



Amherst County Board of Supervisors
County Ordinance No. 2013-0001

AN ORDINANCE, NO. 2013-0001

Adding §§ 2-86 through 2-88 to the Amherst County Code as Division IV of Article II of Chapter 2, to authorize the County to procure qualifying projects under the auspices of the Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”).

Approved as to form and legality by the County Attorney

FIRST READING: January 7, 2012
PUBLIC HEARING: January 15, 2012

THE COUNTY OF AMHERST HEREBY ORDAINS:

§ 1. That §§ 2-86 through 2-88 be and hereby are added to the Code of the County of Amherst as Division 4 of Article II in Chapter 2, as follows:

Division 4. – Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA) – Adoption

Section 2-86. Applicability and purpose.

The Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) (Virginia Code §§ 56-575.1 et seq.) authorizes local governments to create public-private partnerships for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities that serve a public need and purpose. By working in public-private partnerships, local governments and private entities have greater flexibility in contracting the development of qualifying public projects so as to help promote the completion of such projects in a more timely and less costly fashion.

Section 2-87. Authority to procure pursuant to the PPEA.

Amherst County is a political subdivision of the Commonwealth of Virginia with the authority to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, and install a wide range of projects for public use, and therefore may act as a responsible public entity under the PPEA.

Section 2-88. Adoption and promulgation of guidelines.

In order to procure qualifying projects in accordance with the PPEA, the County must adopt and make publicly available guidelines for development of qualifying projects. The Board has adopted guidelines for the implementation of the PPEA by ordinance adopted January 15, 2013. The guidelines are available on the County's website, which states where a printed copy of the guidelines may be examined. The guidelines, as they may be amended from time to time, are hereby incorporated by this reference into this Article II of Chapter 2 of Amherst County Code.

§2. That the guidelines referenced in § 2-88 are attached as Exhibit A to this ordinance.

§3. That on the first business day following adoption of this ordinance, the County Administrator shall ensure that the guidelines are posted on the County website, which posting shall state where a printed copy of the guidelines may be examined.

§4. That this ordinance shall be in force and effect upon adoption.

Adopted this 15th day of January, 2013.

Donald W. Kidd, Vice Chairman
Amherst County Board of Supervisors

ATTEST:

Clarence C. Monday, Clerk
Amherst County Board of Supervisors

Ayes _____

Nays _____

Abstentions _____

Ordinance No. 2013-0001
Exhibit A
(twenty-five pages)

Public-Private Education Facilities and Infrastructure Act of 2002



Guidelines for the County of Amherst, Virginia

I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002 (“PPEA”) (Virginia Code §§ 56-575.1 et seq.) authorizes local governments to create public-private partnerships for the acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, operation, implementation, or installation of education facilities, technology infrastructure, and other public infrastructure and government facilities that serve a public need and purpose. By working in public-private partnerships, local governments and private entities have greater flexibility in contracting the development of qualifying public projects so as to help promote the completion of such projects in a more timely and less costly fashion.

A. Guideline Overview

Amherst County is a political subdivision of the Commonwealth of Virginia with the authority to acquire, design, construct, improve, renovate, expand, equip, maintain, operate, implement, and install a wide range of projects for public use. It therefore is a “Responsible Public Entity” as that term is defined by the PPEA.

The PPEA requires local governments to adopt and make publicly available guidelines for development of projects under the PPEA. The guidelines detailed in this document were adopted by the Amherst County Board of Supervisors by ordinance number 2013-0001 on January 15, 2013, and are thereby incorporated by reference into Amherst County Code.

The person designated as the primary point of contact for information on these guidelines and for submission of solicited or unsolicited proposals under the PPEA is:

County Administrator

Amherst County

150 Washington Street

P.O. Box 390

Amherst, Virginia 24521

If the PPEA is amended in a manner that either conflicts with these guidelines or concerns material matters not addressed by these guidelines, the County Attorney shall approve conforming amendments to the guidelines. If the guidelines are not amended prior to the effective date of the new law, the guidelines nonetheless shall be interpreted in a manner to conform to the new law. The County Attorney also may approve such amendments tailoring these guidelines for optimal use by Amherst County as are consistent with State law.

B. Qualifying Facilities and Projects

Qualifying facilities and projects under the PPEA include:

1. An educational facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education.
2. Any building or facility that meets a public purpose and is developed or operated by or for any public entity.
3. Any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity.
4. Utility and telecommunications and other communications infrastructure.
5. A recreational facility.
6. Technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services.
7. Any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means.
8. Any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas.
9. Necessary or desirable improvements to unimproved publicly-owned real estate.
10. Any solid waste management facility that produces electric energy derived from solid waste.

C. Reservation of County Rights

In considering any proposal, 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 the evaluation of a proposal at any time.
3. Suspend, discontinue, or terminate comprehensive or interim agreement negotiations.
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.
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, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
10. Request revisions to conceptual or detailed proposals.
11. Treat any proposal which may have certain characteristics in common yet differs in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Arrange for review of a proposal by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designed as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

The County shall not be liable for, or reimburse, 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 or regarding a project, the proposer must submit the question in writing to the County Purchasing Agent who shall respond in writing.

II. DEFINITIONS

The following terms shall have the meaning ascribed to them in this section whether they appear in capitalized or uncapitalized form in these Guidelines.

“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.

“County” means Amherst County.

“Develop” means to plan, design, develop, finance, lease, acquire, install, construct or expand.

“IFB” means invitation for bids.

“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.

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

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

“Private entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, nonprofit entity, or other business entity.

“Proposal” means a proposal submitted under these guidelines for development of a qualifying project.

“Proposer” means a private entity that submits a solicited or unsolicited proposal to the County.

“Public entity” means the Commonwealth or 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.

“Responsible public entity” means a public entity that has the power to develop or operate a specific qualifying project.

“Revenues” means all revenues, including but not limited to 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, funds received as grants or otherwise from the federal government, from any public entity, or from any agency or instrumentality of the foregoing in support of the qualifying project.

“RFP” means request for proposals.

“Service contract” means a contract entered into between a public entity and the private entity for the delivery of services to be provided as part of a qualifying project in exchange for such service payments and other consideration as such public entity may deem appropriate.

“Service payments” means payments to the private entity in connection with the development or operation 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 a comprehensive agreement.

III. GENERAL PROVISIONS

A. Proposal Submission and Consideration

The County may solicit proposals or a private entity may submit an unsolicited proposal. In either case, proposers may be required to follow a two-part process consisting of submission of an initial conceptual proposal followed by submission of a more detailed proposal.

Proposals generally 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 by the County. Proposals should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project.

The County may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.

The County shall use County staff or shall engage the services of qualified professionals – such as architects, professional engineers, or certified public accountants – to provide independent analysis regarding the specific components, advantages, disadvantages, and the long and short-term costs of any proposal.

The County shall make County staff available to meet with private entities considering submission of a proposal.

The County may authorize accelerated selection and review and documentation timelines for proposals involving a qualifying project that the County deems a priority for development.

B. Virginia Freedom of Information Act

Proposal documents submitted by a private entity are generally subject to the Virginia Freedom of Information Act (“VFOIA”). Any inspection of procurement transaction records generally shall be subject to reasonable restrictions to ensure the security and integrity of the records, and the provisions of this section shall apply to accepted proposals regardless of whether the process of bargaining will result in an interim or a comprehensive agreement. Notwithstanding these provisions, the County shall comply with the terms of any court order relating to the protection or production of documents involved in any procurement transaction.

1. Documents that must be disclosed.

Except as they are exempt in accordance with these guidelines, the County must disclose the following documents in response to a request under the VFOIA:

- Procurement records.
- Public records disclosing 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.
- Public records disclosing the terms and conditions of any financing arrangement that involves the use of any public funds.
- Public records relating to the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.
- Any public records included in a proposal that the parties agree should be incorporated into a comprehensive or interim agreement upon execution of the agreement.

2. Exemptions the County can invoke.

The County can choose to withhold from public inspection the following documents:

- Documents implicating public safety concerns, pursuant to Virginia Code § 2.2-3705.2.
- 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.
- 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 County or private entity would be adversely affected.
- Any other document that the County determines is properly exempted from disclosure by the VFOIA.

3. Exemptions the proposer can ask the County to invoke.

The proposer may request that the County protect as confidential:

- Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §59.1-336 et seq.).
- 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.
- 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 County or private entity would be adversely affected.

The County may consider these exemptions only if the proposer makes a written request to the County:

- Invoking such exemption upon submission of the data or other materials for which protection from disclosure is sought;
- Identifying with specificity the data or other materials for which protection is sought by marking each affected page or portion thereof “Confidential – Not Subject to VFOIA”; and
- Stating the reasons protection is necessary.

The County shall determine whether exempting the records is necessary to protect the trade secrets or financial records of the proposer, or whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the County or proposer.

The County shall prepare a written determination describing the nature and scope of the protection it will afford the affected documents. The proposer shall be allowed to withdraw its proposal if the written determination provides less protection than the proposer requested.

The Purchasing Agent shall take reasonable precautions to protect the confidentiality of any documents afforded protection under a written determination, and shall not make any disclosures beyond that reasonably necessary to carry out the procurement. Nothing contained herein shall constitute a waiver of sovereign immunity, a consent to suit, or a contractual undertaking, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the County or its

Board of Supervisors, County Attorney, County Administrator, officers, employees, or agents for any failure to maintain confidentiality of information.

C. Affected Jurisdictions

Any private entity submitting a conceptual or detailed proposal to the County shall provide, by certified mail, express delivery, or hand delivery, a copy of the proposal to any other affected jurisdiction. Affected jurisdictions have 60 days from the receipt of the proposal to submit written comments to the County and to indicate whether the proposed project is compatible with the affected jurisdiction’s (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. The County shall consider any comments received within the 60-day period but shall not draw any negative inferences from the absence of comment.

D. Applicability of Other Laws

1. Use of Public Funds.

Virginia constitutional and statutory requirements applicable to appropriation and expenditure of public funds shall apply to any interim or comprehensive agreement entered into pursuant to these guidelines. The processes and procedural requirements associated with the expenditure or obligation of public funds therefore shall be incorporated into planning for any PPEA project or projects and restrictions on County expenditures of public funds shall be deemed incorporated into any agreement executed under these guidelines.

2. Virginia Public Procurement Act.

The provisions of the Virginia Public Procurement Act., Virginia Code § 2.2-4300, *et seq.*, shall not apply to procurement under these guidelines except as follows:

- i. As used in these guidelines, “competitive sealed bidding” and “competitive negotiation” shall have the same meaning as the definitions in Virginia Code § 2.2-4301.
- ii. The provisions of Virginia Code § 2.2-4310 shall apply to all procurements under these guidelines.
- iii. The provisions of the Ethics in Public Contracting Act., Virginia Code § 2.2-4367 through 2.2-4377, shall apply to all procurements under these guidelines.
- iv. The provisions of Virginia Code § 2.2-4336 shall apply to bonds or letters of credit for any components of a qualifying project involving construction.

E. Proposal Review and Analysis Fee

1. To assist its decision regarding entry into an agreement with a private entity, the County shall arrange for review and analysis of any unsolicited or solicited proposal from County staff or from outside advisors or consultants with relevant experience.
2. The County shall not charge a fee for any review and analysis of proposals solicited by a request for proposal or invitation for bid.
3. The County shall charge fees for review and analysis of an unsolicited proposal accepted for conceptual phase review. Such fees may include reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants, and shall be based on the direct costs the County reasonably anticipates it will incur in review and analysis of the proposed qualifying project. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal; and (ii) the out-of-pocket costs for attorneys, consultants and financial advisors engaged by the County in its sole discretion to assist in the review and analysis.
4. Fees initially may be assessed in accordance with the following schedule:
 - (i) Initial or Conceptual Phase Review Fee: The initial or conceptual review fee shall not exceed five thousand dollars (\$5000) and must be submitted with the unsolicited proposal.
 - (ii) Detailed Phase Review Fees. Upon the County's decision to proceed with a detailed phase proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not more than \$50,000 at the time of the submittal of the detailed phase proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal to the extent the County reasonably anticipates incurring costs in excess of the initial detailed phase review fee. The County shall notify the applicant of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluation of the proposal.
5. The County may at its sole discretion at any time before or during the detailed phase review enter into an interim agreement with the proposer under which the County may compensate the proposer for detailed phase proposal activities described therein.
6. If the total fees paid exceed the County's actual direct costs incurred in processing, reviewing, and evaluating the proposal, the County shall refund the difference.

F. County Debt Financing

If a 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 shall retain full discretion to select the finance team, source, and financing vehicle.

IV. SOLICITED PROPOSALS

The County may issue an RFP or IFB for development of a qualifying project. Any proposal submitted pursuant to these guidelines that is not received in response to an IFB or RFP shall be deemed an unsolicited proposal described under Part V. of these guidelines. This shall include proposals received in response to (a) a notice issued by the County that it has received another unsolicited proposal, and (b) publicity by the County concerning particular needs, where the County has not issued an IFB or RFP.

A. Professional Services

For procurement of professional services, the County may proceed under an RFP in a manner consistent with Virginia Code § 2.2-4301.

B. Good or Service Other than Professional Services

1. For procurement of any good or service other than professional services, the County may proceed under an RFP only if the Purchasing Agent makes a written determination pursuant to subdivision 2 of Virginia Code § 56-575.16 that such proceeding is likely to be advantageous to the County based on (i) the probable scope, complexity, or priority of the project; (ii) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) an increase in funding, dedicated revenue source or other economic benefit that would not otherwise be available.
2. If the County proceeds under an RFP to procure a good or service other than professional services, it shall not be required to select the proposal with the lowest price offer, but may consider price as one factor in evaluating the proposals received. Other factors that may be considered include (i) the proposed cost of the qualifying facility; (ii) the general reputation, industry experience, and financial capacity of the private entity; (iii) the proposed design of the qualifying project; (iv) the eligibility of the facility for accelerated selection, review, and documentation timelines under these guidelines; (v) local citizen and government comments; (vi) benefits to the public; (vii) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan; (viii) the private entity's plans to employ local contractors and residents; and (ix) other criteria that the County deems appropriate.
3. The procedures and requirements applicable to any solicited bid or proposal shall be specified in the solicitation and may include requirements as to the following:
 - Contractor qualifications and project selection criteria;
 - Information and documents that must accompany the proposal;
 - Evaluation factors;
 - Whether a pre-proposal conference will be held;

- Proposal format and structure; and
- Any other applicable terms and conditions, including unique qualifications the County may require of the private entity.

C. Public Notice

1. Public notice of the solicitation of proposals shall be posted at least 30 days prior to the date set for receipt of proposals by posting in a public area of the Amherst County Administration Building, posting on the County website, and by publication in one or more newspapers of general circulation in Amherst County. Notices also may be advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site. The County also may contact specific private entities to request that they submit proposals.

2. Within 10 days of accepting a solicited proposal for conceptual phase consideration, the Purchasing Agent shall post and publish notice of the acceptance. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one or more newspapers of general circulation in the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted a solicited proposal; (ii) intends to evaluate the proposal; and (iii) may negotiate an interim or comprehensive agreement with the proposer. The notice shall describe the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection.

3. None of the procurement records referenced in subdivisions 2. and 3. of section B of Part III of these guidelines shall be made available for public inspection under this section except as the proposer and the County may mutually agree.

V. UNSOLICITED PROPOSALS

The County may publicize its needs by means other than issuance of an RFP or IFB, and may receive, evaluate, and select for negotiations unsolicited proposals from private entities submitted in response to that publicity or other basis. The following four-step procedure for evaluating Unsolicited Proposals shall serve as the County's general process for encouraging the receipt and consideration of proposed qualifying projects. If the County determines that it is in the County's interest to do so with respect to any unsolicited proposal, the County may cease or eliminate review at the conceptual phase and proceed directly to the detailed review phase.

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.

A. Step One: Submission of Unsolicited Proposal

1. Delivery of Initial Submission. Any private entity seeking to submit an unsolicited proposal shall deliver six (6) complete copies of the proposal, containing the information detailed in

subdivision 2, to the Purchasing Agent, 150 Washington Street, Amherst, Virginia, 24521. The envelope or package must be clearly labeled "Public Private Education Facilities and Infrastructure Proposal" and must include a list of all affected jurisdictions being provided a copy of the proposal that indicates the name and address of the recipient and the delivery date.

2. Contents of Unsolicited Proposal: Initial Submission. An unsolicited proposal shall contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. A suggested format and information to satisfy these requirements are included in Section V.C.5., below. The information should be adequate to enable the County to evaluate the practicality and sufficiency of the proposal. The private entity may request that the County consider a two part proposal process consisting of an initial conceptual submission (Step Three below) to be followed by a more detailed submission (Step Four below).

B. Step Two: Decision to Proceed With Conceptual Phase Review Notice

1. If the County Administrator decides not to accept an Unsolicited Proposal for Conceptual Phase consideration, he shall notify the proposer and the Board of Supervisors, explaining why no further consideration is warranted, and shall promptly return the proposal, together with all fees and accompanying documentation, to the proposer.
2. If the County Administrator decides to accept an unsolicited proposal for conceptual phase consideration, he shall notify the proposer and, within 10 days of acceptance, shall post and publish notice of the acceptance in order to encourage submission of competing proposals. The notices shall be posted at the County Administration Building and on the County website for a period of not less than forty-five (45) days. The Purchasing Agent also may publish the notice in one or more newspapers of general circulation in the County, in *Virginia Business Opportunities*, and on the Commonwealth's electronic procurement website. Notices shall state that the County: (i) has received and accepted an unsolicited proposal; (ii) intends to evaluate the proposal; (iii) may negotiate an interim and/or comprehensive agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than forty-five (45) days, any competing proposals that comply with County regulations. The notice shall summarize the proposed qualifying project and identify its proposed location, and shall indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to post and publish an unsolicited proposal that he deems necessary.
3. The Purchasing Agent may designate a group to review and evaluate the proposal.
4. The County may require additional submissions to clarify information previously provided or to address other areas of concern to the County.

5. During the forty-five (45) day period for receiving competing unsolicited proposals, the County may continue to evaluate the original unsolicited proposal. County staff shall answer in writing any questions from private entities contemplating submission of a competing unsolicited proposal, and shall post the written responses on the County website.

C. Step Three: Conceptual Phase Review

1. The County will consider for further review at the conceptual phase only those proposals which (i) are compliant with the requirements of these guidelines, (ii) contain sufficient information for a meaningful evaluation, and (iii) are provided in an appropriate format.
2. The County will determine at this point whether it will proceed using procedures associated with competitive sealed bidding or procedures associated with competitive negotiation.
3. After reviewing the unsolicited proposal and any competing unsolicited proposals submitted during the notice period, the County may determine: (i) not to proceed further with any proposal; (ii) to proceed to the detailed review phase with the original proposal; (iii) to proceed to the detailed review phase with a competing proposal; or (iv) to proceed to the detailed review phase with multiple proposals.
4. Discussions between the County and the private entity about the need for infrastructure improvements shall not limit the County's ability at some later date to use standard procurement procedures to meet its infrastructure needs.
5. Unsolicited Proposals at the conceptual phase shall contain information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support or opposition. The following are suggestions for the format and content of the conceptual phase proposal. The County may request such additional information as it deems appropriate.

(i) Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal (i.e. corporation, partnership, joint venture, limited liability corporation.). Identify the organizational structure for the project, the management approach, and how each principal (i.e. major shareholder, member, partner) and major subcontractor in the structure fit into the overall team.
- 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. Include the identity of any firms that will

provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

- c. Provide the names, addresses, and telephone numbers of persons who may be contacted for further information.
- d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater.
- e. Identify any persons known to the applicant who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other private 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 such impacts of the project.
- e. Identify the anticipated 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. Describe the proposed allocation of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- h. 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.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

- j. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet.
 - k. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property that the County is expected to condemn.
- (iii) Project Financing
- a. Provide a preliminary estimate and describe the 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.
 - 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 identify of each such source) and the timing of any anticipated commitment.
 - f. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the applicant contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
 - g. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.
- (iv) Project Benefit and Compatibility
- a. Describe the anticipated benefits to the community, region, or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit.

- b. Identify any anticipated public support or opposition as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Explain whether the project is likely to attract or maintain industries and businesses to the County or the surrounding region and, if so, explain how.
- e. Explain whether the project is compatible with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan and, if so, explain how.

D. Step Four: The Detailed Review Phase

If the County decides to proceed to the detailed review phase with one or more unsolicited proposals, the proposer shall provide all of the following information not supplied in the conceptual phase proposal unless waived by the County in writing:

1. A topographic map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
3. 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;
4. A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County to condemn;
5. 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;
6. A total lifecycle 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 lifecycle 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;
7. A detailed discussion of assumptions about user fees or rates, and usage of the projects;
 8. 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;
 9. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
 10. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction;
 11. 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.*);
 12. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;
 13. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
 14. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
 15. The names and addresses of the persons who may be contacted for further information concerning the request;
 16. 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 financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the applicant of the financing plan proposed for the project; and,
 17. Additional material and information as the County may request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

In addition to evaluation of materials and information described in Section V., the County may consider some or all of the following matters in the evaluation and selection of unsolicited and solicited proposals.

A. Qualifications and Experience

Factors to be considered in either the conceptual or detailed phase of the County's review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership;

B. Project Characteristics

Factors to be considered in evaluating project structure and characteristics include:

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

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

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project include:

1. Cost and cost benefit to the County as determined through a cost-benefit analysis;
2. Financing and the impact on the debt burden of the County or other appropriating body;
3. Financial plan, including the 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. Opportunity costs assessment;
5. Estimated cost;
6. Lifecycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of their commitment, as applicable, and
8. 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 appropriate local or regional comprehensive or development plans include:

1. Community benefits;
2. Community support or opposition;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including 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;
9. The recommendation of a committee of representatives of members of the County and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the County deems appropriate.

F. Public Private Partnership Oversight Advisory Committee

The County may establish criteria for the creation of and the responsibilities of a public-private partnership oversight committee with members representing the County and any appropriating body different from the County Board of Supervisors. Such criteria shall include the scope, costs, and duration of the qualifying project, as well as whether the project involves or impacts multiple public entities. The oversight committee shall function as an advisory committee to review the terms of any proposed interim or comprehensive agreement;

G. Appropriating Body

If a responsible public entity separate from the County is appropriating or authorizing funding to pay for a qualifying project, the County shall establish a mechanism allowing that appropriating body to review any proposed interim or comprehensive agreement prior to execution. When a school board is the responsible public entity, review by the Board of Supervisors shall satisfy this requirement.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

1. 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, the County and private entity may enter into an interim agreement that permits the private entity to perform compensable activities related to the project.
2. The Purchasing Agent may designate a working group to be responsible for negotiating any interim or comprehensive agreement.
3. The County may enter into an interim or comprehensive agreement only with the approval of the Board of Supervisors subsequent to its review of the proposed agreement. Such review shall include examination of the results of any cost-benefit analysis, assessment of opportunity costs, and any other studies and analyses related to the proposed qualifying project.
4. The Board may approve agreements providing for the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by a public entity as a qualifying project, or the design or equipping of a qualifying project so developed or operated, if it determines that the project serves the public purpose because:
 - a. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
 - b. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
 - c. The private entity's plans will result in the timely development or operation of the qualifying project.

In evaluating any request, the Board may rely upon internal staff reports prepared by personnel familiar with the operation of similar facilities or the advice of outside advisors or consultants having relevant experience.

5. The County shall electronically file a copy of all interim and comprehensive agreements and any supporting documents with the Auditor of Public Accounts within 30 days from the execution of the interim or comprehensive agreement.
6. 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.
7. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

A. Interim Agreement Terms

Prior to executing a comprehensive agreement, the County may execute with the private entity an interim agreement which permits the private entity to perform compensable activities related to the project. An interim agreement shall provide for at least the following, if applicable:

1. A description of activities related to
 - Project planning and development.
 - Design and engineering.
 - Environmental and archeological analysis and mitigation.
 - Surveying.
 - Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
2. Provisions establishing a process and timing of the negotiation of the comprehensive agreement.
3. 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 comprehensive agreement shall provide for at least the following, if applicable:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project.
2. The review of plans and specifications for the qualifying project by the County.
3. The rights of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement.
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and any tort or workers compensation liability to the public and employees and to enable the continued operation of the qualifying project.
5. The monitoring of the practices of the private entity by the County to ensure proper maintenance.
6. The terms under which the private entity will reimburse the County for services provided.
7. The 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 for the qualifying project.
 - i. A copy of any service contract shall be filed with the County.
 - ii. 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.

- iii. 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 make any payments to the private entity, and the amount of any such payments.
- 13. The date for the commencement of activities related to the qualifying project, which date the County may extend from time to time.
- 14. Other requirements of the PPEA or other applicable law.
- 15. Such other terms and conditions as the County may deem appropriate.

C. Comprehensive Agreement Provisions Relating to Construction Projects

With respect to construction projects considered under the PPEA, the County generally anticipates addressing the following in the comprehensive agreement. Private entities are encouraged to include a discussion of these matters in proposals relating to construction projects.

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

D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

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

E. Public Notice

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete, but before an interim agreement or a comprehensive agreement is entered into, the County shall post the proposed agreement for 30 days at the County Administration Building and on the County website. The Purchasing Agent also may publish such notice in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. Notices shall (i) state that the County has negotiated an interim or comprehensive agreement with the proposer; (ii) state that the County intends to execute the agreement by a date certain; (iii) summarize the proposed agreement; and (iv) indicate where copies of the proposal are available for public inspection. The Purchasing Agent may take such additional steps to publicize the proposal that he deems necessary.

2. At least one copy of the proposal shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Virginia Code §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Also, any documents that fall under Virginia Code §2.2-3705.2 may be excluded by the County.

3. Any studies and analyses considered by the County in its review of a proposal shall be disclosed to the Board of Supervisors prior to the execution of an interim or comprehensive agreement.

4. 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.

5. Once the County has executed an interim agreement or a comprehensive agreement, the County shall make procurement records available for public inspection, upon request. For the purposes of this subdivision, except as the proposer and the County may mutually agree, procurement records shall not include:

- Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code §59.1-336 et seq.).
- 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.
- Cost estimates prepared by or for the County.

- Those documents the County may choose not to disclose in accordance with the VFOIA.

If the agreement proposed for execution is a comprehensive agreement, procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents prior to execution of an interim or comprehensive agreement would have an adverse affect on the financial interest or bargaining position of the County or private entity as provided by in subdivision 3 of section B in part II of these guidelines.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

VIII. MATERIAL DEFAULT; REMEDIES

1. In the event of a material default by the private entity, the County may elect to assume the responsibilities and duties of the private entity of the qualifying project, and in such case, it shall succeed to all of the right, title and interest in such qualifying project, subject to any liens on revenues previously granted by the private entity to any person providing financing thereof.
2. The County may exercise such power of condemnation to acquire the qualifying project in the event of a material default by the private entity. Any person who has provided financing for the qualifying project, and the private entity, to the extent of its capital investment, may participate in the condemnation proceedings with the standing of a property owner.
3. The County may terminate, with cause, the interim or comprehensive agreement and exercise any other rights and remedies that may be available to it at law or in equity.
4. The County may make or cause to be made any appropriate claims under the maintenance, performance, or payment bonds; or lines of credit required by subsection A 1 of § 56-575.9.
5. In the event the County elects to take over a qualifying project pursuant to subdivision 1, the County may develop or operate the qualifying project, impose user fees, impose and collect lease payments for the use thereof and comply with any service contracts as if it were the private entity. Any revenues that are subject to a lien shall be collected for the benefit of and paid to secured parties, as their interests may appear, to the extent necessary to satisfy the private entity's obligations to secured parties, including the maintenance of reserves. Such liens shall be correspondingly reduced and, when paid off, released. Before any payments to, or for the benefit of, secured parties, the County may use revenues to pay current operation and maintenance costs of the qualifying project, including compensation to the responsible public entity for its services in operating and maintaining the qualifying project. The right to receive such payment, if any, shall be considered just compensation for the qualifying project. The full faith and credit of the County shall not be pledged to secure any financing of the private entity by the election to take over the qualifying project. Assumption of operation of the qualifying project shall not obligate the County to pay any obligation of the private entity from sources other than revenues.