

**Public-Private Education Facilities and Infrastructure  
Act of 2002  
County of Roanoke  
Guidelines**

**April 2003 (rev. Jan. 2021)**

**Public-Private Education Facilities and Infrastructure Act of 2002**

**Roanoke County Procedures**  
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## **I. Introduction**

The Public-Private Education Facilities and Infrastructure Act of 2002, as amended, (the “PPEA”) allows responsible public entities to create public-private partnerships for development of a wide range of projects for public use if the public entities determine there is a need for the project and that private involvement may provide the project to the public in a timely and cost-effective fashion. For purposes of the PPEA, the County of Roanoke, is a “responsible public entity” that “has the power to develop or operate the applicable qualifying project.” Individually negotiated comprehensive agreements between a private entity and the County will define the respective rights and obligations of the parties. This document sets forth the procedures to guide the private partner(s) and the County in the application of PPEA. The approval of the Board of Supervisors of Roanoke County is required for the County to enter into a comprehensive agreement pursuant to the PPEA.

In order for a project to be considered 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:

- (i) An education facility, including, but not limited to, a school building, any functionally-related and subordinate facility and land to a school building (including a 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;
- (ii) Any building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility, telecommunications and other communications infrastructure;
- (v) Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (vi) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- (vii) Services designed to increase the productivity or efficiency through the use of technology or other means;

- (viii) Any improvements necessary or desirable to any unimproved County owned real estate; or
- (ix) A solid waste management facility that produces electric energy from solid waste;
- (x) A recreational facility; and
- (xi) Certain service contracts.

The PPEA establishes requirements that the County shall adhere to when reviewing and approving proposals received pursuant to the PPEA. The County Administrator may receive and consider proposals in strict accord with the procedures specified in this document. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim or comprehensive agreement detailing the relationship between the County and the private entity.

## **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. Private entity proposers will 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 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 must contain specified deliverables.

The PPEA allows private entities to include innovative financing methods, such as 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 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.

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. 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, which contain 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 PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private entity, but also benefits to the private entity 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 critical 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 should be carefully examined for every project. In addition, private entities 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 must 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 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. Comments received within the 60-day period shall be considered in evaluating the request or proposal, however no negative inference shall be drawn from the absence of comment by an affected local jurisdiction.

## **C. Proposal Review Fee**

No fee will be charged by the County to process, review or evaluate any solicited proposal submitted under the PPEA, other than what are considered reasonable and incidental permit, utility, and related fees during the construction stage of the project. The County shall receive an analysis of the proposal from County staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity.

The County shall charge a fee of one-half of one percent (0.5%), not to exceed \$50,000, of the estimated present value cost to the County of the proposal, but not less than \$5,000, to cover the costs of processing, reviewing, and evaluating any unsolicited, Part 1 proposal or competing unsolicited Part 1 proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, consultants and financial advisors. This fee shall not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" 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 attorneys, consultants, and financial advisors. For purposes of initial processing of the proposal, the County shall accept the \$5,000 minimum fee with the balance due and payable prior to the proposals proceeding beyond the initial review stage. Such sums shall be paid with certified funds, and shall be deposited with the Treasurer of Roanoke County in a special fund known as the PPEA Fund. The fund shall be established for such purpose, and deposits to the fund shall be apportioned to defray the direct cost of proposal review(s).

- If the cost of reviewing the proposal is less than the established proposal fee, the County may refund to the proposer the excess fee.
- If during the initial review the County decides not to proceed to publication and conceptual-phase review of an unsolicited proposal, the proposal fee, less any direct (itemized) costs of the initial review, shall be refunded to the private entity.
- If the County chooses to proceed with evaluation of proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid to the County in full.

#### **D. Freedom of Information Act**

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

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (“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 the documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§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. Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the County at the time the documents are submitted, designating with specificity the documents 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 three classes of records listed above in Section II(D)(1).
  - b. Upon receipt of a written request for protection of documents, the County shall 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 proposer's request, then the County will 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 will 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 as provided in section IV.A.2 below.
  - c. Once a written determination has been made by the County, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the County or any affected jurisdiction to which such documents are provided.
  - d. If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records, or documentation shall be subject to disclosure under FOIA.
3. Protection from mandatory disclosure for certain documents produced by the County.
  - a. The County may withhold from disclosure memoranda, staff evaluations, or other records prepared by the County, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or comprehensive agreement, the financial interest or bargaining position of the County would be adversely affected, and (ii) the basis for the determination required in clause (i) 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.

#### **E. Applicability of Other Laws**

The applicability of the Virginia Public Procurement Act (the “VPPA”) is as set forth in the PPEA. In soliciting or entertaining proposals under the PPEA, the County shall also comply with all applicable federal laws and applicable state and local laws not in conflict with the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, private entities shall comply with all applicable federal laws and applicable state and local laws. Such laws may include, but not necessarily be limited to, contractual obligations which require Workers Compensation insurance coverage, performance bonds or payment bonds from approved sureties, compliance with the Virginia Prompt Payment Act, compliance with the Ethics in Public Contracting Act and compliance with environmental laws, workplace safety laws, and state or local laws governing contractor or trade licensing, building codes and building permit requirements.

Expenditure of County funds in support of a comprehensive agreement requires an appropriation in the County budget or other appropriation(s).

The PPEA process should not be used to create County-supported debt. Comprehensive agreements involving any form of County-supported debt, require specific, project-level approval by the Board of Supervisors.

### **III. Solicited Proposals**

With the written authorization of the County Administrator a Request for Proposals (RFPs) or an invitation for competitive sealed bids may be issued, inviting proposals from private entities to develop or operate qualifying projects or to design or equip projects so constructed, improved renovated, expanded, maintained or operated. The County shall use a two-part proposal process consisting of an initial conceptual phase (Part 1) and a detailed phase (Part 2). The RFP shall invite proposers to submit proposals on individual projects identified by the County. In such a case the County shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

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 shall be posted on the County’s electronic procurement website. Notices shall also be published in the Roanoke Times and World News, a newspaper of general circulation. Pre-proposal conferences may be held as deemed appropriate by the County. Any proposal submitted pursuant to the PPEA that is not received in response to a RFP or invitation for sealed bids shall be an Unsolicited Proposal under these procedures, including but not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal, and (b)

proposals received in response to publicity by the County concerning particular needs when the County has not issued RFP or invitation for sealed bids, even if the County has encouraged the submission of proposals.

#### **IV. Unsolicited Proposals**

The PPEA permits the County to receive, evaluate and select for negotiations unsolicited proposals from private entities to develop or operate a qualifying project.

From time to time the County may publicize its needs and may encourage interested parties to submit unsolicited 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 Administrator by delivering six complete copies, together with the required review fee. A working group may be designated by the County Administrator to review and evaluate all unsolicited proposals.

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

1. 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. 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. If the County determines not to accept the proposal, it shall 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, the following shall apply:
  - a. Within 10 working days after acceptance of such proposal, the County shall post a notice on the County's electronic procurement website, and in such other public area(s) as may be regularly used for posting of public notices, for a period of not less than 45 days. At least one copy of the proposals shall be made available for public inspection. The County may provide for more than 45 days in situations where the scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.
  - b. 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 will 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 § 56-575.4 G of the PPEA.

- c. 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 established by the County shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal.
- d. Prior to posting of the notices provided for in this subsection the County shall receive from the private partner or partners the balance due, if any, of the required project proposal review fee.

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

After reviewing the original proposal and any competing proposals submitted during the notice period, the County Administrator may recommend to the Board of Supervisors:

- (i) not to proceed further with any proposal,
- (ii) to proceed to the detailed (Part 2) phase of review with the original proposal,
- (iii) to proceed to the detailed (Part 2) phase with a competing proposal,
- (iv) to proceed to the detailed (Part 2) phase with multiple proposals, or
- (v) to request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed (Part 2) phase of review, the County Administrator shall recommend to the Board of Supervisors whether the unsuccessful private entity, or entities, shall be reimbursed, in whole or in part, for costs incurred in the detailed phase of review. In such case, reasonable costs may be assessed to the successful proposer as part of any ensuing comprehensive agreement.

## **V. Review of Solicited and Unsolicited Proposals**

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 will be considered by the County for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found at Section VI A.

2. The Board of Supervisors will determine at the initial review stage whether it will proceed using:

- a. Standard procurement procedures consistent with the VPPA; or
- b. Procedures developed 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 (competitive negotiation). The Board of Supervisors may proceed using such procedures 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 project, or (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 source or other economic benefit from the project that would otherwise not be available.

When the County elects to use competitive negotiations, its written determination should consider factors such as risk sharing, added value and/or economic benefits from the project that would not be available without competitive negotiation. In addition, the written determination should explain how the scope, complexity, and/or priority of the project are such that competitive negotiation is determined necessary.

The Board of Supervisors has determined that the analysis of a request by a private entity for approval of a qualifying project shall be performed by County employees. The Board reserves the right to engage the services of qualified professionals to provide it with an independent analysis of any proposal. The costs of such analysis shall be recovered from the Proposal Review Fee, Section II C.

## **VI. Proposal Preparation and Submission**

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

The County requires 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) such additional information as may seem prudent which is not inconsistent with the requirements of the PPEA. Suggestions for formatting information to be included in proposals at the Conceptual Stage include:

## 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 (\$100,000 or more) in the structure fits into the overall team. All members of the private entity/offeror'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 \$500,000), 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.
- 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 or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims and litigation, 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.
- c. For each firm or major subcontractor (\$100,000 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 (names/addresses /telephone numbers). 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.
- 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 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.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- i. Provide information on the level of commitment by the firm or consortium of firms to use Department of Minority Business Enterprise firms in developing and implementing the project.
- j. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:
  - (1) 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.
  - (2) 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:
    - (A) bankruptcy filings
    - (B) liquidated damages
    - (C) fines, assessments or penalties
    - (D) judgments or awards in contract disputes
    - (E) contract defaults, contract terminations
    - (F) license revocations, suspensions, other disciplinary actions
    - (G) prior debarments or suspensions by a governmental entity
    - (H) denials of prequalification, findings of non-responsibility

- (I) safety past performance data, including fatality incidents, “Experience Modification Rating,” “Total Recordable Injury Rate” and “Total Lost Workday Incidence Rate”
- (J) violations of any federal, state or local criminal or civil law
- (K) criminal indictments or investigations
- (L) legal claims filed by or against the firm

k. 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.

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 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 an environmental and archaeological assessment have been completed.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- 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 County'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.

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. Include any supporting due diligence studies, analyses or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment.

4. Project Benefit and Compatibility

- a. Identify 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 jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia 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 plan that will be carried out to involve and inform the general public, business community, local governments, 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. Describe the compatibility with the County's comprehensive plan, zoning ordinances, local infrastructure development plans, capital improvements budget and annual budget.

## **B. 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, where applicable, shall 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 qualifying 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 plans for securing all necessary property;
- 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 the County's 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 disabilities that may impact the County'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.

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

Some or all of the following items may be considered in the evaluation and selection of PPEA proposals. In selecting proposals, all relevant information from both the Conceptual Stage and the Detailed Stage should be considered. 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 an agency or institution's review to determine whether the proposer 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, claims and litigation history, 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 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 may include, but are not 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 plan; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies;
4. Estimated cost;
5. Life-cycle cost analysis;
6. Identity of any third party that will provide financing for the project and the nature and time of its commitment;
7. Such other items as the County deems appropriate.

### **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:

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 jobs generated for Virginia residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs generated by the project and the number and value of subcontracts generated for Virginia 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**

1. Proposed cost of the qualifying facility;
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 facility for accelerated selection, review, and documentation;
5. Local citizen and government comments;
6. Benefits to the public;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents; and
9. Other criteria that the Board of Supervisors deems appropriate.

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

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County. Prior to entering into a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project.

The Board of Supervisors shall approve any interim or comprehensive agreement entered into pursuant to the PPEA between the County and a private entity. The County shall accept no liability for developing or operating the qualifying project prior to entering into a properly executed agreement. Each agreement shall define the rights and obligations of the responsible public entity and the selected proposer with regard to the project. Once the negotiation of an agreement under these Guidelines is complete, but before an agreement is entered into, the County shall make available the proposed agreement for public inspection at least 7 days before any proposed action by the Board of Supervisors.

#### **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. Establishing a process and timing of the negotiation of the comprehensive agreement; and
7. Any other provision 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 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 acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, 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 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, each in form and amount satisfactory to the County 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 private entity 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 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;
  - 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.
  - 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. A periodic reporting procedure that incorporates a description of the impact of the project on the Commonwealth and the County; and
12. Such other terms as the County may find necessary and convenient, that are agreed to by the private partner(s).

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.

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 in the ultimate selection of a proposal by the Commonwealth. 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 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.

**C. Public Hearing During Proposal Review Process; Notice and Posting Requirements.**

1. At some point during the proposal review process, but at least 30 days prior to entering into an interim or comprehensive agreement, the County shall hold a public hearing on the proposals that have been received.
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. On the County's 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.
  - b. 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 shall not be required to be posted, except as otherwise agreed to by the County and the private entity.
3. Once an interim or comprehensive agreement has been entered into, the County shall make procurement records available for public inspection, upon request.
  - a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adverse effect on the financial interest or bargaining position of the County or private entity.
  - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.) 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.

The County shall electronically file a copy of any interim and comprehensive agreement and any support documents with the Auditor of Public Accounts within 30 days of its execution.

## **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.

**“Cost-benefit analysis”** means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

**“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.

**“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.

**“Opportunity cost”** means the cost of passing up another choice when making a decision or the increase in costs due to delays in making a decision.

**“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; (viii) any services designed to increase the productivity or efficiency through the use of technology or other means; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility that produces electric energy derived from solid waste.

**“Responsible public entity”** 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.

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

**“State”** means the Commonwealth of Virginia.

**“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.