

**COUNTY OF GLOUCESTER, VIRGINIA  
GUIDELINES FOR THE IMPLEMENTATION OF THE PUBLIC-PRIVATE  
EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002**

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## **250.1 Introduction**

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA") grants the County of Gloucester (the "County"), a responsible public entity as defined in the PPEA, the authority to enter into public-private partnership agreements for the development of a wide range of projects for public use if the County determines that there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. For the purposes of these guidelines, the term "County" includes its School Board in the case of education facilities. Individually negotiated interim and comprehensive agreements between a private entity, as defined in the PPEA, and the County will define the respective rights and obligations of the County and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA.

In order for a project to come under the PPEA, it must meet the definition of a "qualifying project." The County may determine that a proposed project is a qualifying project under the PPEA if:

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

The PPEA contains a broad definition of qualifying projects that include public buildings and facilities of all types, for example:

1. An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility and land to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
2. A building or facility that meets a public purpose and is developed or operated by or for any public entity;

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3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
4. Utility and telecommunications and other communications infrastructure;
5. A recreational facility;
6. 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;
7. Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas, or
8. Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

The PPEA establishes requirements to which the County must adhere when reviewing and approving proposals received pursuant to the PPEA. 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.

These guidelines shall govern all County PPEA projects, including education facilities, and shall be applicable to all County agencies, boards, commissions, and committees. The County Administrator is authorized to designate a working group (the "Working Group") to be responsible for evaluating proposals and negotiating any interim or comprehensive agreement. The County Administrator shall serve as the point of contact for implementation of these guidelines, to receive proposals submitted under the PPEA, and to respond to inquiries regarding the PPEA or these adopted guidelines.

## 250.2 Terms and Definitions

**"Comprehensive agreement"** means the comprehensive agreement between the private entity and the County that is required prior to the development or operation of a qualifying project.

**"Conceptual stage"** means the initial phase of project evaluation when the County makes a determination whether the proposed project serves a public purpose and meets the criteria for a qualifying project; assesses the qualifications

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and experience of a private entity proposer; reviews the project for financial feasibility; and determines whether the project 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, the County Administrator 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 the County 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 the County 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.

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**“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 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; (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, 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; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means; (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in Va. Code § 10.1-1400 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, including the County.

**“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 Va. Code § 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”** means 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 Va. Code § 56-575.9.

**“Working Group”** means the group designated by the County Administrator to be responsible for evaluating proposals and negotiating any interim or comprehensive agreement.

## 250.3

### General Provisions

#### A. Proposal Submission

A proposal may be either solicited by the County or delivered by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a "PPEA PROPOSAL." To be considered, one (1) original and eight (8) copies of any unsolicited proposal must be submitted along with the applicable fee to Director of Central Purchasing, P. O. Box 329, Gloucester, Virginia 23061 by certified mail, express delivery or hand delivery. Proposers may be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase, as described herein. The County may discontinue its evaluation of any proposal at any time during the conceptual or detailed phase.

The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. Proposals may include, 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.

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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 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. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means. The County Administrator may request, in writing, clarification of 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 operator, 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 private entities for these projects. Prospective private entities proposing projects shall be held strictly accountable for their 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 private entity.

**B. Proposal Review Fees**

The PPEA authorizes the County to charge fees to cover the costs of processing, reviewing, and evaluating proposals.

1. A fee in accordance with the fee schedule below, paid with certified funds, shall accompany any initial proposal to cover the cost of determining whether it is a qualifying project with a reasonable expectation of satisfying the criteria of Va. Code § 56-575.4 (C) of the PPEA of public need or benefit, reasonable



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estimated cost, and timely acquisition of the project. The fee shall be based on the total cost of the proposal.

2. If the proposal is advanced to the detailed stage of review, an additional fee in accordance with the fee schedule below shall be due. The fee, paid in certified funds, shall accompany the proposer's submission at the detailed stage.

<b>Review Stage</b>	<b>Fee</b>	<b>Minimum</b>	<b>Maximum</b>
Conceptual/Initial	1%	\$2,500.00	\$25,000.00
Detail	1%	\$5,000.00	\$50,000.00

**C. Reservation of Rights**

In connection with any proposal or qualifying project, the County shall have all rights available to it by law in administering these guidelines, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Proposers shall have no recourse against the County for such rejection. Proposers will be notified in writing of such rejection in accordance with these guidelines.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue or terminate interim and comprehensive agreement negotiations with any proposer at any time before the actual authorized execution of an interim or comprehensive agreement by all parties.
4. Negotiate with a proposer without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to or cancel any request for proposals ("RFP") or invitation for bids ("IFB").
7. Revise, supplement or withdraw all or any part of these guidelines at any time and from time to time.

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8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by proposers hereunder.
10. Request revisions to conceptual or detailed proposals.
11. Submit a proposal for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of, and required to, maintain the confidentiality of information that has been designated as confidential, and to refer all requests for such information to the County.

Under no circumstances shall the County be liable for, or reimburse, the costs incurred by proposers, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these guidelines, the proposer must submit the question in writing and the County will respond in writing as it determines appropriate.

**D. Virginia Freedom of Information Act**

1. General applicability of disclosure provisions

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that Va. Code § 2.2-3705.6 (11) 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 the documents are:

- i. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 et seq.);
- ii. Financial records of the private entity that are not generally available to the public through regulatory disclosure or

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otherwise, including but not limited to, balance sheets and financial statements; or

- iii. 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 will comply with the provisions of such order.

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

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 in Section 250.3.D.1.

Upon the 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 250.3.D.1. The County will make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity will be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section 250.3.D.1.

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

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the County or any affected jurisdiction to which such documents are provided.

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 documents shall be subject to disclosure under FOIA.

3. Protection from mandatory disclosure for certain documents produced by the County

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 a 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.

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

4. 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 entered into 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; or
  - d. information concerning the performance of any private entity developing or operating a qualifying transportation facility.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, the County will comply with such order.

**E. Use of Public Funds**

Virginia constitutional and statutory requirements and County ordinances and policies 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.

**250.4 Solicited Proposals**

The County may issue Request for Proposals (RFPs) or Invitations for Bids (IFBs), 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 shall invite proposers to submit proposals on individual projects identified by the County. The County will 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 will 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 will 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. The RFP will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. Notices may also be published in newspapers or other publications of general circulation. In addition, solicited proposals shall be posted pursuant to Section 250.5 B. Pre-proposal conferences may be held as deemed appropriate by the County.

**250.5 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.

The County may publicize its needs and may encourage interested parties to submit proposals subject to the terms and conditions of the PPEA. When such a proposal is received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal. The County may establish suggested timelines for the review and selection of unsolicited proposals.

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

1. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee or fees by the proposer or proposers, the Working Group will recommend whether to reject the unsolicited proposal or accept the unsolicited proposal for publication and further conceptual-stage consideration.
  - a. If the proposal is an education facility, the Working Group will present its recommendation to the Superintendent of Schools (“Superintendent”), who will forward it, along with his recommendation, to the School Board. The School Board, upon receipt of the Superintendent’s and Working Group’s recommendations, shall decide whether to recommend that the unsolicited proposal be accepted. If the School Board decides to accept the proposal, its decision will be forwarded to the County Administrator who will decide whether to recommend to the Board of Supervisors that the unsolicited proposal be accepted.
  - b. If the proposal is a general government facility, upon receipt of the Working Group's recommendation, the County Administrator will decide whether to recommend to the Board of Supervisors that the unsolicited proposal be accepted.
  - c. The Board of Supervisors will receive all unsolicited proposals forwarded by the County Administrator and decide whether to approve them for publication and further conceptual-stage consideration.

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2. If the Board of Supervisors chooses to accept an unsolicited proposal for publication and conceptual-stage consideration, the County shall post a notice in a public area regularly used by the County for posting of public notices and on the County's website for a period of not less than 45 days. The County may also publish the same notice in one or more newspapers or periodicals of general circulation in the County to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have adequate time as specified in the notice to submit competing unsolicited proposals. The notice shall state that the County (i) has received 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 receive for simultaneous consideration any competing proposals that comply with the guidelines adopted by the County and pursuant to the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

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. 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.

3. Any proposal not accepted for conceptual-stage consideration will be returned, together with all fees and accompanying documentation, to the proposer.

**B. Posting Requirements**

1. Conceptual proposals accepted for review and further evaluation, whether solicited or unsolicited, shall be posted by the County within 10 working days after acceptance of such proposals.

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

2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the County so as to provide maximum notice to the public of the opportunity to inspect the proposals.
3. 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 Va. Code § 2.2-3705.6 (11) (see Section 250.3 D.) 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. Review at Conceptual Stage**

1. When one or more proposals are received, the County will determine at this initial stage of review whether it will proceed with the evaluation of the proposals using standard County procurement procedures or procedures normally used by the County that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Va. Code § 2.2-4301. The County may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available. The County may reject any or all proposals.
2. The Working Group shall review the original proposal and any competing proposals submitted during the notice period. Upon receipt of the Working Group's recommendation, the County



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Administrator (or the School Board in consultation with the Superintendent for education facilities proposals) shall determine:

- a. not to proceed further with any proposal;
  - b. to proceed to the detailed stage of review with the original proposal;
  - c. to proceed to the detailed stage with a competing proposal;  
or
  - d. to proceed to the detailed stage with multiple proposals.
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.

In the event that more than one proposal will be considered in the detailed phase of review, the County shall consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

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

**250.6 Proposal Preparation and Submission**

## **A. Format for Submissions at Conceptual Stage**

All proposals at the conceptual stage shall 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 that the County may request to comply with the requirements of the PPEA. Information to be included in proposals at this stage shall include, but not be limited to, the following:

### **1. Qualifications and Experience**

a. Identify the legal structure or type of private entity making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor (\$1 million or more) in the structure fits into the overall team. All members of the operator/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 \$1 million), may not be substituted or replaced once a project is approved and comprehensive agreement entered into, without the written approval of the County. Include the status of the Virginia license of each partner, proposer, contractor, and major subcontractor.

b. Describe the experience of the private entity making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the private entity. Describe the past safety performance record and current safety capabilities of the private entity. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims by or against the private entity. Include the identity of any private entity that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.

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c. For each private entity or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the private entity's prior projects and clients for the past five years and contact information for same (names/addresses/telephone numbers). If a private entity 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 private entity or major subcontractor shall be required to submit all performance evaluation reports or other documents which are in its possession evaluating the private entity'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 private entity who may be contacted for further information.

e. Provide a current or most recently audited financial statement of the private entity and each partner with an equity interest of ten 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 Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.

g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

h. For each private entity or major subcontractor that will perform construction or design activities, provide the following information:

- (1) A sworn certification by an authorized representative of the private entity attesting to the fact that the private entity is not currently debarred or suspended by

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any federal, state or local government entity.

- (2) A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, private entity resources and business integrity of the private entity, including but not limited to, bonding capacities, insurance coverage and private entity equipment. This statement shall also include a mandatory disclosure by the private entity for the past five years of 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) claims filed by or against the firm

- i. 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 proposed project, including the conceptual design, in sufficient detail so that type and intent of the project, its location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County.
- 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 or anticipated impacts of the project. Indicate if any environmental or archaeological assessment has 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 sufficient time for the County to review, and 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 Comprehensive 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.

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- 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, including any anticipated debt service costs. The operational plan shall 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 significant 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 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, both one-time and on-going. 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.

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- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

- a. Identify community benefits, including the economic impact the project will have on the Commonwealth and the County in terms of amount of tax revenue to be generated for the Commonwealth and the County, the number of 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, infrastructure development plans, and capital improvements plan.

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

If the County (or the School Board for education facilities projects) decides to proceed to the detailed stage of review with one or more proposals, the following information must be provided by the proposer unless specifically waived in writing by the County (or the School Board or Superintendent for education facilities projects):

- 1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project. The tax map number(s) or GPIN(s) of all affected property(ies) shall be provided.

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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 of, use by, and financial involvement of the County.
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 list of public facilities or other public improvements that will be required by the County to complete the project.
7. A statement and strategy setting out the plans for securing all necessary property interests required for the project. The statement must include the names and addresses, if known, of the current owners of the subject property interests, as well as a list of any property the proposer intends to request the County to condemn.
8. 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.
9. 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.
10. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
11. 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 resolutions of



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official bodies, minutes of meetings, letters, or other official communications.

12. Demonstration of consistency with appropriate County comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
13. Demonstration of consistency with all applicable federal, state, and local regulatory requirements, including the County's zoning and subdivision ordinances.
14. Explanation of how the proposed project would affect the County's development plans.
15. 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.
16. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact 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 Interests Act, Chapter 31 (Va. Code § 2.2-3100 et seq.) of Title 2.2 of the Code of Virginia.

## **250.7 Proposal Evaluation and Selection Criteria**

In reviewing any PPEA proposal accepted for consideration, the County shall engage the services of qualified professionals, which may include 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 request by a private entity for approval of a qualifying project unless the Board of Supervisors determines that such analysis shall be performed by County employees.

The following items, along with the information required under Section 250.6.A. above, shall be considered in the evaluation and selection of a PPEA proposal.

**A. Qualifications and Experience**

Factors to be considered in either phase of the review to determine whether the proposer possesses the requisite qualifications and experience will include at a minimum:

1. Professional qualifications and experience with similar projects;
2. Demonstration of ability to perform the 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, and the proposed safety plans for the project;
9. Financial condition of the proposer; and
10. Project ownership.

**B. Project Characteristics**

Factors to be considered in determining the project characteristics include, along with the specified information required under Sections 250.6.A. and 250.6.B. above, the following:

1. Project definition;
2. Proposed project schedule;

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3. Operation of the project;
4. Technology and technical feasibility;
5. Conformity to State and County 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 considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include the following:

1. Cost and cost benefit to the County;
2. Financing, including debt source, and its impact on the debt or debt burden of the County;
3. Financial plan including overall feasibility and reliability of plan; default implications; the proposer's past performance with similar plans and similar projects; degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Life-cycle cost analysis;
5. Opportunity costs assessment;
6. Estimated cost; and
7. 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, as applicable.

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

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

Factors considered in determining the proposed project's compatibility with the County's comprehensive or development plans include the following:

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, and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with County, regional, and state economic development efforts; and
6. Compatibility with the County's land use and transportation plans.

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

Other factors that may be considered by the County in the evaluation and selection of PPEA proposals include:

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

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4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial;
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. The recommendation of a committee of representatives of members of the County which may be established to provide advisory oversight for the project.

## **250.8 Interim and Comprehensive Agreements**

Following the evaluation of the selected proposer(s) at the detailed stage, the Working Group will submit its recommendation to the County Administrator as to whether the County should negotiate an interim or comprehensive agreement with the selected proposer. For education facilities proposals, the Working Group will present its recommendation to the Superintendent, who will forward it, along with his recommendation, to the School Board which will decide whether to begin negotiation of an interim or comprehensive agreement with the selected proposer. Upon receipt of authorization from the County Administrator (or the School Board for education facilities), the County Administrator and the Working Group will negotiate the interim or comprehensive agreement with the selected proposer.

At the conclusion of negotiations with the selected proposer, the County Administrator and the Working Group will submit their recommendation to the County Administrator. For education facilities proposals, the recommendation will be submitted to the Superintendent, who will forward it, along with his recommendation, to the School Board. The County Administrator (with the approval of the School Board for education facilities) will submit his recommendation to the Board of Supervisors for its consideration. The Board of Supervisors will determine whether to authorize the County Administrator to execute an interim or comprehensive agreement with the selected proposer. In the case of education facilities, the School Board may enter into an interim or

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comprehensive agreement and authorize the Superintendent to execute it only with the approval of the Board of Supervisors.

Prior to developing or operating the qualifying project, the selected private entity shall enter into a comprehensive agreement with the County, or with the School Board with County approval. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. Any interim or comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.

**A. Interim Agreement Terms**

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

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;
5. Availability of financing for the proposed facility through financial and revenue analysis;
6. The process to negotiate, and the timing of the negotiation of, the comprehensive agreement; and
7. Any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate prior to the execution of a comprehensive agreement.

**B. Comprehensive Agreement Terms**

The 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 the development or operation of the qualifying project;

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2. The review of plans and specifications for the qualifying project by the County;
3. The rights of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the private entity by the County to ensure proper maintenance of the project;
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 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 of 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.

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- 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. Other requirements of the PPEA or other applicable law; and
14. Such other terms and conditions as the County may deem appropriate.

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

The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with, proposals 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 interim or comprehensive agreement, the proposer 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 proposer shall immediately notify the County of same. Any violation of this section of the interim or 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. Notice and Public Hearing Requirements**

1. In addition to the posting requirements of Section 250.4.B, the County shall hold a public hearing on a proposal 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 on the County's website or post a summary thereof by publication, in a newspaper of general circulation in the County.
3. 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 Va. Code § 2.2-3705.6 (11) (see Section 250.3.D.) shall not be required to be posted, except as otherwise agreed to by the County and the private entity.
4. Any studies and analyses considered by the County in its review of a proposal shall be disclosed to the Board of Supervisors at some point prior to the execution of an interim or comprehensive agreement.
5. Once an interim agreement or a 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 had an adverse affect on the financial interest or bargaining position of the County or private entity in accordance with Section 250.2.D.3.
  - b. Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336 et seq.); (ii) financial records, including balance sheets or financial statements of

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the private entity that are not generally available to the public through regulatory disclosure or otherwise; or (iii) cost estimates prepared by or for the County.

To the extent access to procurement records is compelled or protected by a court order, the County will comply with such order.

6. A copy of any comprehensive agreement shall be submitted by the County to the Auditor of Public Accounts within 30 days after execution.

**250.9            Governing Provisions**

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