

# **COUNTY OF GOOCHLAND, VIRGINIA**



## **GUIDELINES FOR IMPLEMENTATION OF THE PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002**

**Adopted September 2, 2008**

REVISED AND APPROVED JULY 5, 2011

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## **I. INTRODUCTION**

The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §§ 56-575.1, et seq.) as amended from time to time, (the PPEA) grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines: (i) that there is a need for the facility or project; (ii) that the estimated cost of the facility or project is reasonable in relation to similar facilities or projects; and (iii) that the public-private partnership's plans will result in the timely development or operation of the project.

The PPEA defines "responsible public entity" to include any public entity that "has the power to develop or operate the applicable qualifying project." Individually negotiated interim or comprehensive agreements between a private entity and a responsible public entity will define the respective rights and obligations of the responsible public entity and the private entity. This document sets forth the procedures to guide the private operators(s) and the County in entering into an interim comprehensive agreement pursuant to the PPEA.

### **A. Guideline Overview**

The County of Goochland (the County) is a "responsible public entity" that "has the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate the applicable qualifying project." and therefore is a "responsible public entity" as that term is used in the PPEA. The PPEA provides that a responsible public entity shall not proceed to consider any proposal by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with the provisions of the PPEA. In order to facilitate the consideration by the County of qualifying projects under the PPEA, these guidelines were adopted by the Board of Supervisors of Goochland County, Virginia on September 2, 2008.

These guidelines contain the implementation procedures and guidelines developed by the County to guide the selection of projects as authorized by the PPEA. These guidelines shall be made publicly available. The person designated as the primary point of contact for information on these guidelines and for submission of solicited or unsolicited proposals under the PPEA is:

The Purchasing Agent  
Goochland County  
P.O. Box 10  
Goochland, VA 23063

In the event the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by these guidelines, the County shall appropriately amend the guidelines. If the guidelines are not amended prior to the effective date of the new law, the guidelines nonetheless shall be interpreted in a manner to conform to the new law.

## **B. Qualifying Facilities and Projects**

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; for example:

1. An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility and land 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;
2. A building or facility that meets a public purpose and is developed or operated by or for any public entity;
3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
4. Utility and telecommunications and other communications infrastructure;
5. A recreational facility; and
7. Technology infrastructure, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
8. Any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means,
9. Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or
10. Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

## **C. Reservation of County Rights**

As set forth in these Guidelines, the County reserves all rights available to it by law in administering these Guidelines including, without limitation, the right in its sole discretion to:

1. Reject any and all proposals at any time;
2. Terminate consideration or evaluation of any and all proposals at any time;
3. Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties;
4. Suspend or eliminate conceptual phase review and proceed directly to detailed phase review;
5. Negotiate with a proposer without being bound by any provision in its proposal;
6. Negotiate with fewer than all proposers at any given time;

7. Request and/or receive additional information regarding any proposal;
8. Issue addenda to and/or cancel any RFP or IFB;
9. Revise, supplement or withdraw all or any part of these Guidelines;
10. Assess, retain and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines;
11. Request revisions to conceptual or detailed phase proposals.
12. Take any other action permitted under law.

## **II. GENERAL PROVISIONS**

### **A. Proposal Submission**

A proposal may be either solicited by the County or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two-part proposal submission process consisting of an initial conceptual phase (Part 1) and a detailed phase (Part 2). The initial conceptual phase of the proposal should contain 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 should contain specified deliverables.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the federal Economic Growth and Tax Relief Reconciliation Act of 2001<sup>2</sup> for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount. The PPEA is a flexible development tool that allows the use of innovative financing techniques. Depending on the public entity'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.

Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the public entity. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. For specific applications, the County may request in writing, clarification to the submission. The County may establish criteria by which the proposer may provide clarification to the submission. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means.

The PPEA is intended to encourage proposals from the private sector that offer

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

### **B. Affected Local Jurisdictions**

Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County shall provide other affected units of local government with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery, after the County determines whether to accept such proposal. Affected local jurisdictions that are not responsible public entities under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to the County at either or both the conceptual and detailed phases. and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected local jurisdiction.

### **C. Proposal Review Fee**

The County shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. No fee may be charged by the County to process, review or evaluate any solicited proposal submitted under the PPEA. The County may charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants, and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the out-of-pocket costs of the County for attorneys, consultants and financial advisors.

The proposal fee may cover all or part of the initial review process. For example, the County may require a proposal fee in an amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or the County may require a smaller

initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review. Any charges by the County to the private entity shall be documented. If the cost of reviewing the proposal exceeds the initially established proposal fee, the County may assess the proposer the additional costs deemed necessary to evaluate the proposal.

For rejected proposals, the County may establish a schedule for refunding any portion of fees paid in excess of its direct costs associated with evaluating the proposal. If the cost of reviewing the proposal is less than the initially established proposal fee, the County may refund to the proposer the excess fee. Any refunds owed by the County may be offset by any outstanding obligations of the proposer to the County.

Proposers shall pay to the County the following review fees, in certified funds, to offset the cost of processing and reviewing unsolicited proposals, or unsolicited competing proposals. Unless otherwise indicated fees shall be paid in accordance with the following table, with percentages being of the total estimated cost of the proposed project:

<b>Review Stage</b>	<b>Fee</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Conceptual</b>	<b>1%</b>	<b>\$2,500.00</b>	<b>\$15,000.00</b>
<b>Detail</b>	<b>1%</b>	<b>\$5,000.00</b>	<b>\$50,000.00</b>
<b>(\$50,000.00 maximum aggregate total actual cost for both stages)</b>			

The minimum fee shall be submitted in certified funds at the time the initial “Conceptual” and “Detail” proposals are submitted.

**D. Freedom of Information Act**

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“FOIA”).<sup>3</sup> In accordance with § 2.2-3705 A 56 of FOIA, such documents are releasable if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the County under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the public or the private entity or the bargaining position of either party.

Subsection 56-575.4 G of the PPEA imposes an obligation on the County and any affected local jurisdiction to take appropriate action to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the County not disclose information, the County must (i) invoke the exclusion when the data or materials are submitted to the County or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer

without reasonably differentiating between the proprietary and non-proprietary information contained therein.

Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the proposer. If the determination regarding protection or the scope thereof differs from the proposer's request, then the County should accord the proposer a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the proposer, the proposer should be accorded an opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration.

Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the County shall make available, upon request, procurement records in accordance with Goochland County Code Section 2-255.

#### **E. Use of Public Funds**

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

#### **F. Applicability of Other Laws**

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. Division 9 *Ethics in Public Contracting* of the Goochland County Code is hereby incorporated herein by reference. Otherwise, the applicability of the County Code and the Virginia Public Procurement Act (VPPA) is as set forth in the PPEA and herein.

### **III. SOLICITED PROPOSALS**

The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects. The procedures and requirements applicable to any particular solicited bid or proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA and other applicable law. All such solicitations shall be by issuance of a written Invitation for Bid ("IFB") or Request for Proposal ("RFP"), in accordance with the County's ordinances and resolutions. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be deemed an Unsolicited Proposal under Article V. This shall include (a) proposals received in response to a notice issued by the County that it has received another Unsolicited Proposal, and (b) proposals received in response to publicity by the County concerning particular needs but where the County has not issued a formal IFB or RFP.

The RFP or IFB should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the County's notices, including the County website. Notices should also be published in a newspaper or other publications of general circulation. The RFP or IFB should also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the Town.

#### **IV. UNSOLICITED PROPOSALS**

The PPEA permits the County to receive, evaluate and select for negotiations unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project.

The County may publicize its needs and may encourage interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal. Unsolicited proposals should be submitted to the County Purchasing Agent by delivering one original and ten complete copies, together with the required review fee, as previously determined by the Purchasing Agent upon request and submission of relevant information to the Purchasing Agent by the proposer. The County Administrator shall submit to the Board of Supervisors a copy of the unsolicited proposal and a summary recommendation to the Board so that at its next general meeting, or any called special meeting, the Board can decide whether or not to undertake conceptual-phase consideration of the unsolicited proposal. If upon preliminary review, the County Administrator decides to recommend to the Board to undertake a complete review and evaluation of the unsolicited proposal, the County Administrator may designate a working group to initiate such complete review and evaluation. However, as soon as reasonably possible, the Board should consider and vote on the recommendation of the County Administrator. If the Board votes against undertaking the review and evaluation, the County Administrator shall cease such work unless subsequently directed otherwise by the Board. The balance of any unexpended fee shall be returned.

To ensure that the County receives the best value for any qualifying project, the County will seek and encourage competing unsolicited proposals.

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

- 1.** Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the proposer or proposers, the County should determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration by the procedures in section IV, above. The County reserves the right to reject any and all proposals at any time. *If the County rejects a proposal initiated by a private entity that purports to develop specific*

***cost savings, the County shall specify the basis for the rejection***

2. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the County for posting of public notices for a period of not less than 45 days. The County shall also publish the same notice for a period of not less than 45 days in one or more newspapers or periodicals of general circulation in the jurisdiction, and may post such notice on the County Website to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice should also be advertised in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. The notice shall state that the County (i) has received and accepted 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 adopted by the County and the provisions of the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

**B. Initial Review by the County at the Conceptual Stage (Part 1)**

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 should be considered by the County for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section V. A.
2. The County will determine at this initial stage of review whether it will proceed using:
  - a. Standard procurement procedures consistent with the VPPA; or
  - b. Guidelines developed by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The County may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.
3. After reviewing the original proposal, and any competing proposals submitted during the notice period, the County may determine:
  - a. not to proceed further with any proposal,
  - b. to proceed to the detailed (Part 2) phase of review with the original proposal,
  - c. to proceed to the detailed phase (Part 2) with a competing proposal, or
  - d. to proceed to the detailed phase (Part 2) with multiple proposals.
4. In the event that more than one proposal will be considered in the detailed

(Part 2) phase of review, the County shall consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

5. Discussions between the County and private entities about the need for infrastructure improvements shall not limit the ability of the County to later determine to use standard procurement procedures to meet its infrastructure needs. The County retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement

## **V. PROPOSAL PREPARATION AND SUBMISSION**

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

The County shall not be liable for any cost incurred by the proposers in preparing, submitting or presenting the proposal and in satisfying any demonstration or other requirements for an unsuccessful proposal.

The County may require that proposals at the conceptual stage contain information labeled with tabs 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) any additional information as the County may reasonably request to comply with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at the conceptual stage include:

### **B. Qualifications and Experience**

1. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, and how each partner and major subcontractor (over \$1,000,000) in the structure fits into the overall team. All members of the operator's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual Stage. Identified team members, including major subcontractors (over \$1 million), may not be substituted or replaced once a project is approved and comprehensive agreement entered into, without the written approval of the County. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor.
2. Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. 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. Describe the length of time in

business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.

3. 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 and contact information for same (name, address, telephone number, e-mail address). 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 which are in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project development, operation, and completion.
4. Provide the names, prior experience, addresses, telephone numbers and email addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.
5. 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.
6. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
7. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
8. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
  - a. 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.
  - b. A completed qualification statement 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:
    - i. Bankruptcy filings
    - ii. Liquidated damages
    - iii. Fines, assessments or penalties
    - iv. Judgments or awards in contract disputes
    - v. Contract defaults, contract terminations
    - vi. License revocations, suspensions, other disciplinary actions
    - vii. Prior debarments or suspensions by a governmental entity

- viii. Denials of prequalification, findings of non-responsibility
  - ix. Safety past performance data, including fatality incidents, “Experience
  - x. Modification Rating,” “Total Recordable Injury Rate” and “Total Lost
  - xi. Workday Incidence Rate”
  - xii. Violations of any federal, state or local criminal or civil law
  - xiii. Criminal indictments or investigations
  - xiv. Legal claims filed by or against the firm
9. 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.

### **C. Project Characteristics**

1. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
2. Identify and fully describe any work to be performed by the County or any other public entity.
3. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
4. Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the County’s comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed.
5. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the County’s comprehensive land use plan and applicable ordinances and design standards.
6. Identify the proposed schedule for the work on the project, including sufficient time for the County’s review and the estimated time for completion.
7. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
8. Propose allocation of risk and liability, and assurances for timely completion of the project.
9. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County’s use of the project.
10. Provide information relative to phased openings of the proposed project.

### **D. Project Financing**

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
2. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the

- anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
3. Include a list and discussion of assumptions underlying all major elements of the plan.
  4. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
  5. Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
  6. Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a “Service Agreement”, for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized bond rating agency. If the unenhanced rating is not investment grade, the County may require the use of credit enhancements.
  7. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings. Indicate who would receive the benefit of any cost savings from a refinancing. Would the savings go to the County, would the savings be shared and to what extent, or does the firm only receive benefit of this potential?
  8. Outline the financial penalties, if any, that would result should the County wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
  9. If the firm has already chosen an underwriter(s), provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc. If the firm has not yet chosen an underwriter(s), the County reserves the right to have input into the selection of that underwriter(s).

#### **E. Project Benefit and Compatibility**

1. Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
2. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
3. Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.

4. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.
5. Compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.
6. Any Additional Information As the County May Reasonably Request

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

If the County decides to proceed to the detailed phase of review with one or more proposals, the following information, should be provided by the private entity unless a waiver of the requirement or requirements is agreed to by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. 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. Detailed description of the proposed participation, use and financial involvement of the County in the project.
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 property identification and plans for securing all necessary property. The statement must include the addresses and tax map designations of the identified property as well as a list of any property the proposer intends to request the County to condemn. A letter of transmittal that bears the signature of an authorized representative of the prime contractor and designates by name not more than two individuals, either of which is, authorized to negotiate and sign a contract with the County.
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 projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
9. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
10. Identification of any known government support or opposition, or general

- public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
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 any known conflicts of interest or other factors that may impact the City'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. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan for the project, a comparison of that plan with financing alternatives available to the County, and all underlying data supporting any conclusions reached in the analysis of the selection by the private entity of the financing plan proposed for the project.
  16. Additional material and information as the County may reasonably request.

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

The following items, along with the specified information required under V.A and V.B above, shall be considered in the evaluation and selection of PPEA proposals. The County reserves the right at all times to reject any proposal at anytime for any reason.

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

Factors to be considered in either phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience will include, along with the specified information required under V.A and V.B above, the following:

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 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.

### **B. Project Characteristics**

Factors to be considered in determining the project characteristics may include, but are not limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, 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 County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of plan; operator's past performance with similar plans and similar projects; the degree to which the proposer has conducted due diligence investigation and analysis of proposed financial plan and the results of any such inquiries or studies;
4. Estimated cost;
5. Life-cycle cost analysis; and
6. The identity, credit history, past performance of any third party that will provide financing for the project and the nature, amount, and timing of their commitment, as applicable; and
7. Such other items as the County deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the County, or if financing such a project may impact the County's debt rating or financial position, the County may select its own finance team, source, and financing vehicle.

### **D. Project Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the County's comprehensive or development plans and zoning ordinance include, along with the specified information required under V.A and V.B above, the

following:

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

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

Other factors that may be considered by a County 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. Local citizen and government comments;
5. Benefits to the public;
6. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
7. The private entity's plans to employ local contractors and residents; and
8. Other criteria that the County deems appropriate.

### **VII. INTERIM AND COMPREHENSIVE AGREEMENT**

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County. Prior to entering a comprehensive agreement an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The County may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.

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

The scope of an interim agreement may include but is not limited to:

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Ascertaining the availability of financing for the proposed facility through

- financial and revenue analysis;
6. Establish a process and timing of the negotiation of the comprehensive agreement; and
  7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

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

The Board of Supervisors shall approve any comprehensive agreement entered into pursuant to the PPEA between the County and a private provider. The County shall accept no liability for acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, prior to entering into a properly executed comprehensive agreement. Each comprehensive agreement shall define the rights and obligations of the County and the selected proposer(s) with regard to the project.

The terms of the comprehensive agreement shall be tailored to address the specifics of the project and 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;
2. The review of plans and specifications for the qualifying project by the County;
3. The rights of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement;
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 County to ensure proper maintenance;
6. The terms under which the operator will reimburse the County for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the comprehensive agreement is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the County and the transfer or purchase of property or other interests of the operator by the County;
8. The terms under which the operator 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 are the same for persons using the

- facility under like conditions and that will not materially discourage use for the qualifying project;
10. A copy of any service contract shall be filed with the County.
  11. A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
  12. Classifications according to reasonable categories for assessment of user fees may be made.
  13. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project;
  14. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;
  15. The terms and conditions under which the public entity will be required to pay money to the private entity and the amount of any such payments for the project.
  16. Other requirements of the PPEA or other applicable law; and
  17. A periodic reporting procedure that incorporates a description of the impact of the project on the Commonwealth and the County; and
  18. Such other terms as the County may find necessary and convenient, that are agreed to by the private partner(s).

### **C. Comprehensive Agreement Provisions relating to Construction Projects**

With respect to construction projects the County generally anticipates addressing the following in the Comprehensive Agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

1. The County prefers the design-build project delivery system. In design-build construction projects the private entity will be expected to assume single-point responsibility and liability for all design and construction activities.
2. To the fullest extent possible, the County expects the private entity to perform its own geotechnical investigation of subsurface conditions at the project site. The risk of inadequate geotechnical investigation or improper interpretation of the results of the geotechnical investigation will be allocated to the private entity in the comprehensive agreement. The County will consider assuming part or all of the risk of subsurface conditions that could not reasonably be foreseen notwithstanding the performance of a geotechnical investigation meeting the ordinary standard of care of geotechnical engineers working under similar conditions.
3. The County encourages private entities to propose a formula for the mutual sharing of cost savings realized during construction by virtue of value engineering initiatives, guaranteed maximum price with saving sharing provisions, trade allowances or otherwise. Mutually agreed upon terms for the sharing of such savings will be incorporated in the comprehensive agreement.

#### **D. Comprehensive Agreement Provisions relating to Private Entity Legal Structure**

The County is willing to enter comprehensive agreements with private entities that have formed business associations such as joint ventures and limited liability corporations ("LLC"). However, in such cases, the County will expect one or more of the principal members of the association to provide a performance guaranty of all obligations undertaken in the comprehensive agreement. This requirement is in addition to the statutory requirement for a performance bond. Individuals, corporations and other businesses interested in entering public-private partnerships with the County under the PPEA must be willing to provide this security if their proposal is submitted as part of a joint venture, LLC or other business entity that limits the liability of its members, owners or partners

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

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 plays a critical role in the competitive evaluation process and the ultimate selection of a proposal by the County. 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 are 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 and data provided for the proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the Comprehensive Agreement shall give the County the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

#### **VIII. GOVERNING PROVISIONS**

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

#### **IX. NOTICE AND POSTING REQUIREMENTS**

~~In addition to the posting requirements of Section IV. A.2,~~ Not later than 30 days prior to entering into an interim or comprehensive agreement, the County shall ~~provide an opportunity for public comment on the proposals. Such public comment period may include~~ hold a public hearing in the sole discretion of the County. ~~After the end of the public comment period, no additional posting shall be required based on any public~~

~~comment received.~~

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 the Board, the County shall post the proposed agreement in the following manner:

1. Posting shall be on the RPEs' website or by publication, in a newspaper of general circulation in the area in which the contract work is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection.
2. 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 County and the private entity.

## **X. DEFINITIONS**

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

**"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.

**"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.

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

**"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.

**"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.