

**Public-Private Education Facilities and  
Infrastructure Act of 2002, as Amended  
(PPEA)**

**Guidelines and Procedures**

**Stafford County**



*Adopted by the Stafford County Board of Supervisors on January 22, 2019*

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## **I. Introduction**

### **A. Overview**

The Public-Private Education Facilities and Infrastructure Act of 2002, as amended (Code of Virginia § 56-575.1 et seq.) (the “PPEA”), grants to Stafford County Board of Supervisors, its officers and employees (the “County”), as a responsible public entity (“RPE”) as defined in the PPEA, the authority to create public-private partnerships for the development of a wide range of projects for public use if the County determines there is a need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion, lead to productivity or efficiency improvements in the County’s processes or delivery of services, considering among other things, the probable scope, complexity or priority of the project, risk sharing including guaranteed cost or completion guarantees; added value or debt or equity investments proposed by the private entity; or an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.

Individually negotiated interim or comprehensive agreements between a private entity and the County will define the respective rights and obligations of the private entity and the County. Although guidance regarding the application of the PPEA is provided herein, it is incumbent upon the County and all private entities to comply with the provisions of the PPEA.

### **B. Adoption of Guidelines**

Section 56-575.3:1 of the PPEA provides that “A responsible public entity shall, prior to requesting or considering a proposal for a qualifying project, adopt and make publicly available guidelines that are sufficient to enable the responsible public entity to comply with this chapter. Such guidelines shall be reasonable, encourage competition, and guide the selection of projects under the purview of the responsible public entity.” Accordingly, these guidelines (the “Guidelines”) are hereby adopted by the Board of Supervisors as the governing body of the County.

These Guidelines are intended to supplement, and enable the County to comply with, PPEA's requirements. They shall govern all County PPEA projects and shall apply to all County agencies, boards, commissions, and committees.

## **II. General Provisions**

### **A. Qualifying Projects**

In order for a project to be eligible for delivery through the PPEA, it must meet the PPEA definition of a “qualifying project.” The PPEA contains a broad definition of “qualifying project” that includes public buildings and facilities of all types and certain infrastructure and services such as:

1. any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to 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;
2. any building or facility that meets a public purpose and is developed or operated by or for any public entity;
3. any 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;
- 6. technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- 7. any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means;
- 8. any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or
- 9. any improvements necessary or desirable to any unimproved locally-owned real estate.

**B. Proposal Submission**

1. Pursuant to Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to the County may be either solicited from private entities by the public entity (a “Solicited Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). Proposers must follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposers’ qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables. In either case, any such proposal shall be clearly identified as a “PPEA Proposal.”
2. The requirements for any particular Solicited Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPEA.
3. Any Unsolicited Proposal shall be submitted to the County by delivering both paper submission (hard copies) and electronic submission (digital copies) as specified below, together with the required initial review fee as provided in Section IV.C of these Guidelines, to the Central Purchasing Division Administrator, County of Stafford, 1300 Courthouse Road, P.O. Box 339, Stafford, Virginia 22555-0339.
  - a. Paper Submission Copies
    - i. One (1) original signed proposal marked as “ORIGINAL”
    - ii. Six (6) duplicate copies of above each marked as “COPY”
    - iii. One (1) redacted copy marked as “REDACTED” only if Private Entity has invoked protection from disclosure of certain proprietary and confidential information contained in their proposal in accordance with Section II.D of these Guidelines. Private Entity must also include a written request in accordance with Section II.D.2.b of these Guidelines to invoke such protection from disclosure.
  - b. Electronic Submission (provide on CD-R, DVD-R or USB Flash/Thumb drive)
    - i. One (1) electronic copy of proposal in a text searchable format (either MS Word, or text searchable PDF).

- ii. One (1) redacted electronic copy of proposal in a text searchable format only if Private Entity has invoked protection from disclosure of certain proprietary and confidential information contained in their proposal in accordance with Section II.D of these Guidelines.

Other requirements for Unsolicited Proposals are as set forth below in Section IV of these Guidelines.

4. The County may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.
5. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the qualifying project and the benefits to be derived from the project by the County. 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 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. 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.
6. Private entities may 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 Economic Growth and Tax Relief Reconciliation Act of 2001 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.
7. Proposals from the private sector that offer the assumption of commensurate risk by the private partner through innovative approaches to project financing, development and/or use are encouraged. However, while substantial private sector involvement is encouraged, qualifying facilities must be devoted primarily to public use, typically involving facilities critical to public health, safety and welfare. Private entities proposing projects shall be held strictly accountable for representations regarding their qualifications, experience and any other content of their proposals, including all aspects of work to be performed.

### **C. Affected Local Jurisdictions**

1. The term "affected local jurisdiction" includes any county, city or town in which all or a portion of a qualifying project is located.
2. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting delivery of the request or proposal. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the County 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. The County will consider comments received within the 60-day period in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

#### **D. Freedom of Information Act; Disclosure of Records**

##### **1. General applicability of disclosure provisions**

Proposal documents submitted by private entities are generally subject to disclosure under the Virginia Freedom of Information Act (Code of Virginia § 2.2-3700 et seq.) (“FOIA”) except that subdivision 11 of §2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the County may elect to release some or all of documents except to the extent that they relate to:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Code of Virginia § 59.1-336 et seq.);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

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

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

- a. Any confidential and proprietary information provided to the County by a private entity pursuant to the PPEA shall be subject to disclosure under FOIA except as provided by Section 56-575.4(G) of the PPEA.
- b. Documents of a private entity may be withheld from disclosure, only if the private entity makes a written request to the County at the time the documents are submitted designating with specificity the sections of the document, data, or other materials for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of the three classes of records listed in Section II. D.1. of these Guidelines. 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 private entity without reasonably differentiating between the proprietary and non- proprietary information contained therein.

- c. Upon receipt of a written request from a private entity that designated portions of a proposal be protected from disclosure, the County will determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity in accordance with Section II.D.1. The County shall make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be afforded protection from release although what may be protected must be limited to the categories of records identified in Section II.D.1. Once a written determination has been made by the County, the protected documents shall continue to be protected from disclosure when in the possession of the County or any affected local jurisdiction.

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

3. Protection from mandatory disclosure for certain documents produced by the County
  - a. Memoranda, staff evaluations, or other records prepared by or for the County, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the County or private entity, and the basis for the determination of the adversely affected financial interest or bargaining position is documented in writing by the County.
  - b. Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.
4. Records that may not be withheld from disclosure

The County may not withhold from public access:

- a. Procurement records other than those subject to the written determination of the County;
- b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the County and the private entity;
- c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds;
- d. Information concerning the performance of any private entity developing or operating a qualifying project; or
- e. To the extent access to the records are compelled by law or a court order, then the County must comply with such law or order.

**E. Use of Public Funds**

Commonwealth of 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. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, private entities shall comply with all applicable federal, state, and local laws.

**III. Solicited Proposals**

The County may issue Requests for Proposals (RFPs) inviting proposals from private entities to develop or operate qualifying projects. The County may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase. An RFP may invite proposers to submit proposals on individual projects identified by the County. In such a case the County should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The County may establish suggested timelines for selecting proposals for the review and selection of Solicited Proposals.

The RFP 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 County procurement notices, including the County's website. Notices should also be published in a newspaper or other publication of general circulation and may be advertised in Virginia Business Opportunities and posted on the Commonwealth's electronic procurement site. In addition, Solicited Proposals should be posted pursuant to Section IV.B. The RFP 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 County.

**IV. Unsolicited Proposals**

The PPEA permits public entities to receive, evaluate and select for negotiations Unsolicited Proposals from private entities to develop or operate a qualifying project. The County may publicize its needs and encourage interested parties to submit Unsolicited Proposals subject to the terms and conditions of the PPEA. When such a proposal is received without issuance of an RFP, the proposal shall be treated as an Unsolicited Proposal under the Act. Unsolicited Proposals should be submitted to the County's Central Purchasing Division Administrator in accordance with Section II.B of these Guidelines.

A working group comprised of appropriate County staff may be designated by the County



Administrator or his designee to review and evaluate any Unsolicited Proposals. Additionally, the County shall engage the services of qualified professionals, which may include, but is not limited to, an architect, professional engineer, or certified public accountant, not otherwise employed by the County, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any proposal submitted by a private entity for a qualifying project, unless the County determines that such analysis of a request by a private entity for a qualifying project shall be performed by employees of the County.

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

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt of any Unsolicited Proposal or group of proposals and payment of the required fee by the proposer or proposers, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration. If the County determines not to accept the proposal and proceed to publication and conceptual-phase consideration, it will return the proposal, together with all fees and accompanying documentation, to the proposer.
3. 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's website shall serve as the public area. 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 to notify any parties that may be interested in submitting competing Unsolicited Proposals. In addition, the notice may 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 PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations. Copies of Unsolicited Proposals shall be available upon request, subject to the provisions of FOIA and Section 56-575.4 G of the PPEA.
4. Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer the balance due, if any, of the required project proposal review fee.
5. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the County familiar with the Unsolicited Proposal and the Guidelines shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The County shall conduct an analysis of the information pertaining to the proposal included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the County shall establish criteria, including key decision points and approvals to ensure proper consideration of the extent of competition from available private entities prior to selection.

**B. Posting Requirements**

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County within 10 working days after acceptance of such proposals.

2. Posting shall be made on the County's website of a summary of the proposals and the location where copies of the proposals are available for public inspection. At the discretion of the County, posting may also be by publication, in a newspaper of general circulation in the area in which the contract is to be performed, or on the Commonwealth's Department of General Service's web-based electronic procurement program commonly known as eVA.
3. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the County to provide maximum notice to the public of the opportunity to inspect the proposals.
4. 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 Virginia Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

### **C. Proposal Review Fees**

1. No fee will be charged to process, review or evaluate any Solicited Proposal submitted under the PPEA.
2. A review fee will be charged a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating the proposal, including the cost to compare it to any competing proposals. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.
3. For Unsolicited Proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:
  - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid in full.
  - b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

- c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to conceptual-stage review of an Unsolicited Proposal, the proposal fee, less any direct costs of the initial review, shall be refunded.

#### **D. Initial Review at Conceptual Stage**

1. Only proposals complying with the requirements of the PPEA and these Guidelines that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.
2. The County should determine at this initial stage of review whether it will proceed using standard procurement procedures consistent with the VPPA; or 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 urgency of a project; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source 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 phase of review with the original proposal;
  - c. to proceed to the detailed phase with a competing proposal;
  - d. to proceed to the detailed phase with multiple proposals; or
  - e. to request modifications or amendments to any proposals.
4. Discussions between County and private entities about the need for infrastructure improvements shall not limit the ability of a 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 the Conceptual Stage**

The County may require that proposals at the conceptual stage contain information in the following areas: (i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) 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 this stage include the items listed below, as well as any additional information or documents that County may request:

## 1. Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the proposer'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 \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the County.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. For each firm or major contractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years with contact information for such clients (names/addresses/ telephone numbers). If a firm has worked on more than ten projects during this period, it may limit prior project list to ten, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.
- d. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.
- f. Identify any persons known to the private entity 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.

## 2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other

public entity.

- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed.
- e. Identify the projected positive social, economic and environmental impacts of the project. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- i. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- k. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- l. List any other assumptions relied on for the project to be successful.
- m. List any contingencies that must occur for the project to be successful.

### 3. Project Financing

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.

- d. Identify all anticipated risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax exempt financing.
- h. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

#### 4. Project Benefit and Compatibility

- a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the compatibility of the project with local, regional, and state economic development efforts.
- e. Explain the compatibility with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.
- f. Provide a statement setting forth participation efforts to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, (iii) small businesses, and (iv) Stafford businesses.

#### **B. Format for Submissions at the Detailed Stage**

If the County decides to proceed to the detailed phase (part 2) of review with one or more proposals, then the following information must be provided by the private entity unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the

- proposed project.
2. A conceptual site plan indicating proposed location and configuration of the project on the proposed site.
  3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
  4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project if they differ from the County's standard form contract.
  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 private entity to accommodate such crossings.
  6. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the public entity to condemn.
  7. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
  8. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the 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 and discussion of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
  11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
  12. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
  13. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cost, cash management, quality, worker safety, change orders, and legal compliance.
  14. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity 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 Interests 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 proposed for the project, a comparison of that plan with financing alternatives

that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

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

17. Any additional information that the private entity finds appropriate.

## **VI. Proposal Evaluation and Selection Criteria**

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. However, the County retains the right at all times to reject any proposal at any time for any reason whatsoever.

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

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience, training and preparation with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition; and
10. Project ownership.

### **B. Project Characteristics**

Factors to be considered in evaluating the project characteristics may include but are not necessarily limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, codes, guidelines and standards;



6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

**C. Project Financing**

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

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 the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;
4. Estimated cost;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment; and
7. Such other items as the County deems appropriate.

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

**D. Public Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits, including the economic impact the project will have on the County in terms of amount of tax revenue generated for the County, the number of jobs generated for area residents, the level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for 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 in the evaluation and selection of PPEA proposals include:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;

4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;
8. The private entity's plan to employ local contractors and residents; and
9. Other criteria that the County deems appropriate.

## **VII. Additional Review Procedures**

### **A. Advisory Committee**

The County may establish criteria to trigger establishment of an advisory committee consisting of representatives of the County to review the terms of the proposed interim or comprehensive agreement. The criteria should include, but not be limited to, the scope, total cost and duration of the proposed project, and whether the project involves or impacts multiple public entities. Timelines for the work of the committee should be developed and made available to proposers.

### **B. Appropriating Body**

If the County is not the Responsible Public Entity ("RPE") for appropriating or authorizing funding to pay for a qualifying project, then the County in reviewing or approving the project should establish a mechanism for that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the RPE, review by the local governing body shall satisfy this requirement.

## **VIII. Interim and Comprehensive Agreements**

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. The County shall approve any interim or comprehensive agreement executed pursuant to the PPEA. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

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

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

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

Prior to or in connection with the negotiation of the comprehensive agreement, the responsible public entity may enter into an interim agreement with the private entity proposing the development or

operation of the qualifying project. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities; and
2. Establish the process and timing of the negotiation of the comprehensive agreement.

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**

Prior to developing or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPEA. Such comprehensive agreement and any amendment thereto, must be approved by the County before it is entered into.

The scope of the comprehensive agreement shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any development or operation of the qualifying project, in the forms and amounts satisfactory to the County;
2. The review and approval of plans and specifications for the qualifying project by the County;
3. The right of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. The maintenance of a policy or policies of liability insurance or self-insurance, each in form and amount satisfactory to the County 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. The monitoring of the practices of the private entity by the County to ensure proper maintenance;
6. The terms under which the private entity will reimburse the County for services provided;
7. The policies and guidelines governing the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County;

8. The terms under which the private entity will file appropriate financial statements on a periodic basis;
9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be set at a level that is the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. The agreement shall also contain the following requirements:
  - a. A copy of any service contract shall be filed with the County,
  - b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request, and
  - c. Classifications according to reasonable categories for assessment of user fees may be made;
10. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project;
11. 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;
12. The terms and conditions under which the County will be required to pay money to the private entity and the amount of any such payments for the project;
13. Any other provisions required by the PPEA and/or other applicable law; and
14. Such other terms and conditions as the public entity may deem appropriate.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment executed by both the private entity and the County. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the private entity and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the private entity 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.

### **C. Public Hearing; Notice and Posting Requirements**

1. In addition to the posting requirements of Section IV.B of these Guidelines, the County shall hold a public hearing on the proposals during the proposal review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.
2. Once the negotiation phase for the development of an interim or a comprehensive agreement

is complete and a decision to award has been made by the County, the County shall post the proposed agreement in the following manner:

- a. Posting shall be made on the County’s website of a summary of the proposals and the location where copies of the proposals are available for public inspection. At the discretion of the County, posting may also be by publication, in a newspaper of general circulation in the area in which the contract is to be performed, or on the Commonwealth’s Department of General Service's web-based electronic procurement program commonly known as eVA.
3. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§2.2-3700 et seq.).
- a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.
  - b. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise. Provided that such procurement records were properly excluded in accordance with §2.2-3705.6 (11) and the requirements contained within Section II.D.2 of these Guidelines.
  - c. To the extent access to procurement records are compelled by law or a court order, then the County must comply with such law or order.

## **IX. Governing Positions**

In the event of any conflict between these Guidelines and the PPEA, the PPEA shall control whether as currently enacted or as amended in the future.

## **X. Terms and Definitions**

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

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

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

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

**“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.

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

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

**“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” or “RPE”** means a public entity that has the power to develop or operate the applicable qualifying project.

**“Revenues”** means all revenues, income, earnings, user fees, lease payments, or other service payments arising out of or in connection with supporting the development or operation of a qualifying project, including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

**“Service contract”** means a contract entered into between a public entity and the private entity pursuant to § 56-575.5. Public-Private Education Facilities and Infrastructure Act of 2002, as amended.

**“Service payments”** means payments to the private entity of a qualifying project pursuant to a service contract.

**“State”** means the Commonwealth of Virginia unless the context dictates otherwise.

**“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.