



Legislation Text

File #: 22-0266, Version: 1

City of Alexandria, Virginia

MEMORANDUM

DATE: SEPTEMBER 7, 2021

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: MARK B. JINKS, CITY MANAGER /s/

DOCKET TITLE:

Public Hearing, Second Reading, and Final Passage of an ordinance to amend Section 3-3-2 (APPLICATION) of Article A (GENERAL PROVISIONS) of Chapter 3 (Purchases and Contractual Services) of Title 3 (FINANCE, TAXATION AND PROCUREMENT) of the Code of the City of Alexandria, Virginia, 1981, as amended and consideration of a resolution for adoption of Guidelines for the use of the Virginia Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”). [ROLL-CALL VOTE]

ISSUE: Should the City establish the City of Alexandria PPEA Guidelines (“Guidelines”) that allow for the acceptance and review of unsolicited and solicited proposals under PPEA.

RECOMMENDATION: That City Council:

1. Approve the proposed amendment to Section 3-3-2 of the City Code on the first reading and schedule it for second reading, public hearing, and final passage on September 18, 2021;
2. Receive the attached proposed resolution in regard to the City of Alexandria PPEA Guidelines (“Guidelines”); and
3. On September 18, 2021, after public hearing, adopt the ordinance and the resolution.

BACKGROUND: Public-private partnerships are contractual arrangements between public and private sectors that allow for greater private sector participation in delivery of public sector projects, services, and infrastructure. Public-private partnerships serve as another tool to bring about investment and private sector expertise to the public sector.

The City of Alexandria has long been a part of public-private partnerships such as the Energy from Waste facility on Eisenhower Avenue, the construction of public parking garages, the Torpedo Factory, City

Courthouse, affordable and workforce housing, as well as the upcoming Landmark Mall site redevelopment. The City also partners with many non-profit organizations in the delivery of services to the public. However, the City has not had in place a formal mechanism to solicit or to receive unsolicited proposals from the private sector, as allowed under the Virginia Public-Private Education Facilities and Infrastructure Act (“PPEA”).

The PPEA, which was adopted by the General Assembly in 2002, provides that a responsible public entity may not consider any public-private partnership proposal by a private entity for approval of a qualifying project until the responsible public entity has adopted publicly available guidelines that are sufficient to establish the process for acceptance and review of proposals. Qualifying projects include public buildings and facilities of all types and certain infrastructure and services, telecommunications infrastructure, building security improvements, recreational facilities, and technology infrastructure and services. Adoption of the proposed PPEA Guidelines will permit the City to utilize the PPEA to provide an additional project delivery tool for the City. The PPEA allows the City to create public-private partnerships, on a solicited or unsolicited basis, for the development of a wide range of projects for public use if the City determines that there is a need for a project and private involvement can provide the project in a timely and cost-efficient fashion.

DISCUSSION:

Benefits and Challenges of Public-Private Partnerships

Public-private partnerships are not privatization. The public sector retains ownership or control of the asset, but the private entity may be given additional decision-making rights in determining how the asset is financed, developed, constructed, operated, or maintained over its lifecycle. To achieve true value from a public-private partnership, risks should be allocated to the public or private partner based on the party best capable of handling the risk. Some of the key benefits of P3s are optimal allocation of risk through a rigorous and competitive procurement process, cost certainty through stringent fiscal management from private sector capital, schedule certainty and acceleration, cost savings through lifecycle cost optimization by ability to enter into long-term contracts, and expanding to a global pool of private players that brings in best practices to the project. Additionally, public-private partnerships typically incentivize service performance by tying payment to performance and predictable funding, and innovation through performance-based instead of prescriptive specifications that take into account the entire lifecycle of the asset.

However, public-private partnerships are not without their own challenges. Public-private partnerships are not a one-size fits all. Public-private partnership transactions are typically more complex, time consuming and expensive compared to the traditional prescriptive-based approach. While public-private partnerships can provide access to new capital, they do not result in free money and need a revenue stream to be feasible. Additionally, public-private partnerships are not typically suitable for services and projects with limited risks and complexity that the public sector can better address.

Consequently, a public-private partnership is not a solution to all problems, and is a viable option only when it provides value for money to the public sector and its constituents compared to traditional approaches.

Guidelines

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code § 56-575, *et seq.*, grants responsible public entities the authority to consider public-private partnerships for the development of a wide range of projects for public use if the public entity has adopted guidelines that establish the process for

consideration of private proposals which must be reasonable, encourage competition, and guide the selection of projects.

The attached proposed Guidelines are designed to comply with PPEA and have been adapted from Virginia model guidelines customized based on national best practices, industry feedback, experiences of local jurisdictions with PPEA, and the City's objectives. The Guidelines provide for public engagement in the development of any public-private partnership and require City Council approval of any project.

The City has selected the following qualifying projects from the permissible categories authorized by the PPEA based on the City's current priorities and needs:

- (i) A building or facility that meets a public purpose and is developed or operated by or for a public entity;
- (ii) Improvements and equipment to enhance public safety and security of buildings principally used by a public entity;
- (iii) Utility, telecommunications, and other communications infrastructure;
- (iv) A recreational facility;
- (v) Technology infrastructure, services, and applications, including automated data processing, word processing and management information systems, and related equipment, goods, and services;
- (vi) Services to increase the productivity or efficiency of the responsible public entity through technology or other means;
- (vii) Technology, equipment, or infrastructure to deploy wireless broadband services to businesses, or residential areas;
- (viii) Necessary or desirable improvements to unimproved publicly-owned real estate;

These Guidelines are not applicable to independent political subdivisions of the City including, but not limited to, the Alexandria Redevelopment and Housing Authority, AlexRenew (formerly known as the Alexandria Sanitation Authority), and Alexandria City Public Schools. However, PPEA requires that guidelines adopted by responsible public entities include a mechanism for the appropriating body to review a proposed interim or comprehensive agreement prior to execution. With solar energy projects in mind, Alexandria City Public Schools are working towards putting PPEA guidelines in place in the near future. If ACPS proceeds with a PPEA driven project, City Council approval would be required. Submissions may be made that are for a "mixed" project (for example, projects including both an independent political subdivision and the City), where, for certain components, the independent political subdivision may be the responsible public entity, and for certain components, the City may be the responsible public entity.

In order for the City to consider or grant approval of a project, the City must determine that the project serves the public purpose. The City may determine that the qualifying project serves such public

purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
3. The private entity's plans will result in the timely development or operation of the qualifying project.

The Guidelines allow for the City to solicit proposals for a particular project through procurement processes or receive unsolicited proposals that propose a qualifying project. If the City has initiated or indicated the start of a solicitation process for a qualifying project by publishing a Request For Expression of Interest (RFEI), Request for Quotes (RFQ), Request for Qualifications (RFQu), Request for Proposals (RFP), Invitation to Bid (ITB), solicitation for franchise proposals, or a City held project specific Industry Forum, unsolicited proposals for such qualifying projects shall be rejected. For example, the City is in the process of adopting an ordinance to solicit franchise proposals for Fiber to the Premises (FTTP) to residents and businesses, so unsolicited proposals for such FTTP solutions submitted prior to the release of the solicitation for franchise proposals will likely be rejected.

The Guidelines provide the criteria for the content of solicited and unsolicited proposals, the process for evaluation of proposals to the City, and the procedure for approval or rejection of proposals.

Unsolicited and associated competing proposals will be charged a review fee of \$5,000 at the conceptual stage and a project dependent review fee at the detailed stage depending on the project size and complexity, in order to cover the City's costs of processing, reviewing, and evaluating any proposal.

The proposed Guidelines will give the City another procurement tool that can provide access to private sector expertise and innovation. Many Virginia jurisdictions, and most of the City's neighboring jurisdictions such as Arlington County, Fairfax County, Loudoun County, and Prince William County, have already adopted similar Guidelines.

FISCAL IMPACT: Adopting the Guidelines and approving the corresponding amendments to the Code of City of Alexandria does not have any immediate direct fiscal impact.

For unsolicited proposals, fees charged partially defray the cost of review of the proposals. In order to generate sufficient private sector interest, such fees would be limited in order to not be considered onerous to the private sector. Funding in excess of fees charged may be required for the hiring of consultants with expertise with the particular type of project being considered. The City Manager would have discretion to waive or refund all or part of these proposal review fees and also reserves the right to modify the fee schedule in the guidelines for a specific project or for all future projects.

For solicited proposals, funding will be required for the hiring of consultants with expertise with the delivery method(s) or particular type of project being considered.

The City Manager is authorized to issue stipends to private entities as determined to be appropriate in the City Manager's discretion based upon the nature and scope of the project to be used for development. In order to indicate the seriousness of the City and reduce private sector risk in creation of expensive PPEA proposals,

providing stipends to responsive and responsible shortlisted qualified unsuccessful proposers is considered an industry best practice. Paying a stipend also allows the City to incorporate intellectual property into the specific project or future projects even if the idea is from an unsuccessful proposer. There is no requirement that a stipend be offered.

ATTACHMENTS:

1. Cover and Ordinance to amend Section 3-3-2 of the City Code
2. PPEA Resolution
3. City of Alexandria PPEA Guidelines
4. Unsolicited and Solicited Process Flowchart
5. Presentation

STAFF:

Joanna Anderson, City Attorney

Adrienne Fine, Assistant City Attorney

Sarah McElveen, Assistant City Attorney

Emily A. Baker, Deputy City Manager

Julian Gonsalves, Assistant City Manager for Public-Private Partnerships

Kendel Taylor, Director of Finance

Darryl Jackson, Acting Purchasing Agent/Contracting Officer, Department of Finance