

12/19/03

VIRGINIA COMMUNITY COLLEGE SYSTEM
IMPLEMENTATION GUIDELINES
FOR
THE PUBLIC-PRIVATE EDUCATION FACILITIES
AND INFRASTRUCTURE ACT (PPEA) OF 2002

I INTRODUCTION.

The Commonwealth of Virginia has adopted Procedures for the implementation of the Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) by all "agencies and institutions" of state government. Those Procedures are attached hereto as Addendum A. The State Board for Community Colleges has adopted and made available these Virginia Community College System "Implementation Guidelines" for its colleges to supplement the Commonwealth's Procedures.¹

II DEFINITIONS AND GENERAL PROVISIONS.

For the purposes of these Implementation Guidelines, the following definitions and general provisions shall apply to individual community college PPEA proposals:

- a. "Responsible public entity" for the Virginia Community College System (VCCS), as that term is used in the PPEA Procedures, is the State Board for Community Colleges (SBCC).
- b. "Institution" as used in the Commonwealth's Procedures shall be interpreted to mean the SBCC for PPEA proposals and projects received by or initiated by an individual community college.
- c. "PPEA Coordinator" is designated by the President of each community college to be the primary point of contact for PPEA inquiries from potential proposers and to receive proposals that may be submitted. The identity and contact information for this individual should be publicized on the community college's website and in college publications containing information regarding facilities and procurement matters
- d. "PPEA Review Committee" may be appointed by each community college President and shall be charged with conducting the various reviews required for PPEA proposals. This Review Committee may have both standing members, who will customarily participate in reviews of all such proposals, and *ad hoc* members who are appointed for a specific proposal because of a need for particular expertise or knowledge. A Chairperson who will be a

¹ Va. Code §56-575.16 .4 provides in part: "A responsible public entity shall not proceed to consider any request by a private entity for approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with this chapter."

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standing member of this Review Committee should also be designated by the college President.

The VCCS Assistant Vice Chancellor for Facilities Management Services and/or his/her designee shall be *ex officio* members of all community college PPEA Review Committees, and shall be provided notice and information concerning proposals to be reviewed and meetings of Review Committees.

The function of the Review Committees shall be to advise the college President, the Chancellor, and the State Board for Community Colleges regarding PPEA proposals. The SBCC shall have the sole authority to make final decisions with regard to all PPEA proposals. The Review Committee and the college President shall have no independent authority to take actions under the PPEA.

System Counsel and/or her/his designee shall serve as legal counsel to the Review Committee, the Chancellor, and the SBCC regarding all community college PPEA proposals.

e. "Outside Consultants" or advisors may be retained under the PPEA Procedures to assist in the review of PPEA proposals, with costs to be paid from proposer fees. The Review Committee may include in its standing or *ad hoc* members outside consultants or advisors as designated by the President of the college. Contractual arrangements with outside consultants are subject to public procurement policy, and availability of funding for such advisors and consultants should be certified by the college President in writing prior to appointment of an outside consultant.

III PROCESSING OF PPEA PROPOSALS.

The Commonwealth procedures provide for two types of PPEA proposals, those being "solicited" proposals or "unsolicited" proposals. The procedure for processing PPEA proposals is specific to the type of proposals under review.

A. Solicited PPEA Proposals.

The PPEA allows institutions to solicit PPEA proposals for needed "qualifying projects" as defined in the PPEA Procedures. Solicited PPEA proposals will be reviewed and processed in accordance with the following guidelines

1. Initiation

Community colleges desiring to solicit PPEA proposals shall prepare a solicitation in conformance with Commonwealth Procedures, and provide a copy to the Chancellor for approval by the State Board for Community Colleges prior to publication of the solicitation.

2. Advertising for Proposals

College issues a solicitation for proposals in accordance with Commonwealth PPEA Procedures.

3. Initial Review of Conceptual Proposals

Review committee determines if conceptual proposals that are received are in compliance with the guidelines including the following:

- a. Compliance with the statutory requirements for "qualifying projects" under the PPEA, and compliance with the required "purposes" of a PPEA project;
- b. Proper format and incorporation of all information required by the Commonwealth's Procedures;
- c. Determine whether the proposed Qualifying Project should be acquired through customary procurement processes including sealed bidding, or whether it should be acquired through competitive negotiation; and
- d. Recommend whether the community college should accept the proposal for consideration and further processing.

The Review Committee's initial review findings and recommendations shall be reported to the President of the college who shall make a determination as to the required findings and a decision to proceed with further review and consideration of the proposal by the State Board for Community Colleges. Should a decision to proceed be made, the college President will make a recommendation to the Chancellor and State Board for Community Colleges for approval to accept a PPEA proposal for further consideration.

Upon the recommendation of the college President, the Review Committee may conduct a meeting with the proposer, or allow the proposer to make a presentation in support of the proposal, under such conditions as the Committee Chairperson deems appropriate.

4. Confidentiality Agreement

The PPEA and the Commonwealth's Procedures require a proposer to expressly identify confidential or proprietary information in any proposal, and to enter into a written agreement with the institution to exempt that information from disclosure under the Virginia Freedom of Information Act. Once the decision has been made to recommend a proposal, the President shall direct that such a Confidentiality Agreement be prepared, and negotiated with the proposer. Upon agreement with the proposer, the Chancellor or his/her designee shall sign the Confidentiality Agreement on behalf of the State Board for Community Colleges.

5. Local Jurisdictions Review

Following notification by the community college that its proposal has been accepted for further consideration and execution of a confidentiality agreement with the community college, it will be the responsibility of the proposer to submit the portions of the proposal not subject to the confidentiality agreement to each "affected local jurisdiction" as that term is defined in the PPEA and the Commonwealth's Procedures. Copies of transmittals or other notification shall be provided to the community college's PPEA Coordinator demonstrating that the affected local jurisdictions have been so notified and the date on which they received the proposal and that the 60 day period for review by local jurisdictions has commenced.

6. Approval to Proceed with Detailed Submission

The Commonwealth's Procedures require that the decision to proceed to the detailed proposal stage be made by the Secretary of Education. Therefore, if one or more conceptual proposals are to be recommended for submission of a detailed proposal, the community college shall forward their submission to the Chancellor for recommendation to the Secretary of Education. The community college submission shall include the following:

- a. A summary of the original proposal received;
- b. Documentation of the publication for competing proposals;
- c. A summary of all competing proposals received;
- d. Copies of all confidentiality agreements executed with proposers; and
- e. A recommendation as to which ones, if any, of the proposals should proceed to submission of detailed proposals, with justification.
- f. Copies of this submission should also be sent to the VCCS Executive Vice Chancellor for coordination of review and comment by other VCCS Presidents and Vice Presidents of Finance and Administration.

7. Solicitation and Review of Detailed Proposals

Upon approval by the Secretary of Education to request detailed proposals from one or more proposers, the PPEA Coordinator at the community college will advise the proposers of this request and the deadline for submission. Upon submission of the detailed proposals as required by the Commonwealth's Procedures, the PPEA Review Committee will commence review of the detailed proposals with a goal of recommending one proposal for negotiation of a comprehensive agreement, if it is determined to be in the College's best interest to do so. The Review Committee may allow proposers an opportunity to meet with the Committee to present or discuss their detailed proposal. The Review Committee will normally recommend to the college President one proposal for recommendation to the Chancellor and SBCC for negotiation of a comprehensive agreement.

8. Negotiation of Comprehensive Agreement

The community college President shall advise the Chancellor regarding a recommendation to the Secretary of Education of the VCCS intention to commence negotiation of a comprehensive agreement with a single (or multiple) proposer(s). System Counsel, other attorneys from the Office of the Attorney General, or outside counsel may assist with

preparation of the Comprehensive Agreement and related documents. When the comprehensive agreement has been fully negotiated and reviewed by the Attorney General's office, the completed agreement shall be presented to the State Board for Community College for approval prior to submission through the VCCS to the Secretaries of Education, Finance and Administration, and to the Governor for the approval required under the Commonwealth's Procedures. Following approval by the Governor, the VCCS Chancellor shall execute the Comprehensive Agreement on behalf of the State Board for Community Colleges.

B. Unsolicited PPEA Proposals.

Unsolicited PPEA proposals will be reviewed and processed in substantially the same manner as solicited proposals except that an initial review fee shall be charged in accordance with Commonwealth Procedures. A community college that receives an unsolicited PPEA proposal shall process it in accordance with the following guidelines.

1. Initiation - The Review Committee shall make an initial review of all unsolicited conceptual proposals for the following:
 - a. Compliance with the statutory requirements for "qualifying projects" under the PPEA, and compliance with the required "purposes" of a PPEA project;
 - b. Proper format and incorporation of all information required by the Commonwealth's Procedures;
 - c. Payment of the initial \$5,000 of the required Proposal Review Fee;
 - d. Determine whether the proposed Qualifying Project should be acquired through customary procurement processes including sealed bidding, or whether it should be acquired through competitive negotiation; and
 - e. Recommend whether the community college should accept the proposal for consideration and further processing.

The Review Committee's initial review findings and recommendations shall be reported to the President of the college who shall make a determination as to the required findings and a decision to proceed with further review and consideration of the proposal by the State Board for Community Colleges. Should a decision to proceed be made, the college President will make a recommendation to the State Board for Community College for approval to accept a PPEA proposal for further consideration.

Upon the recommendation of the college President, the Review Committee may conduct a meeting with the proposer, or allow the proposer to make a presentation in support of the proposal, under such conditions as the Committee Chairperson deems appropriate.

2. Confidentiality Agreement

The PPEA and the Commonwealth's Procedures require a proposer to expressly identify confidential or proprietary information in any proposal, and to enter into a written agreement with the institution to exempt that information from disclosure under the Virginia Freedom of Information Act. Once the decision has been made to recommend a proposal, the President shall direct that such a Confidentiality Agreement be prepared, and negotiated with the proposer. Upon agreement with the proposer, the Chancellor or his/her designee shall sign the Confidentiality Agreement on behalf of the State Board for Community Colleges.

3. Deposit of the Proposal Review Fee

The required review fee should be made payable to the community college and should be deposited upon receipt. Upon a decision to continue with further review of a proposal, the President shall cause the required Proposal Review Fee to be forwarded for deposit into the State Treasury in accordance with Department of Finance, Accounting Procedures attached hereto as Attachment B. If a decision is made not to continue with consideration of the proposal, the Proposal Review Fee shall be returned to the proposer in accordance with the Commonwealth's Procedures.

4. Publication for Competing Proposals

Once a decision has been made by the SBCC to accept a PPEA proposal for further consideration, the college President shall direct that the decision to accept the proposal is publicized as required in the Commonwealth's Procedures. Public notice of the intent to consider the unsolicited proposal(s) shall include a specific place, date, and time for receipt of competing unsolicited proposals. Costs of publication shall be paid by the community college subject to reimbursement from the Commonwealth's "PPEA Fund."

5. Review of Competing Proposals

If, after publication of the community college's intent to consider the unsolicited proposal(s), competing proposals are submitted, they shall be reviewed by the Review Committee in the same manner and according to the same criteria including the requirement for deposit of a \$5,000 fee from each proposer. Confidentiality Agreements shall be executed with them and documentation of affected local jurisdiction review collected.

6. Confidentiality Agreement

The PPEA and the Commonwealth's Procedures require a proposer to expressly identify confidential or proprietary information in any proposal, and to enter into a written agreement with the institution to exempt that information from disclosure under the Virginia Freedom of Information Act. Once the decision has been made to recommend a proposal, the President shall direct that such a Confidentiality Agreement be prepared, and negotiated with the proposer. Upon agreement with the proposer, the Chancellor or his/her designee shall sign the Confidentiality Agreement on behalf of the State Board for Community Colleges.

7. Affected Local Jurisdiction Review

Following notification by the community college that its proposal has been accepted for further consideration and execution of a confidentiality agreement with the community college, it will be the responsibility of the proposer to submit the portions of the proposal not subject to the confidentiality agreement to each "affected local jurisdiction" as that term is defined in the PPEA and the Commonwealth's Procedures. Copies of transmittals or other notification shall be provided to the community college's PPEA Coordinator demonstrating that the affected local jurisdictions have been so notified and the date on which they received the proposal and that the 60 day period for the local jurisdiction review has commenced.

8. Approval to Proceed with Detailed Submission

The Commonwealth's Procedures require that the decision to proceed to the detailed proposal stage be made by the Secretary of Education. Therefore, if one or more conceptual proposals are to be recommended for submission of a detailed proposal, the community college shall forward its submission to the Chancellor for recommendation to the Secretary of Education. The community college submission shall include the following:

- a. A summary of the original proposal received;
- b. Documentation of the publication for competing proposals;
- c. A summary of all competing proposals received;
- d. Copies of all confidentiality agreements executed with proposers; and
- e. A recommendation as to which ones, if any, of the proposals should proceed to submission of detailed proposals, with justification.
- f. Copies of this submission should also be sent to the VCCS Executive Vice Chancellor for coordination of review and comment by other VCCS Presidents and Vice Presidents of Finance and Administration.

9. Solicitation and Review of Detailed Proposals

Upon approval by the Secretary of Education to request detailed proposals from one or more proposers, the PPEA Coordinator at the community college will advise the proposers of this request, the deadline for submission, and payment of the remaining review fee of one-half of one percent (0.5%), not to exceed a total of \$50,000, of the estimated present value cost to the Commonwealth of the proposal. Upon submission of the detailed proposals and payment of the second increment of the review fee as required by the Commonwealth's Procedures, the PPEA Review Committee will commence review of the detailed proposals with a goal of recommending one proposal for negotiation of a comprehensive agreement, if it is determined to be in the College's best interest to do so. The Review Committee may allow proposers an opportunity to meet with the Committee to present or discuss their detailed proposal. The Review Committee will normally recommend to the college President one proposal for recommendation to the Chancellor and SBCC for negotiation of a comprehensive agreement. Review fees on deposit from unsuccessful proposers shall be returned to the proposers less expenses incurred for processing, reviewing, and evaluating the unsolicited proposals.

10. Negotiation of Comprehensive Agreement

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The community college President shall advise the Chancellor regarding a recommendation to the Secretary of Education of the VCCS intention to commence negotiation of a comprehensive agreement with a single (or multiple) proposer(s). System Counsel will assist with preparation of the comprehensive Agreement and related documents or may delegate to other attorneys from the Office of the Attorney General, or outside counsel. When the comprehensive agreement has been fully negotiated and reviewed by the Attorney General's office, the completed agreement shall be presented to the State Board for Community College for approval prior to submission through the VCCS to the Secretaries of Education, Finance and Administration, and to the Governor for the approval required under the Commonwealth's Procedures. Following approval by the Governor, the VCCS Chancellor shall execute the Comprehensive Agreement on behalf of the State Board for Community Colleges.

IV MODIFICATION OF IMPLEMENTING GUIDELINES.

Community college requests for modification of these Implementation Guidelines to suit unique or particular circumstances may be made by to the State Board for Community Colleges upon approval by the VCCS Chancellor.

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ADDENDUM A

COMMONWEALTH OF VIRGINIA PPEA PROCEDURES

An electronic copy of the Commonwealth of Virginia PPEA Procedures can also be accessed at
[Http://www.administration.virginia.gov/Services/Vendors/PPEIA.cfm](http://www.administration.virginia.gov/Services/Vendors/PPEIA.cfm)

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ADDENDUM B

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF FINANCE
ACCOUNTING PROCEDURES