

047259320

HOUSE BILL NO. 148

Offered January 14, 2004

Prefiled December 30, 2003

A BILL to amend and reenact §§ 56-575.9 and 56-575.16 of the Code of Virginia, relating to the Public-Private Education Facilities and Infrastructure Act of 2002.

Patron—Hargrove

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:**1. That §§ 56-575.9 and 56-575.16 of the Code of Virginia are amended and reenacted as follows:**

§ 56-575.9. Comprehensive agreement.

A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, operating, implementing, or installing the qualifying project, the private entity shall enter into a comprehensive agreement with the responsible public entity. The comprehensive agreement shall provide for:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of the qualifying project, in the forms and amounts satisfactory to the responsible public entity *and in compliance with § 2.2-4337*;

2. *Delivery of a bid bond of five percent of the project cost to be furnished at the time the solicited or unsolicited proposal is provided;*

3. Review of plans and specifications for the qualifying project by the responsible public entity and approval by the responsible public entity if the plans and specifications conform to standards acceptable to the responsible public entity. This shall not be construed as requiring the private entity to complete design of a qualifying project prior to the execution of a comprehensive agreement;

~~3.~~ 4. Inspection of the qualifying project by the responsible public entity to ensure that the operator's activities are acceptable to the responsible public entity in accordance with the provisions of the comprehensive agreement;

4. 5. Maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage), self-insurance, in form and amount satisfactory to the responsible public entity and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

~~5.~~ 6. Monitoring of the practices of the operator by the responsible public entity to ensure that the qualifying project is properly maintained;

6. 7. Reimbursement to be paid to the responsible public entity for services provided by the responsible public entity;

7. 8. Filing of appropriate financial statements on a periodic basis; and

8. 9. Policies and procedures governing the rights and responsibilities of the responsible public entity and the operator in the event the comprehensive agreement is terminated or there is a material default by the operator. Such policies and procedures shall include conditions governing assumption of the duties and responsibilities of the operator by the responsible public entity and the transfer or purchase of property or other interests of the operator by the responsible public entity.

B. The comprehensive agreement shall provide for such user fees, lease payments, or service payments as may be established from time to time by agreement of the parties. A copy of any service contract shall be filed with the responsible public entity. In negotiating user fees under this section, the parties shall establish payments or fees that are the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project. The execution of the comprehensive agreement or any amendment thereto shall constitute conclusive evidence that the user fees, lease payments, or service payments provided for comply with this chapter. User fees or lease payments established in the comprehensive agreement as a source of revenues may be in addition to, or in lieu of, service payments.

C. In the comprehensive agreement, the responsible public entity may agree to make grants or loans to the operator from time to time from amounts received from the federal, state, or local government or any agency or instrumentality thereof.

D. The comprehensive agreement shall incorporate the duties of the operator under this chapter and may contain such other terms and conditions that the responsible public entity determines serve the public purpose of this chapter. Without limitation, the comprehensive agreement may contain provisions

INTRODUCED

HB148

59 under which the responsible public entity agrees to provide notice of default and cure rights for the
60 benefit of the operator and the persons specified therein as providing financing for the qualifying
61 project. The comprehensive agreement may contain such other lawful terms and conditions to which the
62 operator and the responsible public entity mutually agree, including, without limitation, provisions
63 regarding unavoidable delays or provisions providing for a loan of public funds to the operator to
64 acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, or install one
65 or more qualifying projects. The comprehensive agreement may also contain provisions where the
66 authority and duties of the operator under this chapter shall cease, and the qualifying project is dedicated
67 to the responsible public entity or, if the qualifying project was initially dedicated by an affected local
68 jurisdiction, to such affected local jurisdiction for public use.

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

71 F. ~~When a~~ A responsible public entity that is not an agency or authority of the Commonwealth ~~enters~~
72 ~~into a comprehensive agreement pursuant to this chapter,~~ it shall ~~within 30 days thereafter~~ submit a copy
73 of the comprehensive agreement to the Auditor of Public Accounts: *for analysis of plan content to*
74 *independently determine plan costs, including full accounting of long-term leases as a debt of the*
75 *responsible public entity, prior to approval of the comprehensive plan. This information shall be*
76 *provided at a public hearing where information on the nature, cost and other facts relating to the*
77 *project can be reviewed by the public and other interested parties.*

78 § 56-575.16. Procurement.

79 The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and any interpretations, regulations, or
80 guidelines of the Division of Engineering and Buildings of the Department of General Services or the
81 Virginia Information Technologies Agency, including the Capital Outlay Manual and those
82 interpretations, regulations or guidelines developed pursuant to §§ 2.2-1131, 2.2-1132, 2.2-1133,
83 2.2-1149, and 2.2-1502, except those developed by the Division or the Virginia Information
84 Technologies Agency in accordance with this chapter when the Commonwealth is the responsible public
85 entity, shall not apply to this chapter. However, a responsible public entity may enter into a
86 comprehensive agreement only in accordance with procedures adopted by it as follows:

87 1. A responsible public entity may enter into a comprehensive agreement in accordance with
88 procedures adopted by it that are consistent with procurement through competitive sealed bidding as
89 defined in § 2.2-4301 and subsection B of § 2.2-4310.

90 2. A responsible public entity may enter into a comprehensive agreement in accordance with
91 procedures adopted by it that are consistent with the procurement of "other than professional services"
92 through competitive negotiation as defined in § 2.2-4301 and subsection B of § 2.2-4310. Such
93 responsible public entity shall not be required to select the proposal with the lowest price offer, but may
94 consider price as one factor in evaluating the proposals received. A responsible public entity shall
95 proceed in accordance with the procedures adopted by it pursuant to subdivision 1 unless it determines
96 that proceeding in accordance with the procedures adopted by it pursuant to this subdivision is likely to
97 be advantageous to the responsible public entity and the public, based on (i) the probable scope,
98 complexity or urgency of the project, or (ii) risk sharing, added value, an increase in funding or
99 economic benefit from the project that would not otherwise be available. When the responsible public
100 entity determines to proceed according to the procedures adopted by it pursuant to this subdivision, it
101 shall state the reasons for its determination in writing. If a state agency is the responsible public entity,
102 the approval of the responsible Governor's Secretary, or the Governor, shall be required before the
103 responsible public entity may enter into a comprehensive agreement pursuant to this subdivision. *If the*
104 *responsible public entity is not an agency or authority of the Commonwealth, the approval of the*
105 *Design/Build Construction Management Review Board shall be required before the responsible public*
106 *entity may enter into a comprehensive agreement pursuant to this subdivision. This review shall be*
107 *completed within 30 days of receipt of a request for approval from a responsible public entity.*

108 3. Nothing in this chapter shall authorize or require that a responsible public entity obtain
109 professional services through any process except in accordance with procedures adopted by it that are
110 consistent with the procurement of "professional services" through competitive negotiation as defined in
111 § 2.2-4301 and subsection B of § 2.2-4310.

112 4. A responsible public entity shall not proceed to consider any request by a private entity for
113 approval of a qualifying project pursuant to subsection A of § 56-575.4 until the responsible public
114 entity has adopted and made publicly available procedures that are sufficient to enable the responsible
115 public entity to comply with this chapter. Such procedures shall include provision for the posting and
116 publishing of public notice of a private entity's request for approval of a qualifying project pursuant to
117 subsection A of § 56-575.4 and a reasonable time period, determined by the responsible public entity to
118 be appropriate to encourage competition and public-private partnerships pursuant to the goals of this
119 chapter, such reasonable period not to be less than 45 days, during which the responsible public entity
120 will receive competing proposals pursuant to that subsection. Such procedures shall include advertising

121 such notice in the Virginia Business Opportunities publication and, in the case of a state agency, posting
122 a notice on the Commonwealth's electronic procurement website.

123 5. Once a comprehensive agreement has been entered into, and the process of bargaining of all
124 phases or aspects of the comprehensive agreement is complete, a responsible public entity shall make
125 available, upon request, procurement records in accordance with § 2.2-4342.

126 6. A responsible public entity that is a school board or a county, city or town may enter into a
127 comprehensive agreement under this chapter only with the approval of the local governing body.

INTRODUCED

HB148