006
