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February 2017

ALEXANDRIA RENEW ENTERPRISES

# Purchasing Manual

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*Alexandria's Water Transformers*

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## ***Note from the Chief Executive Officer***

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To Alexandria Renew Enterprises Staff:

Alexandria Renew Enterprises (AlexRenew) is committed to being an environmental steward, good neighbor, and industry leader in our day-to-day work of making dirty water clean as we aspire to be the utility of the future. To support this vision, AlexRenew is committed to continuous improvement of its purchasing process, with policies and procedures aligned with all applicable laws, the Virginia Public Procurement Act and best procurement practices. This purchasing manual is designed for all employees involved in requesting, ordering, receiving, paying for and/or disposing of construction, goods, services and materials.

In order to have an outstanding purchasing program, all staff involved must work as a team and cooperate with one another. It is also essential that staff has a clear definition and understanding of the procurement process. The intent of this manual is to clarify policies and procedures with respect to the acquisition process and to serve as a general framework that includes sound and efficient business decisions.

As active participants striving to reach our vision, all staff performing purchasing functions should use this manual as a guide and resource. Only through a combined effort will we achieve the goal of continuous improvement a reality. Integrity, fairness and best business practices are woven throughout the purchasing cycle, so as to maintain a position of unquestioned ethics in the procurement process. Through transparency and accountability the public trust will remain unfaltering.

Karen Pallansch  
Chief Executive Officer  
Alexandria Renew Enterprises

## ***Note from the Chief Sustainability Officer***

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The Chief Executive Officer has approved this purchasing manual for use by all employees of AlexRenew. It is intended as a point of reference to guide employees and maintain the Authority's reputation for fairness and integrity in the procurement process.

Procurement involves the purchase of materials, supplies, equipment, and services, at a reasonable cost, for the proper operation of the various functions at AlexRenew. To achieve this objective, we seek to foster as much competition as possible. In doing so, all players in the process must adopt the value of fairness to ensure that the process is open to all who want to compete for our business.

This manual cannot address every conceivable procurement issue we may encounter; however, it does reflect best practices, applicable law, and serves as a road map for staff to apply their expertise in meeting the purchasing needs of AlexRenew.

Sean Stephan  
Chief Sustainability Officer  
Alexandria Renew Enterprises

## ***Purchasing Office, Department of Finance***

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The Purchasing Office is committed to providing value-added service to our customers, consistent with professional standards, ethical principles, and legal requirements. It is essential that the Purchasing Office maintain close communications with its customers. Comments or suggestions on ways to improve procurement are encouraged and welcome.

**Vision:** The Purchasing Office strives to combine the best practices in procurement with the use of technology to meet the ever-changing needs of our internal and external customers.

**Mission:** The mission of the Purchasing Office is to demonstrate good stewardship and best practices in the purchase of construction, goods, services and materials through fair and competitive processes in accordance with applicable laws and regulations; provide timely distribution, quality customer service, and effective communication to stakeholders; and develop and implement innovative technology solutions to provide more efficient procurement and department-wide services.

**Goals:** The Purchasing Office strives to meet the following goals to guide its operations and its relations with its customers, suppliers and the public it serves, namely to:

- Determine the most cost-effective methods of purchasing to enable AlexRenew to spend funds efficiently;
- Maintain the highest level of ethical standards in procurement practices and contract management , and sustainable industry practices.;
- Ensure fair competition, accountability and compliance with applicable policies and regulations;
- Streamline business processes through the use of technology and best practices to maximize efficiency;
- Provide continuous training and education;
- Provide knowledgeable advice and consulting;
- Create a work environment that fosters personal, professional and departmental growth.

**Sustainable Purchasing Policy:** AlexRenew encourages the purchase and use of environmentally preferable products and services that protect human health and natural resources, prevent pollution, reduce waste, conserve resources and support environmental sustainability. Whenever feasible, AlexRenew will seek to purchase environmentally preferable products and services that reduce AlexRenew's overall negative impact on the environment. Consideration and judgment will be exercised by AlexRenew staff to ensure that environmentally preferable products and services perform adequately, are reasonably priced, and can be delivered in a reasonable period of time.

## 1. Enabling Legislation and Authority:

- A. Virginia Public Procurement Act: The [Code of Virginia 2.2-4300](#), titled the “Virginia Public Procurement Act” (the “VPPA”) is adopted by AlexRenew in its entirety. Any terms not defined in this Manual shall be as defined in the Virginia Public Procurement Act. In the event of any direct conflict between the VPPA and this Manual concerning an issued covered by the VPPA, the terms of the VPPA shall prevail. The VPPA sets forth the requirements for competitive principles to be used for the procurement of construction, goods and services by all governmental bodies within the Commonwealth of Virginia. It is subject to amendment by the legislature during any session. The role of the Virginia Public Procurement Act, in summary, is stated below. Specifically, it provides that:
- 1) Public bodies in the Commonwealth obtain high quality goods and services at reasonable cost.
  - 2) All procurement procedures will be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety.
  - 3) All qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded.
  - 4) A centralized location is established where all contractual documents will be stored as a reference for procurement activities.
  - 5) Competition is sought to the maximum feasible degree.
  - 6) Procurement procedures involve openness and administrative efficiency.
  - 7) Individual public bodies enjoy broad flexibility in fashioning details of such competition.
  - 8) The rules governing contract awards be made clear in advance of the competition.
  - 9) Specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor.
  - 10) The purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.
  - 11) Public bodies may consider best value concepts when procuring goods and nonprofessional services, but not construction or professional services. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

## 2. Code of Ethics:

- A. Conflict of Interest: No AlexRenew employee having responsibility for a procurement transaction (except as may be specifically allowed by subdivisions of [A2, A3 and A4 of §2.2-3112 of the Code of Virginia](#)) shall participate in that transaction on behalf of AlexRenew when the employee knows that:
- 1) The employee is contemporaneously employed by a bidder, offeror, or contractor involved in the procurement transaction.
  - 2) The employee, the employee's partner, or any member of the employee's immediate family holds a position with a bidder, offeror, or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five percent in the company.
  - 3) The employee, the employee's partner, or any member of the employee's immediate family has a financial interest arising from the procurement transaction.
  - 4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating or has an arrangement concerning prospective employment with a bidder, offeror, or contractor.
- B. Solicitation or Acceptance of Gifts: No AlexRenew employee having responsibility for a procurement transaction shall accept gifts from contractors. All employees are to discourage the offer of, and decline, any gift regardless of value or purpose that in any way might influence the expenditure of funds.
- C. Kickbacks: No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services, or anything present or promised, unless consideration of substantially equal or greater value is exchanged.

- D. Preparation of Solicitations: No person who, for compensation, prepares an invitation to bid or request for proposal for or on behalf of AlexRenew shall submit a bid or proposal for that procurement or any portion thereof, or disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the AlexRenew CEO may permit such person to submit a bid or proposal for that procurement or any portion thereof if AlexRenew determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of AlexRenew.
- E. Misrepresentations: No AlexRenew employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious, or fraudulent statements or representations; or make or use any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry.
- F. Penalty for Violation: The penalty for violations of any of the provisions in this section is provided in the [Code of Virginia, §2.2-4377](#).

### 3. Procurement Process:

- A. Purchasing Transactions: All AlexRenew purchases must be completed by placement of a purchase requisition in Avantis, or, by using a procurement credit card within delegated authority and expenditure limits. Except in an emergency as defined in paragraph 6.G, staff is not authorized to use any other method (e.g., verbal phone orders) to procure construction, goods and services, or to obligate funds.
- B. Executing Contracts and Purchase Orders: Staff is not authorized to execute contracts. Only the CEO or the CEO's designee is authorized to execute contractual documents on behalf of AlexRenew. All requests to establish or amend contracts must be submitted to the Purchasing Office. The Purchasing Office will administer the contract process to ensure compliance with the acceptable methods of procurement referenced in Section 6. The Purchasing Office will request final contract approval and execution from the CEO. Signature authority for Purchase Orders varies based on the value of the Purchase Order. A Purchase Order is defined as a purchaser's written document to a supplier formalizing all terms and conditions of a proposed transaction, such as a description of the requested item, being purchased, delivery schedule, terms of payment, and transportation. For Purchase Orders up to \$5000, the buyer may sign. For Purchase Orders of \$5000 or more, the Purchasing Manager must sign. Purchase Orders shall not be split into multiple



lower-value orders in order to circumvent signature requirements.

- C. Board Approval of Contracts: The AlexRenew Board of Directors must approve all contracts for Construction and Professional Services estimated to exceed \$100,000 for the duration of the contract. The Board of Directors must also approve any contract that exceeds its estimated value by greater than 25% or \$50,000, or any amendment to a Construction or Professional Services contract which would cause the contract to meet or exceed \$100,000 in total cost. Construction Services shall mean the process of utilizing labor to build, alter, repair, improve, or demolish any structure, building or public improvement; generally, Construction does not apply to routine maintenance, repair, or operation (MRO) of existing real property. Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
- D. Interaction with Vendors: Staff is authorized to contact vendors for the purpose of researching the market, gauging approximate costs, and soliciting price quotes. Advise vendors that any subsequent purchase will be carried out in accordance with AlexRenew purchasing regulations. Staff may wish to direct vendors to the “How to Do Business with AlexRenew” section of this Manual.
- E. Technology Purchases: The Information Systems Office must approve all technology purchases such as computer software, hardware and peripheral devices, add maintenance, licenses and consulting services. Should the Purchasing Office receive a request for technology equipment or services from other than the Information Systems Office, the Purchasing Office will consult with Information Systems prior to proceeding with the procurement.

#### **4. Specifications:**

Specifications are that portion of a purchase or solicitation (ie. IFB, RFP, RFQ, etc.) that describes the characteristics of a commodity or service required by a requestor. Specifications can either enhance or inhibit competition. It is the goal of AlexRenew that competition is sought to the maximum feasible degree.

- A. Preparation of Specifications: Advice or assistance may be received from vendors in identifying the features and characteristics of requirements; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of AlexRenew shall submit a bid or proposal for that procurement or any portion thereof, or disclose to any bidder or offeror information concerning the

procurement which is not available to the public.

- B. Design Specifications: Design specifications employ dimensional and other physical requirements and provide details as to how a product is to be fabricated. Design specifications are normally prepared by architects and engineers for construction or custom manufactured products.
- C. Performance Specifications: Performance specifications communicate what a product must accomplish rather than how it is to be built.
- D. Brand Name or Equal Specification: A brand name and model number may be used to convey the general style, type, character, and quality of the article desired. Unless otherwise provided in the IFB, the name of a certain brand, make, or manufacturer does not restrict bidders to the specific brand or manufacturer named. Any article which AlexRenew in its sole discretion, determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted ([Code of Virginia, § 2.2-4315](#)).
- E. Proprietary Specification: A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when, among other circumstances, the desired product must be compatible with or is an integral component of existing equipment or products, or where prequalification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors who carry the manufacturer's product.

## **5. Requisitions and Purchase Orders in Avantis:**

- A. Requisitions: Requisitions are created through the use of Avantis to initiate the purchasing process. A requisition is the authorizing document allowing a Purchasing transaction using funding from the requestor's budget. It is the requestor's obligation to complete the requisition, attach the proposed vendor to be utilized, provide account code(s), budget limitations and to provide the required delivery and schedule needs. Except for purchases less than \$5,000.00, requestors ARE NOT authorized to obligate in any manner the financial resources of AlexRenew. Only the Chief Executive Officer or her/his designee(s) and the staff assigned to the Purchasing Office as warranted, may obligate AlexRenew financial resources. Additional information about Avantis requisitioning:

- 1) Requisitions generated in Avantis automatically number the requisitions in sequence regardless of the user.
  - 2) Vendors and Manufacturers are not synonymous in Avantis. Manufacturers may have a designated vendor or may sell directly.
  - 3) The Purchasing Office welcomes the opportunity to add new information regarding any existing vendor in order to keep its records up-to-date, (e.g., changes to the vendor's name, address, representatives and other contact information).
  - 4) When a customer requires Procurement to add a new vendor, the following information is required:  
  
Vendor's name;  
Address, phone number, fax number;  
Representative's name;  
Vendor's W9 (Tax ID) Form
  - 5) Purchasing receives approved requisitions from Avantis and assigns the next consecutive purchase order number to create a purchase order through Avantis.
  - 6) A daily recap of the purchase orders is generated from Avantis for Purchasing.
- B. Pricing on Requisitions: If the requestor knows the current price, it must be filled in. If the requestor is using prices from a previous order, or quotation, it should be so noted in the description area, along with the approximate date of that previous order or quotation so that any further investigation necessary to determine the accuracy is prompted. Regardless of the source, there must be at least an estimate of the price, either by unit, if possible, or, if not, just an estimate of the total price for the order. Avantis picks up previous pricing entered so requisitions are not necessarily accurate when created. The Purchasing Office is tasked with assuring regulatory compliance for every order.

- C. **Freight Terms on Requisitions:** Freight terms for the purchase of goods are generally expressed as “F.O.B. Destination” or “F.O.B. Origin.” F.O.B is referred to as “Free on Board.” **F.O.B. Destination** is the preferred method of delivery of goods. F.O.B. Destination means that the seller or vendor owns and assumes all risk for the goods until they are accepted at the buyer’s designated delivery point. **F.O.B. Origin** is the alternative method for delivery of goods. F.O.B. Origin is means the vendor transfers ownership to the buyer at the shipping point. The buyer owns the product at the shipping point and assumes all risks for the product from the point of shipping. Shipping costs may be included in the quoted price or added to the subsequent invoice.
- D. **Purchase Orders:** Once a requisition has been created and approved by the appropriate personnel, Purchasing will review the requisition to ensure compliance with one of the accepted methods of procurement as referenced in Section 6. Once approved, Purchasing will generate a purchase order based on the information provided in the requisition. The purchase order will be issued to the vendor most often via facsimile along with Alexandria Renew Enterprise’s most recent Purchasing Terms and Conditions and any other supporting documentation (if applicable). The Purchasing Terms and Conditions is also available on the [AlexRenew website](#) and is incorporated by reference in the purchase orders. The original Purchase Order will be kept by Procurement. A copy of the issued purchase order will be provided to both the requestor and Receiving Department for reference and records purposes.
- E. **Virginia Sales Tax Exemption Certificates:** Alexandria Renew Enterprises is exempt from paying sales tax to any vendor with whom it purchases tangible personal property in the State of Virginia; or, any vendor, regardless of the state in which they are located, if delivery occurs to any AlexRenew location in Virginia.
- 1) Alexandria Renew Enterprises does not use a Tax Exemption Number; rather, uses a tax exemption certificate from the Commonwealth of Virginia (ST-12 form). Vendors are required by law to keep this tax form on file for at least one year, though they may keep it indefinitely. They shall refer to this same form for any and all orders.
  - 2) An ST-12 form shall be sent with the original copy of the Purchase Order to each **new vendor** from whom we order. Jurisdictions within the Commonwealth are broadly applying this statement to include purchases made on governmental credit cards.
  - 3) As directed by the Department of Taxation of the Commonwealth of Virginia, ST-12’s shall be used by governmental entities and accepted by any vendor wishing to do business.

- 4) AlexRenew is not exempt from sales taxes of other states if what is ordered is picked up in another state. States have reciprocal agreements on sales taxes, and vendors honor that as a normal business practice. It is beneficial to have supplies delivered to a Virginia facility rather than a pick up in neighboring jurisdictions (e.g., Washington, D.C. or Maryland).
- F. Credit Applications from the Authority to Vendors: Alexandria Renew Enterprises is a municipal entity; as such, the standard practice is not to complete vendor credit application forms. AlexRenew has a standard credit information form which the Finance Department will provide to vendors upon request.

## **6. Methods of Procurement:**

All AlexRenew contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding or competitive negotiation, except as otherwise provided for in this manual or by law. Among the other procedures that may be used are Construction Management at Risk, Design-Build (Appendix 1.) and the Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") (Appendix 2). AlexRenew has adopted special procedures for procurement using the Construction Management at Risk, Design-Build and PPEA deliveries. These special procedures are set forth in Appendices 1 and 2 of this Manual.

- A. Types of Procurement Methods: There are several methods of procurement that may be used for obtaining construction, goods and/or services. They are:
- 1) Small Purchase Procedures (Less than \$100,000)
  - 2) Competitive Sealed Bidding (\$100,000 +)
  - 3) Competitive Negotiations (\$60,000+ for Professional Services, \$100,000 for Non- Professional Services)
  - 4) Sole Source
  - 5) Emergency Procurement
  - 6) Joint and Cooperative Purchases
- B. Small Purchase Procedures: Small Purchase Procedures do not require competitive sealed bids or competitive negotiation. They may be used for single or term contracts for (1) goods and services other than professional services and (2) non-transportation related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000. They may also be used for single or term contracts for professional services without competitive negotiation, where the aggregate or sum of all phases is not expected to

exceed \$60,000. As described below, these Small Purchase Procedures provide for competition wherever practicable.

- 1) Single Quotation (less than \$15,000): When AlexRenew requestors estimate that cost of goods or nonprofessional services is less than \$15,000, purchases can be made upon receipt of a minimum of one (1) written or telephone (oral) quotation. Competition is encouraged but not required. Every effort should be made to ensure that pricing is fair and reasonable.
- 2) Telephone Bids (\$15,000 to less than \$50,000): AlexRenew staff is authorized to solicit telephone bids for goods and non-professional services estimated to be \$15,000 or more, but less than \$50,000. Bids must be solicited from a minimum of three (3) legitimate sources and documented using the Telephone Bid Record for Goods or Telephone Bid Record for Services forms. These forms are available from the Purchasing Office and are also available on [SharePoint](#). The completed Bid Record form should accompany any resulting Purchase Requisition.
- 3) Unsealed Written Bidding (\$50,000 to less than \$100,000): AlexRenew staff is authorized to solicit written bids for goods and non-professional services estimated to be \$50,000 or more, but less than \$100,000. It is vitally important that all potential bidders receive uniform information to avoid an unfair advantage or disadvantage to particular bidders. Bids must be solicited from a minimum of four (4) legitimate sources and documented using the AlexRenew Request for Quote form. This form is available from the Purchasing Office and is also available on [SharePoint](#). The completed Request for Quote forms should accompany any resulting Purchase Requisition.
- 4) Unsealed Proposals for Non-Professional Services (\$15,000 to less than \$100,000): AlexRenew may obtain required goods or nonprofessional services using a solicitation for unsealed proposals up to \$100,000. A written determination for the use of competitive negotiation is not required for unsealed proposals. A Selection Advisory Committee shall be established to evaluate and rank offers based upon evaluation criteria established in the solicitation. Upon completion of the evaluation, negotiations shall be conducted with the offeror's selected, and the committee will recommend award of a contract.
- 5) Unsealed Proposals for Professional Services (\$15,000 to less than \$60,000.): AlexRenew may obtain required professional services using a solicitation for unsealed proposals up to \$60,000. A written determination for the use of competitive negotiation is not required for unsealed proposals. A Selection Advisory Committee

shall be established to evaluate and rank offers based upon evaluation criteria established in the solicitation. Upon completion of the evaluation, negotiations shall be conducted with the offeror's selected, and the committee will recommend award of a contract.

- C. Exceptions to Competitive Procurement Requirements: AlexRenew has determined that competition normally is either not practicable or available for purchases of goods and services listed below. Therefore, when the estimated cost of goods and services is estimated to be less than \$100,000 for the entire duration of the requirement, purchases may be made upon receipt of a minimum of one written quotation for the following categories:
- 1) Art and Antiques: Original works of art; and original, or authentic antique period art frames. Period antiques used to furnish historic facilities.
  - 2) Books: Printed Materials, Reprints and Subscriptions: When only available from the publisher.
  - 3) Copyright and Royalty Fees: Purchase of exclusive legal rights to reproduce, publish, sell, or distribute the matter and form of something, such as, a literary, artistic or musical work.
  - 4) Dues and Professional Licenses: Professional organization membership and professional license dues and fees.
  - 5) Equipment, Used or Surplus: Purchase of used or surplus equipment.
  - 6) Honoraria, Entertainment and Speakers and Artists: Services of speakers, lecturers, musicians, performing artists and writers.
  - 7) Photographers: For official photographs and portraits
  - 8) License and Maintenance Agreements: License and Maintenance Agreements with the owner of source code for existing software and/or manufacturer of sophisticated scientific equipment.
  - 9) Media Purchases: Newspaper Advertisements, Legal Postings, Public Announcements.
  - 10) Pilot Programs: Purchases for testing and evaluation. Purchases should be limited to the amount needed for complete and adequate documented testing.
  - 11) Rare or Historic Materials: Historical manuscripts, photographs and prints. Includes rental of materials for exhibition purposes.



- 12) Sponsorship of events directly related to the mission of AlexRenew: Sponsorships are limited to charitable, volunteer and non-profit organizations, chamber of commerce, or other governmental entities.
  - 13) Training: Training provided by professional organizations such as workshops and conferences. Specialized training, proprietary, not typically available to the general public.
  - 14) Intergovernmental Agreements: Purchases from the federal government and other public bodies throughout the United States. Intergovernmental agreements are exempt from competition at any dollar range.
- D. Competitive Sealed Bidding: Competitive sealed bidding uses an Invitation for Bids or IFB. Competitive sealed bidding is used for procuring construction, goods and non-professional services with an estimated value of \$100,000 or greater. The Purchasing Office will initiate and manage the solicitation process upon authorization of a purchase request. The competitive sealed bidding process includes the following elements:
- 1) Issuance of a written Invitation for Bids containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Public notice of the Invitation for Bids will be posted on Virginia's electronic purchasing portal, eVA, and the AlexRenew website at least 10 days prior to the date set for receipt of bids. Public notice of the Invitation for Bids may also be posted at least 5 days prior to the date set for receipt of bids by posting in a designated public area or publication in a newspaper of general circulation or both. In addition to public posting, bids may be solicited directly from potential qualified bidders. Any additional solicitations shall include businesses selected from a list made available by the Department of Small Business and Supplier Diversity or its successor.
  - 2) All potential bidders must be notified in writing of any changes or interpretations in the bid materials, and all bidders must receive the same information. All questions from potential bidders should be directed to Purchasing Office staff.
  - 3) Bid shall be publicly opened and a tabulation of received bids shall be announced and publicly posted.
  - 4) Evaluation of bids based upon the requirements set forth in the invitation, which may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.



- 5) Award will be made to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation to Bid.
- E. Competitive Negotiation: Competitive negotiation uses a Request for Proposals or RFP. Competitive negotiation is for services other than professional services with an estimated value of \$100,000 or greater and professional services with an estimated value of \$60,000 or greater. The Purchasing Office will initiate and manage the solicitation and award process. The competitive negotiation process includes the following elements:
- 1) Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal, indicating whether a numerical scoring system will be used in evaluation of the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the RFP or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.
  - 2) Public notice of the Request for Proposal will be posted on Virginia's electronic purchasing portal, eVA, and the AlexRenew website at least 10 days prior to the date set for receipt of proposals. Public notice of the Request for Proposal may also be posted at least 5 days prior to the date set for receipt of proposals by posting in a designated public area or by publication in a newspaper of general circulation or both. In addition to public posting, proposals may be solicited directly from potential qualified offerors. Any additional solicitations shall include certified businesses selected from a list made available by the Department of Small Business and Supplier Diversity or its successor.
  - 3) All potential offerors must be notified in writing of any changes or interpretations, and all bidders must receive the same information. All questions from potential bidders should be directed to Purchasing Office staff.
  - 4) Appointment of a Selection Advisory Committee (SAC) to evaluate proposals, negotiate and recommend award. The SAC will be composed of three or more key staff personnel and other subject matter experts required. The SAC is appointed by the CEO and outside consultants may or may not be included.
  - 5) Minutes of Selection Advisory Committee deliberations and records or votes taken shall be recorded and maintained for the duration of the contract and then archived for three years. Minutes shall detail pertinent reasons for committee recommendations and be

available for review by the general public upon request.

- 6) For goods, nonprofessional services, and insurance with an estimated value of \$100,000 or more, selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole or primary determining factor. After negotiations have been conducted with each offeror so selected, AlexRenew shall select the offeror which, in its opinion, has made the best proposal and provides the best value, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should AlexRenew determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.
- 7) All proposed contracts for professional services where compensation exceeds \$60,000 shall be procured via competitive negotiation. AlexRenew shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the public body in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the public body may discuss nonbinding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, nonbinding estimates of price for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors, in accordance with Virginia Code § 2.2-4342. At the conclusion of discussion, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, AlexRenew shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious.

Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to AlexRenew can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and

reasonable price.

Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the Request for Proposal, AlexRenew may award contracts to more than one offeror.

Should AlexRenew determine in writing and in its sole discretion that only one offeror is fully qualified or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

- 8) Professional services shall mean any type of service performed by an independent contractor within the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy, or professional engineering.
- F. Sole Source Procurement: Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination and must clearly demonstrate that there is only one source or only one supplier that can provide the construction, goods or services. Providing detailed responses to the following items will help in determining whether sole source procurement is justified:
- 1) Provide a description of the project and/or the purpose of the contract in which the product or service is required.
  - 2) In addition to the product or service requested what other products and/or services have you considered and why are they not acceptable?
  - 3) Explain why this is the only product or service that can meet your needs.
  - 4) Explain why this vendor is the only practicable source available from which to obtain this product or service. What other potential sources were considered and why are they not acceptable?
  - 5) Explain why this action/choice is in the best interest of Alexandria Renew.
  - 6) Describe the efforts that were made to negotiate the best possible price and contract terms. Explain why the price is considered fair and reasonable.

The requestor shall complete a Sole Source Procurement Request Form and submit it to the Purchasing Office for review and approval. The form is available from the Purchasing Office and is also available on [SharePoint](#). The Purchasing Office must publicly post sole source procurement awards on the day the decision to award is announced or the award is made, whichever occurred first.

- G. Emergency Procurement: An emergency is defined as a situation which has an immediate impact to the safety of staff and the general public, the protection of AlexRenew property, and the ability of AlexRenew to carry out its daily mission. If an emergency situation arises at AlexRenew, a purchase or contract may be executed without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The Purchasing Office shall issue a written notice stating that the contract is being awarded on an emergency basis and identifying what is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted publicly where the Purchasing Office typically provides notices of procurement opportunities, and may be published in a newspaper of general circulation and/or on the Department of General Services eVA site
- H. Joint and Cooperative Procurement: Purchases may be made jointly or cooperatively with other public bodies as more particularly described in Virginia Code § 2.2-4304. A purchase request should be submitted describing the process to be used and the purchase to be made.

- I. Purchasing Lead Time: Administrative lead-time is that period of time from initiation of the requirement by the user to issuance of a purchase order for existing contracts or award of a new contract.

Method of Procurement	Lead Time	Description
<b>Invitation for Bid (IFB)</b> : For construction, goods and non-professional services greater than \$100,000	60-90 Calendar Days	Publicly advertised competitive sealed bidding.
<b>Request for Proposal (RFP)</b> : For requirements greater than \$100,000 for goods and nonprofessional services, and construction upon making the required determination \$60,000 for Professional Services.	120-150 Calendar Days	Publicly advertised competitive negotiation.
<b>Sole Source Contracts</b> : For requirements greater than \$5,000 where it is determined in writing that there is only one source practicably available.	10-14 Calendar Days	Sole Source contracts require a written determination that there is only one source practicably available for the required good or service. The determination must be approved by the Purchasing Office.
<b>Unsealed Bidding and Proposals</b> : For requirements of \$15,000 - \$100,000 for non- professional goods and services, , \$15,000 - \$60,000 for professional services.	10-14 Calendar Days	Similar to the Invitation for Bid and Competitive Negotiations, but public advertisement is not required. At least 4 legitimate sources must be solicited for written bids or proposals.

<b>Joint and Cooperative Purchases:</b> Purchase Requests utilizing an existing AlexRenew or other public contract, or initiating a new procurement with another public body	1 Business Day for Cooperative; time for Joint will follow the nature of the underlying procurement	A Cooperative procurement purchases using an existing AlexRenew or other permitted public contract. If the request matches terms, conditions and prices of the contract, the Purchase Request will be converted to a Purchase Order. A Joint procurement follows the process for the underlying procurement type.
<b>Purchases less than \$15,000 Follow small purchase procedures.</b>	1 Business Day	Competition is recommended but not required.
<b>Emergency Procurement</b>	1 Business Day	A purchase can be executed without competitive sealed bidding or competitive negotiation.

## **7. Standard Operating Procedures for Contract Execution and Management:**

### **A. Contract Approval and Execution**

Staff is not authorized to execute contracts.

1. Only the CEO or CEO's designee is authorized to execute contractual documents on behalf of AlexRenew.
2. All requests to establish or amend contracts must be submitted to the Purchasing Office and not directly to the CEO.
3. The Contracts Specialist will ensure compliance with method of procurement and request final approval and execution from CEO.

Board Approval of Contracts:

1. The Board must approve contracts for Construction and Professional Services estimated to meet or exceed \$100K.
2. The Board must approve any contract modification that causes the contract to exceed its original value by the greater than 25% or \$50,000, and any amendment to a Construction or Professional Services contract which would cause the contract to meet or exceed \$100K in total value.
3. The CEO has authority to approve all other contracts.

### **B. Contract Modifications:**

1. A contract modification is any request for change affecting price, quality, quantity, delivery, or cancellation. It requires a thorough written explanation prior to approval.
2. A Contractor shall not be notified that a change has been approved until that change has been authorized through a written amendment to the contract reviewed and drafted by the Contracts Specialist.
3. All change requests should be evaluated for contract validity, and a price reasonableness determination of the change shall be made in writing.
4. Any such change included as an amendment to the contract is reviewed solely or jointly by the Contracts Specialist and Project Lead.
5. As noted above, Board approval and/or CEO execution may be required for modifications of certain value or scope.

### **C. Managing Contracts:**

1. Contract management planning should occur during the pre-award phase and be reflected in solicitation and award documents.
2. All purchases should encompass some post-award analysis efforts, with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the agency.
3. Key Performance Indicators should be developed for each contract that requires multiple or scheduled actions by the contractor during the contract period.

4. Key Performance Indicators are developed directly from the contract by extracting specific requirements, scheduled delivery dates, start-up and a completion date, plus other related items such as performance guarantees (e.g., bonds, certificates of insurance, catalogs, copies of warranties, volume reports, as-built drawings, maintenance manuals, parts lists, maintenance, scheduled testing, etc.).
5. The Contracts Specialist works jointly with project lead in establishing requirements or tasks while developing the solicitation.
6. All contracts are saved in SharePoint and original copies are filed in the Contracts Specialist Office.
7. Contract management begins after award of the contract. Its purpose is to assure that the contractor's total performance is in accordance with the terms and conditions of the contractual agreement.
8. The integrity of the public purchasing system demands that construction, goods or services be furnished, received, invoiced, and paid as specified in the contract.
9. Contract management includes all actions taken by AlexRenew relative to a specific contract after the award is made.
10. After issuance of a contract award, the Contract Owner and the Contracts Specialist are responsible for contract management to assure that the construction, services or goods are provided in accordance with the terms of the contract. Use of the Key Performance Indicators supports this effort.
11. Upon a report of contractor noncompliance, the Contracts Specialist and Contract Owner shall work together, in consultation with other AlexRenew staff and consultants, to determine how to respond to the noncompliance to protect the best interests of AlexRenew, consist with the Contract terms.

## **8. Delivery and Inspection of Shipments:**

- A. **Delivery of Goods:** Receiving personnel should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default.
- B. **Inspection:** Receiving personnel are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to



determine conformance with applicable contract requirements or specifications. It includes the determination that:

- 1) Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.
  - 2) Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.
  - 3) The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.
  - 4) The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.
- C. Acceptance: Proper notification of the acceptance of goods or services involves the requisitioner, the receiver and the Purchasing Office. Notification of the acceptance of the delivery should be noted on a receiving document such as a packing slip or copy of the purchase order. Timely and proper payment of invoices requires expedient review and acceptance of the delivery against the terms of the purchase.
- D. Rejection: Rejection of goods or services is the responsibility of the receiver whenever the goods or services do not meet contract or purchase order requirements. In the event of a partial or total rejection, personnel should take immediate action to notify the contractor as to the reasons for rejection and to request prompt replacement.
- E. Restocking Charges: A restocking charge may be assessed by a contractor for those deliveries rejected by AlexRenew due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return.
- F. Overshipments/Overruns: AlexRenew should not accept goods in excess of those specified on the purchase order or contract unless it is recognized as a custom of that industry (e.g. printing, cable, fabric), is so stated in the bid, and is accepted by the buyer. In the event that an over-shipment is not recognized until after receipt and not provided for in the award, AlexRenew staff must notify the contractor that the over-shipment will not be accepted and, unless the over-shipment is picked up by the contractor, it will be returned at the contractor's expense.

- G. Lost or Damaged Shipments: It is the receiver's responsibility to promptly inspect deliveries for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the carrier and contractor within seven days of receipt and prior to removal from the point of delivery if possible. It is difficult to fix responsibility for deliveries once the goods have been moved to another location or when the inspection has not been made in a timely manner. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by AlexRenew.

## 9. Payment and Invoice Processing:

- A. Invoice Processing: To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. The *Code of Virginia*, § 2.2-4350A, requires payment for the completely delivered goods or services by the required payment date. If no payment date has been established by contract, then payment is due 30 days after receipt of a proper invoice, or 30 days after the receipt of the goods or services, whichever is later. When a large purchase requires performance over an extended period of time, arrangements should be made to process partial payments upon receipt of evidence indicating that the goods or services have been received, or in otherwise in accordance with the terms of the contract.
- B. Receipt Documentation: The acknowledgments of packing slips, shipping tickets, delivery receipts, store receipts, partial receiving reports, invoices received should be forwarded to the Purchasing Office immediately upon proper inspection of goods. Documentation must show the legible signature of the employee receiving the merchandise and proper notation as to any shortages, discrepancies, breakage, etc., in the shipment. Should a shipment arrive void of any kind of receipt, it is the responsibility of the receiver to fully execute a receiving report (for incomplete OR complete shipments). A photo copy of the appropriate Purchase Order with any applicable notations as indicated above is sufficient. This is normally performed by the Stock Room with the exception of certain items such as chemicals. Invoices received from vendors via mail are routed to the appropriate division for acknowledgment of receipt of goods or services only in the rare instances when receipts or like data have not already been forwarded to the Purchasing Office for approval to proceed with payment (usually the appropriate staff member is asked to stop by the Purchasing Office). Upon receipt in the Purchasing Office, invoices are compared to the purchase order and receipts, coded, reviewed for accuracy, and approved for payment prior to forwarding to finance for auditing and payment. This process can be swift, so it is imperative any problems with the shipment be detected and reported immediately.

## 10. Purchase Card Program:

- A. Program Overview: In an effort to streamline invoice and payment processing steps and sharply reduce paperwork, AlexRenew has established a program allowing individuals and departments to use charge cards. Unlike the typical consumer charge card, this program incorporates the features of corporate charge cards, a national concept designed for business applications. Major program benefits include the reduction in the number of invoices processed, reduction in internal requisitioning, reduced vendor collection costs, and payment to the vendor by the charge card company within as little as three business days. There are different types of cards:
- 1) Individual Cards - These have individual employee's names on them. They are available for use by that singular employee only, and that named employee is responsible for the keeping of an accurate log with receipt.
  - 2) "Un-named" Cards: These cards do not display an individual employee's name, but rather have a designation of the department or division which they serve with a single digit number indicating which card it is for that department or division. In most instances, a single employee is responsible for the record keeping of each of these cards, as well as its distribution for use and recovery, and collection of receipts. In some instances two employees have been appointed as alternately responsible for the same card.
  - 3) "Travel Only" Cards: These cards are secured in the Purchasing Office. They are available to appropriately authorized AlexRenew employees who do not have access to Individual Cards for travel purposes. They can be checked out the last regular work day before an employee is to begin travel. Employee must appear in the Purchasing Office with an approved travel form as verification that the trip has been authorized. AlexRenew travel and bankcard regulations must be followed for all charges during the approved travel.
- B. Purchasing Card Log Sheets and Reconciliation: Purchasing Card Log Sheets are available in the administration building mailroom. The log sheets are to be kept by individual AlexRenew credit card holders or kept in one central location for record of purchases made on any one of several cards assigned to various work groups rather than individual card holders. In both instances, all appropriate receipts must be attached and the logs turned in to the Purchasing Office between the 16<sup>th</sup> and 20<sup>th</sup> of each month.

## 11. Surplus Property:

- A. Definition: Surplus materials means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but does not include property as defined in *Code of Virginia*, § 2.2-1147 (real property or real estate), that is determined to be surplus.
- B. Disposal of Surplus Items: All surplus property should be disposed of through the Purchasing Manager. AlexRenew staff wishing to surplus an item will need to complete a Declaration of Surplus Property form (forms are available in the Mail Room). The original copy of the surplus property form must be completed and signed by the requestor's department manager and forwarded to the Purchasing Manager. The Purchasing Manager will discuss with the CFO prior to disposal of the item. All items will be disposed by one or more of the following methods:
- 1) Transfer to another division, agency, or governmental entity;
  - 2) Sent to an online auction service provider;
  - 3) Donated to non-profit, charitable institution upon approval of a senior management member;
  - 4) Disposal as scrap material (e.g., scrap metals for which Alexandria Renew Enterprises receives monetary compensation); or;
  - 5) Disposal as trash (other than normal hauling to the landfill of regular plant refuse). This designation would be broken furniture or computer components which are not salvageable or recyclable. No receipts required;
  - 6) Disposal of hazardous material will be handled by appropriate disposal methods.
- C. Employee Purchase of Surplus Equipment: Public employees cannot purchase or gain any other benefit from the disposal of any item owned by their employer, including vehicles which are sent to auction. Though AlexRenew employees may be eligible to participate in the auction of surplus items or vehicles of other jurisdictions, neither the AlexRenew employee nor members of their immediate family may bid on AlexRenew surplus property. The definition of "immediate family" in the Virginia Public Procurement Act is as follows: " 'Immediate family' shall mean a spouse, children, parents, brothers, and sisters, and any other person living in the same household as the employee."

## **12. Sustainable Purchasing Policy (SPP)**

### PURPOSE

AlexRenew has an expressed goal to become widely and continuously recognized as THE leading sustainable and resilient utility. This goal aligns with the AlexRenew Business Action Plan to complete a sustainable and resilient utility roadmap that meets the City of Alexandria Eco City Charter. In support of this goal, AlexRenew is implementing a policy to promote the purchase and use of environmentally preferable products and services.

### ENVIRONMENTALLY PREFERABLE PRODUCTS AND SERVICES

Environmentally preferable products and services are those that:

- Reduce negative impact to human health and natural resources;
- Prevent pollution;
- Reduce waste;
- Conserve resources; and
- Support environmental sustainability.

Analysis of environmental impact may also include supply chain and life cycle factors such as manufacturing, production, content, packaging, distribution, reuse, disposal, and the environmental practices of manufacturers, distributors, and vendors.

### POLICY STATEMENT

AlexRenew endeavors to purchase environmentally preferable products and services that have a reduced negative effect on the environment and human health when compared to other products and services that serve the same purpose. Consideration and judgment will be exercised by AlexRenew staff to ensure that environmentally preferable products and services perform adequately, are reasonably priced, and can be delivered in a reasonable period of time. Nothing in this policy shall require AlexRenew to procure products that do not perform adequately, or are not available at a reasonable price within a reasonable period of time.

### ROLES

This policy applies to all AlexRenew employees and departments. The Purchasing Office will manage the policy and assist employees and departments by providing information and purchasing tools to support the goals of this policy.

## GOALS

Environmental Purchasing efforts will accomplish the following goals:

1. Where authorized by applicable law, implement best value principles in contract award evaluations through a balance of performance requirements, price and the environmental impact of products and services;
2. Develop purchasing specifications and standard solicitation language that promote the purchase of environmentally preferable energy and water efficient products and services;
3. Develop contract language that requires contractors to use environmentally preferable products and practices in providing construction, goods and services for AlexRenew;
4. Incorporate the use of the ENVISION rating system into planning, design, and construction projects to ensure sustainability;
5. Implement a surplus property program that promotes and manages re-use and proper disposal of property, and reduces the volume of new equipment purchases;
6. Evaluate and monitor supply chain practices of AlexRenew vendors and identify those whose practices best reduce negative environmental impact;
7. Develop a purchasing tool kit for AlexRenew staff with resources to help identify environmentally preferable products and services; and
8. Cooperatively and jointly purchase environmentally preferable products and services with neighboring jurisdictions to consolidate like kind requirements, achieve favorable pricing and reduce the environmental impact of packaging and transportation.

## SPP GOVERNANCE AND REPORTING

Sustainability Outcome Indicators will be developed for each of the goals specified herein. The Purchasing Manager and the Chief of Enterprise Sustainability will monitor the policy goals, measure outcome and provide status reports to executive management quarterly.

### 13. How to Do Business with AlexRenew

All Public Notices regarding requests for proposal (RFP), qualifications (RFQ), information (RFI), expressions of interest (RFEI), and invitations for bid (IFB) are advertised in one or more of the following ways:

- [AlexRenew website](#)
- [The Virginia's eProcurement \(eVA\) Portal \(link is external\)](#)

Suppliers are encouraged to attend bid openings. Unless otherwise specified, awards will be made within 60 days of the opening. Please [review our purchasing terms and conditions](#) (PDF) before submitting your bid.

Also, make sure you've completed your [eVA registration \(link is external\)](#). Prospective bidders are encouraged to [review our current bid and proposal opportunities](#).

Suppliers interested in providing a non-binding product demonstration or services overview for our staff may contact the Purchasing Department by emailing [Purchasing@alexrenew.com](mailto:Purchasing@alexrenew.com) (link sends e-mail). We are proud to be a resource for you and your business.

**CHECKLIST – IFB SOP**

Task Done	MILESTONES	RESPONSIBLE PARTY	APPROVAL
<b>SOLICITATION PLANNING</b>			
	Determine and Define Requirement	Program Manager	N/A
	Notify Procurement of Requirement	Program Manager	N/A
	Develop Tentative Procurement Schedule/Timeline	Contract Specialist	Client
	Create Solicitation Number	Contract Specialist	N/A
	Start IFB Draft	Contract Specialist	N/A
	Establish Issue Date	Contract Specialist	N/A
	Establish Bid Opening Date	Contract Specialist	N/A
	Send IFB Document for Review/Approval	Contract Specialist	Purchasing Manager Program Manager
	Final Approval of Solicitation Document	Purchasing Manager	
	<b>SOLICITATION ACTIVITIES</b>		
	Launch Solicitation – Advertise on eVA, and AlexRenew Website	Contract Specialist	N/A
	Prepare for Pre-Bid Conference (if applicable)	Contract Specialist	N/A
	Prepare and issue addendum(s) (if applicable)	Contract Specialist	Purchasing Manager
	Conduct Bid Opening	Contract Specialist	N/A
	Prepare Bid Tabulation	Contract Specialist	N/A
<b>EVALUATION ACTIVITIES</b>			



	Send Bid Tabulation and Bids to Program Manager for Evaluation and Award Recommendation	Contract Specialist	N/A
	Review Bids for responsiveness and responsibility, and other criteria for award	Contract Specialist	N/A
	Send Recommendation for Award from Program Manager	Program Manager	N/A
	Review Recommendation for Award	Contract Specialist	N/A
	Final Recommendation for Award	Contract Specialist	Purchasing Manager
<b>AWARD ACTIVITIES</b>			
	Prepare Contract or Acceptance Agreement	Contract Specialist	Purchasing Manager
	Prepare Notice of Award	Contract Specialist	Purchasing Manager
	Send approved Contract to Contractor for review and signature (if applicable)	Contract Specialist	N/A
	Prepare internal memo to CEO	Contract Specialist	Purchasing Manager
	Send internal memo along with Acceptance Agreement/Contract, and Notice of award for CEO review and approval/signature.	Contract Specialist	CEO
	Send approved Acceptance Agreement/Contract to Contractor.	Contract Specialist	N/A
	Post Notice of Award on AlexRenew and eVA websites	Contract Specialist	N/A
	Post contract entry in SharePoint and attach relevant contract documents	Contract Specialist	N/A
<b>POST AWARD ACTIVITIES</b>			
	Contract Kick-Off Meeting	Contract Specialist Program Manager	N/A
	Issue PO/Notice to Proceed	Program Manager (PO) Contract Specialist (NTP)	N/A
	Monitor and address vendor performance issues, Amend contracts as needed.	Program Manager Contract Specialist	As required

**CHECKLIST- RFP SOP**

Task Done	MILESTONES	RESPONSIBLE PARTY	APPROVAL
<b>SOLICITATION PLANNING</b>			
	Determine and Define Requirement	Program Manager	N/A
	Notify Procurement of Requirement	Program Manager	N/A
	Issue Tentative Procurement Timeline	Contract Specialist	Program Manager
	Create Solicitation Number	Contract Specialist	N/A
	Develop Statement of Work	Program Manager	N/A
	Develop Special & Technical Provisions	Contract Specialist	N/A
	Start RFP Draft (template)	Contract Specialist	N/A
	Confirm Final Procurement Schedule	Contract Specialist	Program Manager
	Recommend Bidder List for Direct Notification	Program Manager	N/A
	Establish Selection and Technical Advisory Members	Contract Specialist	N/A
	Review RFP Document	Contract Specialist	Program Manager
	Approve Final RFP Document	Contract Specialist	Program Manager Purchasing Manager
<b>SOLICITATION ACTIVITIES</b>			
	Launch Solicitation: Advertise on AlexRenew and eVA Websites, directly notify recommended bidders.	Contract Specialist	N/A
	Prepare for and Conduct Pre-proposal Conference	Contract Specialist	N/A
	Prepare and issue Addenda if necessary	Contract Specialist	N/A
	Prepare Evaluation Criteria Scoresheet	Contract Specialist	
	Forward SAC Approval Memo to CEO for approval prior to RFP closing date	Contract Specialist	CEO
	Receive and record proposals	Contract Specialist	N/A
	Review Proposals to determine all submittal requirements were met – Follow up with Offerors as necessary.	Contract Specialist	N/A

EVALUATION ACTIVITIES			
	Schedule 1 <sup>st</sup> SAC meeting-proposal distribution (establish subsequent meetings based on timeline)	Contract Specialist	N/A
	SAC/TAC Members sign Disclosure & Non-Disclosure Statements	Contract Specialist	N/A
	Proposal Transmittal Memo to SAC/TAC	Contract Specialist	N/A
	Transmit Proposals to SAC and TAC	Contract Specialist	N/A
	SAC Completes Proposal Evaluation	SAC Chair	N/A
	Meet to Review and Discuss Scores	SAC Contract Specialist	N/A
	Identify Top-rated Offerors	SAC Contract Specialist	N/A
	Issue Score Summary Memo to Contract Specialist	SAC Chair	N/A
	Meet to Review and Discuss Scoring	SAC Contract Specialist	N/A
	Conduct (optional) Interviews and /or Demos (SAC Attendance Required)	SAC Contract Specialist	N/A
	Establish Negotiation Team	SAC Contract Specialist	N/A
	Identify Negotiation Issues	SAC Negotiation Team Contract Specialist	N/A
	Negotiate with Multiple Offerors (Except Prof Services)	Negotiation Team Contract Specialist	N/A
	Document Negotiation issues and agreement	Negotiation Team Contract Specialist	N/A
	Recommendation for Award	SAC Chair	Contract Specialist
CONTRACT AWARD ACTIVITIES			
	Establish Board Item Date if necessary	Program Manager Contract Specialist	Board Secretary/CEO's Office
	Prepare Contract	Contract Specialist	Purchasing Manager
	Prepare Notice of Award	Contract Specialist	Purchasing Manager
	Send Approved Contract to Contractor for review and approval.	Contract Specialist	Contractor
	Prepare internal memo to CEO	Contract Specialist	N/A
	Send internal memo along with Contract and Notice of award for CEO review and approval/signature.	Contract Specialist	CEO
	Send approved Contract to Contractor	Contract Specialist	N/A
	Post Notice of Award on AlexRenew and eVA websites	Contract Specialist	N/A
	Notify unsuccessful offerors of award decision	Contract Specialist	N/A
POST AWARD ACTIVITIES			
	Contract Kick-Off Meeting	Program Manager Contract Specialist	
	Debrief unsuccessful offerors as requested	Contract Specialist	
	Monitor Vendor Performance	Program Mgr	

## **APPENDIX-1**

### **Procedures for the Procurement of Construction Management and Design-Build**

Adopted by the AlexRenew Board of Directors on June 19, 2012

#### **A. Construction Management**

In accordance with the provisions of § 2.2-4308 of the Code of Virginia, the City of Alexandria, Virginia Sanitation Authority d/b/a Alexandria Renew Enterprises (the "Authority") hereby adopts the following procedures for the procurement of Construction Management ("CM") contracts, as defined in Virginia Code § 2.2-4301. These procedures shall be effective June 20, 2012. All revisions shall be effective upon adoption.

A. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4308 of the Code of Virginia, the Authority may enter into a contract with a Construction Manager in accordance with these procedures. Under authority of § 2.2-4308 of the Code of Virginia, the Authority is authorized to use competitive negotiations to procure CM contracts when it has in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the Authority regarding the use of construction management for the project and who shall assist the Authority with the preparation of the Request for Proposal and the evaluation of such proposals; and when it determines in advance, and sets forth in writing, (i) that a construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) that there is a benefit to the Authority by using a construction management contract; and (iii) that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

B. **CRITERIA FOR USE OF CM:** CM contracts may be approved for use on projects where 1) fast tracking of construction is needed to meet Authority program requirements, or 2) value engineering and/or constructability analyses concurrent with design are required.

The use of CM shall be limited to projects with a construction value that is in excess of \$10,000,000. With proper justification for small complex projects, the Chief Executive Officer of the Authority ("CEO") may grant a waiver of this requirement.

C. **PROCEDURE FOR APPROVAL TO USE CM:** Prior to taking any further action, the Authority shall request authority, in writing, and receive approval from the CEO, to use a CM contract.

The request shall justify and substantiate that a CM contract meets the criteria found in paragraph B. The request must also include the stipulation that the CM contract will be initiated no later than the Schematic Phase of design. The request shall also include a written justification (i) that a construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) that there is a benefit to the Authority by using a construction management contract; and (iii) that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. These justifications for the use of a CM contract shall also be stated in the Request for Qualifications.

Approval of exceptions to this policy may be granted by the CEO, who is the approving authority for requests to use CM procedures.

D. CM SELECTION PROCEDURES: ON projects approved for CM, procurement of the contract shall be a two-step process unless a one step process is approved pursuant to Subsection G. The following procedures shall be used in selecting a CM and awarding a contract:

1. The Authority shall appoint an Evaluation Committee ("Committee") which shall consist of at least three members from the Authority. The Committee shall include a licensed professional engineer or architect employed by or under contract with the Authority.
2. The basis of the award of the contract shall be in accordance with § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the CEO, in advance, for approval. It is noted that cost is a critical component of the selection process.
3. Selection of Qualified Offerors (STEP I): On projects approved for CM, the Authority shall conduct a prequalification process as follows to determine which offerors are qualified to receive Requests for Proposals.
  - a) The Authority shall prepare a Request for Qualifications ("RFQ") containing the Authority's facility requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate the RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor registered in the Commonwealth of Virginia as part of the Project team.
  - b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Code of Virginia.
  - c) The Committee shall evaluate each responding firm's RFQ responses and any other relevant information and shall determine those deemed qualified with respect to the criteria established for the project.
  - d) The RFQ evaluation process shall result in a short list of two to five offerors to receive the Request for Proposal ("RFP"). An offeror may be denied prequalification only as specified under § 2.2-4317 of the Code of Virginia, but the short list shall also be based on the RFQ criteria.
  - e) At least 30 days prior to the date established for the submission of proposals, the Authority shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
4. Selection of a Construction Manager (STEP II):
  - a) The Committee shall send an RFP to the offerors on the short list and request submission of formal proposals from them. The criteria for award shall be included in the RFP.
  - b) Proposals as described in the RFP shall be submitted to the Committee.

c) The Committee will evaluate and rank the proposals. After evaluation and ranking of the proposals, the Committee shall:

1. Conduct negotiations with two or more offerors submitting the highest ranked proposals, OR
2. Should the Authority determine, in writing and at its sole discretion, that only one offeror is fully qualified or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated with that offeror after approval of the CEO.

d) The Committee shall make its recommendation on the selection of a Construction Manager to the CEO based on its evaluations and negotiations. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the RFP.

e) The Authority will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Authority may notify all offerors who submitted proposals of the Authority's intent to award the contract to a particular offeror at any time after the CEO has selected the Construction Manager. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror.

f) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

**E. REQUIRED CONSTRUCTION MANAGEMENT CONTRACT TERMS:** Any Guaranteed Maximum Price construction management contract entered into by the Authority will contain provisions requiring that (1) not more than 10% of the construction work (measured by cost of the work) will be performed by the CM with its own forces and (2) that the remaining 90% of the construction work will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding. The CEO may modify these contractual requirements in whole or in part for projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Manager.

**F.** The Guaranteed Maximum Price shall be established at the completion of working drawings unless a waiver has been granted to this requirement by the CEO.

**G.** The Authority may request from the CEO approval to perform a one-step solicitation for its project. If adequate justification is provided, the CEO may approve the request.

## **B. Design/Build**

In accordance with the provisions of § 2.2-4308 of the Code of Virginia, the Alexandria Sanitation Authority (the "Authority") hereby adopts the following procedures for the procurement of Design-Build ("D/B") contracts, as defined in Virginia Code § 2.2-4301. These procedures shall be effective June 20, 2012. All revisions shall be effective upon adoption.

A. **LEGISLATIVE AUTHORITY:** Under authority of § 2.2-4308 of the Code of Virginia, the Authority may contract to secure D/B projects on a fixed price or not to exceed basis in accordance with these procedures. Under authority of § 2.2-4308 of the Code of Virginia, the Authority is authorized to use competitive negotiations to procure D/B contracts when it has in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the Authority regarding the use of design/build for the project and who shall assist the Authority with the preparation of the Request for Proposal and the evaluation of such proposals; and when it determines in advance, and sets forth in writing, (i) that a design/build contract is more advantageous than a competitive sealed bid construction contract; (ii) that there is a benefit to the Authority by using a design/build contract; and (iii) that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination.

B. **CRITERIA FOR USE OF D/B CONTRACTS:** D/B contracts are intended to minimize the project risk for an owner and to reduce the delivery schedule by overlapping the design phase and construction phase of a project.

C. **PROCEDURE FOR APPROVAL TO USE D/B:** Prior to taking any action, the Authority shall request authority, in writing and receive approval from the CEO, to use a D/B contract.

The request shall justify and substantiate that D/B is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the Authority will benefit from using D/B. The request shall also include a written justification (i) that a design/build contract is more advantageous than a competitive sealed bid construction contract; (ii) that there is a benefit to the Authority by using a design/build contract; and (iii) that competitive sealed bidding is either not practicable or not fiscally advantageous to the public.

Approval of exceptions to this policy may be granted by the CEO, who is the approving authority for requests to use D/B procedures.

D. **D/B SELECTION PROCEDURES:** On projects approved for D/B, procurement of the contract shall be a two step competitive negotiation process. The following procedures shall be used in selecting a Design-Builder and awarding a contract:

1. The Authority shall appoint an Evaluation Committee ("Committee") which shall consist of at least three members from the Authority. The Committee shall include a licensed professional engineer or architect employed by or under contract with the Authority.

2. The basis of the award of the contract shall be in accordance with § 2.2-4301(3)(b) and the criteria for the award shall be submitted to the CEO, in advance, for approval. It is noted that cost is a critical component of the selection process.
3. Selection of Qualified Offerors (STEP I): On projects approved for D/B, the Authority shall conduct a prequalification process as follows to determine which offerors are qualified to receive Requests for Proposals.
  - a) The Authority shall prepare a Request for Qualifications ("RFQ") containing the Authority's Facility Requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses and other relevant information, including any unique capabilities or qualifications that will be required of the contractor. All offerors shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Project Team.
  - b) The RFQ shall be posted in accordance with the current standards for the posting of public bids in the Code of Virginia.
  - c) The Committee shall evaluate each offeror's RFQ responses and any other relevant information and shall determine which offerors are fully qualified and suitable for the project.
  - d) The RFQ evaluation shall result in a short list of two to five offerors to receive the Request for Proposal ("RFP"). An offeror may be denied prequalification only as specified under § 2.2-4317 of the Code of Virginia, but the short list shall also be based on the RFQ criteria.
  - e) At least 30 days prior to the date established for the submission of proposals, the Authority shall advise in writing each offeror which sought prequalification whether that offeror has been prequalified. Prequalified offerors that are not selected for the short list shall likewise be provided the reasons for such decision. In the event that an offeror is denied prequalification, the written notification to such offeror shall state the reasons for such denial of prequalification and the factual basis of such reasons.
4. Selection of Design-Build Contractor (STEP II):
  - a) The Authority will send an RFP to the D/B offerors on the short list for the project and request formal proposals from them. The criteria for award shall be included in the RFP.
  - b) Sealed Technical Proposals as described in the RFP shall be submitted to the Committee. Separately-sealed Cost Proposals shall be submitted to the Authority's contracting officer for the project and shall be secured by and kept sealed until evaluation of the Technical Proposals and the design adjustments are completed.
  - c) The Committee will evaluate the Technical Proposals based on the criteria contained in the RFP. It will inform each D/B offeror of any adjustments necessary to make its Technical Proposal fully comply with the requirements of the RFP. In addition, the Authority may require that offerors make design adjustments necessary to incorporate project improvements and/or additional detailed information identified by the Committee during design development.
  - d) Based on the revisions made to the Technical Proposals, the offeror may amend its Cost Proposal. In addition, an offeror may submit cost modifications to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.



e) The Committee shall evaluate (and rank if technical rankings are to be considered as a criteria for award) the Technical Proposals. Should the Authority determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror after approval of the CEO. Otherwise, the Authority shall open the Cost Proposals and apply the criteria for award as specified in the RFP and approved by the CEO.

f) The Committee shall make its recommendation on the selection of a Design-Builder to the CEO based on its evaluations of the Technical and Cost Proposals and all amendments thereto. The contract shall be awarded to the offeror who is fully qualified and has been determined to have provided the best value in response to the Request for Proposal.

g) The Authority will notify all offerors who submitted proposals which offeror was selected for the project. In the alternative, the Authority may notify all offerors who submitted proposals of the Authority's intent to award the contract to a particular offeror at any time after the CEO has selected the Design-Builder. When the terms and conditions of multiple awards are so provide din the RFP, awards may be made to more than one offeror.

h) Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful proposers.

## **APPENDIX-2**

Procedures for the Procurement under the Public-Private Education Facilities and  
Infrastructure Act of 2002

Adopted by the AlexRenew Board of Directors on \_\_\_\_\_, 20\_\_

# **Public-Private Education Facilities and Infrastructure Act of 2002, as Amended**

## **Commonwealth of Virginia**

**Guidelines and Procedures**  
**Revised January 17, 2008**

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## I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, as amended<sup>1</sup> (the Act, or PPEA) is the legislative framework enabling departments, agencies and institutions of the Commonwealth of Virginia, as well as local governments and certain other public bodies, to enter agreements authorizing private entities (sometimes referred to herein as “Private Partner” or “Contractor”) to develop and/or operate qualifying projects as defined in the Act. The guidelines and procedures presented in this document were developed pursuant to the requirements of Virginia Code § 56-575.3:1 and 56-575.16. These guidelines and procedures are to be followed by departments, agencies and institutions of the Commonwealth (all sometimes referred to herein as “Agency”) in considering and developing projects under the Act. The guidelines and procedures will also guide private entities who wish to partner with Agencies in undertaking projects pursuant to the Act.

The Act grants responsible public entities authority to create public-private partnerships for development of a wide range of projects for public use if the public entities determine there is a need for such projects and that private involvement may provide the project in a more timely or cost-effective fashion, lead to productivity or efficiency improvements in the public entities’ processes or delivery of services, considering, among other things, the probable scope, complexity or priority of the project; risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

Virginia Code §56-575.16.2, provides, in part: “When the responsible public entity determines to proceed according to the guidelines adopted by it pursuant to this subdivision, it shall state the reasons for its determination in writing. If a state agency is the responsible public entity, the approval of the responsible Governor’s Secretary, or the Governor, shall be required before the responsible public entity may enter into a comprehensive agreement pursuant to this subdivision.” Agencies may enter an interim agreement or a comprehensive agreement under the Act, if they are so advised, only after the Governor or responsible Cabinet Secretary has approved proceeding to the Detailed Stage (Part 2) of the PPEA process. With such approval, the head of the Agency, or the Agency’s Board if applicable, may approve entering the interim and/or comprehensive agreement.

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, and certain infrastructure and services such as:

<sup>1</sup> Va. Code §§56-575.1 through 56-575.17

- (i) An education facility, including, but not limited to, a school building, any functionally-related and subordinate facility (a stadium, for example), land appurtenant to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility and telecommunications and other communications infrastructure;
- (v) A recreational facility;
- (vi) Technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services, or
- (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- (viii) Any improvements necessary or desirable to any unimproved locally or state-owned real estate.

Because the PPEA is intended to encourage innovative partnerships between responsible public entities and private entities, Agencies are encouraged to maintain an open dialogue with private entities to discuss the need for infrastructure improvements.

Although guidance with regard to the application of the PPEA is provided in this document, it is incumbent upon all entities, both public and private, to comply with the provisions of the PPEA and other applicable laws. In the event that the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by these guidelines, then these guidelines shall be interpreted in a manner to conform to the new law. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -3-

## II. GENERAL PROVISIONS

### A. Proposal Submission

Proposals may be invited through solicitation or they may be considered when delivered by a private entity on an unsolicited basis. In either case, proposers must follow a two-part submission process consisting of an initial Conceptual Stage (Part 1) and, after approval of the conceptual stage, a Detailed Stage (Part 2). The initial stage of the proposal should provide specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The Part 2 detailed proposal must provide detailed scope and budget estimates and identify deliverables.

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. Benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals should include a comprehensive scope of work and a financial plan for the project that contains enough detail to allow analysis of the proposed project's financial feasibility. The PPEA is a flexible development tool that allows use of innovative financing techniques. Depending on the Agency's authority and the circumstances of each transaction, financing options might include the use of special purpose entities, sale and lease-back transactions, enhanced use leasing, property exchanges, development agreements, conduit financing and other methods allowed by law. However, the cost analysis of a proposal should not be linked solely to the financing plan as the Commonwealth may determine to finance the project through other available means such as through the Virginia Public Building Authority.

The PPEA is intended to encourage proposals from the private sector that offer the assumption of commensurate risk by the private partner through innovative approaches to project financing, development and/or use. However, while substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to *public* use, typically involving facilities critical to public health, safety and welfare. Accordingly, Agencies shall continue to exercise full and proper due diligence in the evaluation and selection of private entities to carry-out the proposals. In this regard, the qualifications, capabilities, resources and other attributes of a prospective private partner and its entire team must be carefully examined for every project. Private entities proposing projects shall be held strictly accountable for representations regarding their qualifications, experience and any other content of their proposals, including all aspects of work to be performed. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -4-

## **B. Affected Local Jurisdictions**

Va. Code § 56-575.6 requires that any private entity requesting approval from or submitting a proposal to the Commonwealth must provide each affected unit of local government a copy of the private entity's request or proposal. The private entity is responsible for documenting delivery of the request or proposal.

Affected local jurisdictions must have 60 days from the receipt of the request or proposal to submit written comments to the responsible Agency, 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 by the affected Agency within the 60-day period shall be considered in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by a local jurisdiction.

In providing the request or proposal to the affected local jurisdiction, the private entity may withhold information that the Agency has deemed to be confidential and not subject to release under the Freedom of Information Act, in accordance with Section II. D of these Guidelines.

## **C. Proposal Review Fee**

No fee will be charged by Agencies to process, review or evaluate any solicited proposal submitted under the PPEA.

For unsolicited proposals and competing proposals, Agencies shall charge a fee of one-half of one percent (0.5%) of the estimated cost of implementing the proposal. The minimum fee shall be \$5,000 and the maximum fee shall be \$50,000. For purposes of initial processing of the proposal, the Agency may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. Such sums shall be paid with certified funds and shall be deposited in the State Treasury on the books of the Comptroller in a special statewide fund known as the PPEA Fund.

- ⌚ If the cost of reviewing the proposal is less than the established proposal fee, the Agency may refund the excess to the proposer.
- ⌚ If during the initial review the Agency decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded to the private entity.

Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -5-

- ⌚ If the Agency chooses to proceed with evaluation of proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid to the Commonwealth in full.

#### **D. Freedom of Information Act**

1. General applicability of disclosure provisions.

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (“FOIA”) except that § 2.2-3705.6 (11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and a responsible public body may elect to release some or all of documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 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 or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the Agency must comply with the provisions of such order.

2. Protection from mandatory disclosure for certain documents submitted by a private entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the responsible public entity 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 three classes of records listed in Section D.1. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008 -6-**



Upon the receipt of a written request for protection of documents, the responsible public entity shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the responsible public entity or private entity in accordance with Section D.1. The responsible public entity shall make a written determination of the nature and scope of the protection to be afforded by the responsible public entity under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section D.1.

Once a written determination has been made by the responsible public entity, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the responsible public entity or any affected local jurisdiction, or the Public Private Partnership Advisory Commission as provided for in §30-281, to which such documents are provided.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

3. Protection from mandatory disclosure for certain documents produced by the responsible public entity.

Memoranda, staff evaluations, or other records prepared by or for the responsible public entity, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the responsible public entity or private entity, and the basis for the determination of adverse affect is documented in writing by the responsible public entity.

Cost estimates relating to a proposed procurement transaction prepared by or for a responsible public entity shall not be open to public inspection.

4. If a private entity fails to designate confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under FOIA. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008 -7-**

5. A responsible public entity may not withhold from public access:

- (a) procurement records other than those subject to the written determination of the responsible public entity;
- (b) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the responsible public entity and the private entity;
- (c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- (d) information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the RPE must comply with such order.

**E. Applicability of Other Laws**

Once an interim or comprehensive agreement has been executed, Agencies shall make available, upon request, procurement records in accordance with Va. Code §2.2-4342.

In soliciting or entertaining proposals under the PPEA, Agencies shall comply with all applicable federal, , state and local laws not in conflict with the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, Private entities shall comply with all applicable federal state and local laws. Such laws may include, but not necessarily be limited to, contractual obligations which require Workers Compensation insurance coverage, performance bonds or payment bonds from approved sureties, compliance with the Virginia Prompt Payment Act, compliance with the Ethics in Public Contracting Act and compliance with environmental laws, workplace safety laws, and state or local laws governing contractor or trade licensing, building codes and building permit requirements.

Departments, agencies and institutions of the Commonwealth of Virginia are constitutionally prohibited from expending funds that are not appropriated by the Virginia General Assembly. Therefore, expenditure of state funds in support of an interim or comprehensive agreement requires and must be conditioned upon such appropriation of funds. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008 -8-**

Proposals should avoid the creation of state-supported debt; however, should a proposal include such debt, procedures to secure specific approval by the Governor, General Assembly, the Department of Planning and Budget, the Department of the Treasury, and any other appropriate entities must be included in the proposal.. In addition, a clear and detailed alternative if such approval is not achieved must be provided.

Any Agency considering construction of facilities through solicited or unsolicited proposals shall be responsible for ensuring compliance with the provisions of § 10.1-1188 of the Code of Virginia as it regards environmental issues and the need for an Environmental Impact Report .

In accordance with existing state law, or pursuant to directive from the Governor's Office, other Agencies may also have a right and/or responsibility with respect to the project and the Contractor's compliance with the terms of the comprehensive agreement.

While procedures incorporated in these guidelines are consistent with those of Virginia Code §§ 2.2-4301, under § 56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

### **III. SOLICITED PROPOSALS**

With the written authorization of the head of the Agency, a Request for Proposals (RFP) may be issued inviting proposals from private entities to develop and/or operate qualifying projects. The Agency shall use a two-part proposal process consisting of an initial conceptual stage (Part 1) and a detailed stage (Part 2). The RFP shall invite qualified parties to submit proposals on individual projects identified by the Agency . In such case, the Agency shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP must specify any information and documents required by the Agency and the factors that will be used in evaluating proposals. The RFP also should contain or incorporate by reference applicable Virginia standard terms and conditions, and should specify any unique capabilities or qualifications that will be required of the private entities. Pre-proposal conferences may be held as deemed appropriate by the Agency.

The RFP shall be posted on the Commonwealth's electronic procurement website ([www.eva.virginia.gov](http://www.eva.virginia.gov)). Notices shall also be published in a newspaper or other publications of general circulation and advertised on the *Virginia Business Opportunities Newsletter* website. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008 -9-**

#### IV. UNSOLICITED PROPOSALS

The PPEA permits Agencies to consider unsolicited proposals received from private entities for development and/or operation of qualifying projects.

Agencies may publicize their needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited proposals should be submitted to the head of the affected Agency, and the delivery should be confirmed for the submitter by written receipt. If a proposal clearly affects multiple Agencies, or if it is uncertain as to which Agency is best suited to receive a proposal, it should be submitted to the Secretary of Administration.

##### **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

- . The Commonwealth reserves the right to reject any and all proposals at any time.
- . Upon receipt of any unsolicited proposal, or group of proposals, and payment of the required fee by the proposer or proposers, the agency or institution should determine whether to accept the unsolicited proposal for publication and conceptual stage consideration. If the Agency determines not to accept the proposal, it shall return the proposal, together with all fees and accompanying documentation, to the proposer.
- . a. If an Agency chooses to accept an unsolicited proposal for conceptual-stage consideration, it shall invite competing proposals by posting notices on the Commonwealth's electronic procurement website eVA at [www.eva.virginia.gov](http://www.eva.virginia.gov) and in such other public area as may be regularly used for posting of public notices. The notices shall be posted for such period as the Agency deems necessary and reasonable, but in no event less than 45 days. The Agency should publish, at least once, the same notice in one or more newspapers or periodicals of general circulation in the affected jurisdiction(s), providing notice of pending or potential action in not less than 45 days. The Agency shall provide for more than 45 days in situations where the scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.
- . The notice shall state that the Agency (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -10-

adopted by the Commonwealth and the provisions of the PPEA. The notice will summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA. Representatives of the agency or institution are encouraged to answer questions from private entities that are contemplating submission of a competing unsolicited proposal.

Prior to posting of the notices provided for in this subsection, the Agency shall receive from the initial proposer(s) the balance due, if any, of the required project proposal review fee.

#### **B. Posting Requirements**

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the responsible public entity within 10 working days after acceptance of such proposals on the Department of General Service's web-based electronic procurement program commonly known as "eVA;".

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the responsible public entity so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3. In addition to the posting requirements, 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 responsible public entity and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

#### **C. Initial Review by the Commonwealth at the Conceptual Stage (Part 1)**

After reviewing the original proposal and any competing proposals submitted during the notice period, the Agency may recommend to the responsible Cabinet Secretary, or the Governor:

(i) not to proceed further with any proposal,

(ii) to proceed to the detailed (Part 2) stage of review with the original proposal,

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<sup>2</sup>

Va. Code § 2.2-4300 et seq.

(iii) to proceed to the detailed (Part 2) stage with a competing proposal, or

(iv) to proceed to the detailed (Part 2) stage with multiple proposals.

The responsible Cabinet Secretary, or the Governor (if there is not a responsible Cabinet Secretary), shall approve, in writing, in advance, the course of action to be implemented by the agency or institution, after considering the comments of Secretaries of Finance and Administration.

In the event that more than one proposal will be considered in the detailed (Part 2) stage of review, the Agency shall determine whether the unsuccessful private entity, or entities, shall be reimbursed, in whole or in part, for costs incurred in the detailed stage of review. In such case, reasonable costs may be assessed to the successful proposer as part of any ensuing interim or comprehensive agreement.

Discussions between the Agency and a private entity about the need for infrastructure improvements shall not inhibit the Agency's ability to employ other procurement procedures to meet such needs. The Commonwealth retains the right to reject any proposal at any time, without penalty, prior to the execution of an interim or comprehensive agreement.

#### **V. REVIEW OF SOLICITED AND UNSOLICITED PROPOSALS**

1. 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 Agency for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section VI A.

2. The Agency will determine at the initial review stage whether it will proceed using:

a. Standard procurement procedures consistent with the Virginia Public Procurement Act<sup>2</sup>; or

b. Procedures developed that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Virginia Code § 2.2-4301 (competitive negotiation). The Agency may proceed using such procedures only if

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it makes a written determination that doing so is likely to be advantageous to the Commonwealth and the public based upon either (i) the probable scope, complexity or priority of need, or (ii) the risk sharing, including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity, or increase in funding, dedicated revenue or other economic benefit from the project would otherwise not be available.

When an Agency elects to use competitive negotiations, its written determination should consider factors such as risk sharing, added value and/or economic benefits from the project that would not be available without competitive negotiation. In addition, the written determination should explain how the scope, complexity, and/or urgency of the project are such that competitive negotiation is determined necessary.

## **VI. PROPOSAL PREPARATION AND SUBMISSION**

### **A. Format for Submissions at Conceptual Stage (Part 1)**

Proposals at the conceptual stage must 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) such additional information as may seem prudent which is not inconsistent with the requirements of the PPEA. Suggestions for presenting information to be included in proposals at the Conceptual Stage include:

#### **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 (\$1 million or more) in the structure fits into the overall team. All members of the offeror's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor. Identified team members, including major subcontractors (over \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the responsible Agency.

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- 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. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims, of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.
- c. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years with contact information for such clients (names/addresses /telephone numbers). If a firm 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 possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.
- d. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. 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.
- f. 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.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

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- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- i. Provide information on the level of commitment by the firm or consortium of firms to use Department of Minority Business Enterprise certified firms in developing and implementing the project.
- j. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
  - (1) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
  - (2) A completed qualification statement on a form developed by the Commonwealth that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three years any of the following conduct:
    - (A) bankruptcy filings
    - (B) liquidated damages
    - (C) fines, assessments or penalties
    - (D) judgments or awards in contract disputes
    - (E) contract defaults, contract terminations
    - (F) license revocations, suspensions, other disciplinary actions
    - (G) prior debarments or suspensions by a governmental entity
    - (H) denials of prequalification, findings of non-responsibility

l) safety past performance data, including fatality incidents, "Experience Modification Rating," "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate"

- (J) violations of any federal, state or local criminal or civil law
- (K) criminal indictments or investigations
- (L) legal claims filed by or against the firm

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

l. Virginia Code 22.1-296.1C provides: “Prior to awarding a contract for the provision of services that require the contractor or his employees to have direct contact with students, the school board shall require the contractor and, when relevant, any employee who will have direct contact with students, to provide certification that (i) he has not been convicted of a felony or any offense involving the sexual molestation or physical or sexual abuse or rape of a child; and (ii) whether he has been convicted of a crime of moral turpitude.” Identify the proposed plan for complying with the intent of Va. Code §22.1-296.1C (whether or not the statute applies to the client Agency) if the contractor or its employees or subcontractors, will have direct contact with students.

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 of 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 public entity.

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

d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed.

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. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.

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- h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- i. 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.
- j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- k. List any other assumptions relied on for the project to be successful.
- l. 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 include appropriate staffing levels and associated costs. Include any 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 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 Commonwealth's credit or revenue.

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f. Identify the amounts and the terms and conditions for any revenue sources.

g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

a. Identify community benefits, including the economic impact the project will have on the Commonwealth and local community in terms of amount of tax revenue to be generated for the Commonwealth and political subdivisions, the number jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia subcontractors.

b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project;

c. Explain the strategy and plan that will be carried out to involve and inform the general public, business community, local governments, and governmental agencies in areas affected by the project;

d. Describe the compatibility of the project with local, regional, and state economic development efforts.

e. Describe the compatibility with the local comprehensive plan, local infrastructure development plans, and any capital improvements budget or other local spending plan.

f. Provide a statement setting forth participation efforts 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.

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**B. Format for Submissions at Detailed Stage (Part 2)**

If the Commonwealth decides to proceed to the detailed stage (Part 2) with one or more proposals, each selected private entity must provide the following information, where applicable, unless the responsible Agency waives the requirement or requirements:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A conceptual site plan indicating proposed location and configuration of the project on the proposed site;
3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
4. A detailed description of the proposed participation, use and financial involvement of the State, agency and/or locality in the project. Include the proposed terms and conditions for the project if they differ from the standard state General Conditions;
5. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
6. 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 proposer intends to request the public entity to condemn;
7. 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;
8. 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

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projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.

9. A detailed discussion of assumptions regarding user fees or rates and usage of the projects.

10. Identification and discussion of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

11. Demonstration of consistency with appropriate 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 jurisdiction.

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

14. 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 public entity'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.

15. Acknowledge conformance with Virginia Code Sections 2.2-4367 thru 2.2-4377 (the Ethics in Public Contracting Act);

16. Additional material and information as the Agency may request.

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## **VII. PROPOSAL EVALUATION AND SELECTION CRITERIA**

In selecting proposals, all relevant information from both the Conceptual Stage and the Detailed Stage must be considered, along with the following:

### **A. Qualifications and Experience**

To determine whether the proposer possesses the requisite qualifications and experience, factors to consider in review of either phase should include:

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 plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition; and
10. Project ownership.

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### **B. Project Characteristics**

Factors to consider in determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformance with applicable laws, regulations, codes, guidelines 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 include:

1. Cost and cost benefit to the Agency;
2. Financing and the impact on the debt or debt burden of the Agency and Commonwealth;
3. Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.

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4. Estimated cost; and
5. Life-cycle cost.
6. 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, as applicable; and,
7. Such other items as the Commonwealth deems appropriate.

The Commonwealth may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

**D. Public 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:

1. Community benefits, including the economic impact the project will have on the Commonwealth and local community in terms of amount of tax revenue to be generated for the Commonwealth and political subdivisions, the number jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia subcontractors.
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.

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#### **E. Other Factors**

Other factors that may be considered 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 whether the project will lead to productivity or efficiency improvements in the Commonwealth's processes or delivery of services to the public,
7. The private entity's compliance with a minority business plan, enterprise participation plan or good faith effort to comply with the goals of such plans;
8. The private entity's plan to employ local contractors and residents; and,
9. Other criteria that the Commonwealth deems appropriate.

#### **VIII. PUBLIC-PRIVATE PARTNERSHIP OVERSIGHT COMMISSION**

Prior to entering into negotiations with any private entity for an interim or comprehensive agreement, the Agency shall submit copies of the detailed proposals to the Public-Private Partnership Advisory Commission as required by §30-278 et seq. Unless the proposals meet the requirements of §30-278.B, the Agency shall not commence negotiation of an interim or comprehensive agreement until the Commission has submitted its recommendations to the Agency, or the Commission has declined to accept the detailed proposals for review. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -24-

## **IX. INTERIM AND COMPREHENSIVE AGREEMENTS**

Neither the Commonwealth nor the Agency shall accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. The head of the affected Agency, or the Agency's Board, shall approve any interim or comprehensive agreement executed pursuant to the PPEA, but no such agreement shall be executed prior to i) receiving approval by the Governor or the appropriate Cabinet Secretary authorizing the Agency to proceed to the Detailed stage (Part 2) of the PPEA, and ii) the agency or institution submitting a copy of the proposed interim or comprehensive agreement to the Public-Private Partnership Advisory Commission at least 30 days prior to execution of the agreement along with a report describing the extent to which the Commission's recommendations were addressed in the proposed interim or comprehensive agreement.

Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

### **A. Interim Agreement Terms**

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the Commonwealth assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the head of the affected Agency and in no way limits the rights reserved by the Agency or the Commonwealth to terminate the evaluation of any or all proposals at any time.

### **B. Comprehensive Agreement Terms**

The scope 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;

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2. The review of plans and specifications by the Commonwealth, its agencies or instrumentalities;
3. The rights of the Commonwealth to inspect the project to ensure compliance with the comprehensive agreement and any development plans and specifications;
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 operator by the Commonwealth, its agencies or instrumentalities to ensure proper maintenance;
6. The terms under which the Contractor will reimburse the Commonwealth for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the Commonwealth and the Contractor in the event that the comprehensive agreement is terminated or there is a material default by the Contractor including the conditions governing assumption of the duties and responsibilities of the Contractor by the Agency and the transfer or purchase of property or other interests of the Contractor by the Agency;
8. The terms under which the Contractor 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 is 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 Commonwealth.
  - b. A schedule of the current user fees or lease payments shall be made available by the Contractor to any member of the public upon request.
  - c. Classifications according to reasonable categories for assessment of user fees may be made.

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10. The terms and conditions under which the Agency may be required to contribute financial resources, if any;
  11. The terms and conditions under which existing site conditions will be addressed, including identification of the party responsible for conducting assessments and taking necessary remedial action;
  12. The terms and conditions under which the Agency will be required to pay money to the private entity and the amount of any such payments for the project.
13. A periodic reporting procedure that incorporates a description of the impact of the project on the Commonwealth;
  14. Such other terms and conditions as the Commonwealth may deem appropriate.

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

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Commonwealth. Accordingly, as part of the Comprehensive Agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the Commonwealth of same. Any violation of this section of the Comprehensive Agreement shall give the Commonwealth the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

**C. Notice and Posting requirements**

1. In addition to the posting requirements of Section IV, 30 days prior to entering into an interim or comprehensive agreement, a responsible public entity shall provide an opportunity for public comment on the proposals. Such public comment period may include a public hearing Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -27-

in the sole discretion of the responsible public entity. After the end of the public comment period, no additional posting shall be required based on any public comment received.

2. 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 a responsible public entity, the responsible public entity shall post the proposed agreement in the following manner:

a. For responsible public entities that are state agencies, departments, and institutions, posting shall be on the Department of General Service's web-based electronic procurement program commonly known as "eVA;" at [www.eva.virginia.gov](http://www.eva.virginia.gov) and

b. In addition to the posting requirements, 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 responsible public entity and the private entity.

3. Once an interim agreement or a comprehensive agreement has been executed, the responsible Agency shall make procurement records available for public inspection, upon request.

a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the responsible public entity or private entity.

b. 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.

## **X. GOVERNING PROVISIONS**

In the event of any conflict between these guidelines and procedures and the PPEA, the terms of the PPEA shall control. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -28-

## **Terms and Definitions**

**"Affected jurisdiction"** means any county, city, or town in which all or a portion of a qualifying project is located.

**"Appropriating body"** means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

**"Comprehensive agreement"** means the comprehensive agreement between the private entity and the responsible public entity that is required prior to the development or operation of a qualifying project.

**"Conceptual stage"** means the initial phase of project evaluation when the public entity makes a determination whether the proposed project serves a public purpose, meets the criteria for a qualifying project, assesses the qualifications and experience of a private entity proposer, reviews the project for financial feasibility, and warrants further pursuit.

**"Cost-benefit analysis"** means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

**"Detailed stage"** means the second phase of project evaluation where the public entity has completed the conceptual stage and accepted the proposal and may request additional information regarding a proposed project prior to entering 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.

**"Interim agreement"** means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

**"Lease payment"** means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

**"Lifecycle 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. Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia Procedures Revised January 17, 2008** -29-

**"Material default"** means any default by the private entity in the performance of its duties that jeopardizes adequate service to the public from a qualifying project.

**"Operate"** means to finance, maintain, improve, equip, modify, repair, or operate.

**"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.

**"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.

**"Public entity"** means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

**"Qualifying project"** means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land of 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 any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

**"Responsible public entity"** means a public entity that has the power to develop or operate the applicable qualifying project.

**"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 entity, or from any agency or instrumentality of the foregoing in aid of such facility.

**"Service contract"** means a contract entered into between a public entity and the private entity pursuant to § 56-575.5.Public-Private Education Facilities and Infrastructure Act of 2002, as amended **Commonwealth of Virginia**  
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**"Service payments"** means payments to the private entity of a qualifying project pursuant to a service contract.

**"State"** means the Commonwealth of Virginia.

**"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 pursuant to § 56-575.9.