

# SPOTSYLVANIA COUNTY GUIDELINES – PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT

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## **I. Introduction**

The Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code § 56-575 *et seq.*) (“PPEA”) authorizes the County of Spotsylvania (the “County”) to create public-private partnerships for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the projects to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements, *i.e.*, contracts, between a private operator, as defined in the Act, and the County will define the respective rights and obligations of the County and the private operator. 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 fully with the provisions of the PPEA, as applicable.

Private entities may include innovative financing methods in their proposals and shall be strictly accountable for their representations and information.

A project must meet the PPEA definition of “qualifying project” in Appendix A.

These guidelines are intended to supplement, and enable the County to comply with, PPEA’s requirements. They shall govern all County PPEA projects, including those for education facilities, and shall apply to all County agencies, boards, commissions, and committees. If the guidelines herein and the PPEA conflict, the terms of the PPEA control.

## **II. Requests for County Approval**

### **A. Unsolicited, Competing, and Solicited Proposals**

A private entity must obtain the County’s approval for PPEA projects or services. *See* Va. Code §§ 56-575.3(A); 56-575.4. The private entity may seek the County’s approval by submitting one of three types of proposals:

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1. If the County has not issued a Request for Proposals (RFP), the private entity may submit an **unsolicited proposal** for approval. *See* Va. Code § 56-575.4(A).
2. If the County receives an unsolicited proposal, it shall review the proposal and decide whether to accept the unsolicited proposal for further consideration. *See* Va. Code § 56-575.3(C). If the County decides to accept the unsolicited proposal for further consideration, the County shall publish notice of the unsolicited proposal and seek **competing proposals** from other private entities. *See* Va. Code § 56-375.3:1(B)(11).
3. The County may seek PPEA proposals by issuing a RFP. *See* Va. Code § 56-575.4(B). If the County has issued a RFP, a private entity may submit a proposal which shall be treated as a **solicited proposal**.

### **B. Invitations to Bid**

The private entity may also seek the County’s approval by responding to a County Invitation to Bid. *See* Va. Code § 56-575.4(B). The County may accept a responsive bid and enter into a Comprehensive Agreement using the competitive sealed bidding procedures of the Virginia Public Procurement Act and in accordance with the County’s Procurement Policy. *See* Va. Code § 56-575.16(1), Va. Code § 2.2-4302.1 and §2.2-4310(B).

### **C. Choice of Procedures**

For PPEA projects, the County shall determine whether to use procedures consistent with competitive sealed bidding or with competitive negotiation of “other than professional services.” *See* Va. Code § 56-575.16(2), Va. Code § 2.2-4302.2 and § 2.2-4310(B).

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## **D. Working Group**

The County Administrator shall designate a PPEA working group (the “Working Group”) to evaluate proposals and the County Administrator shall administer these guidelines.

The Procurement Manager, if not included in the Working Group, shall staff the Working Group, and shall receive and respond to inquiries and proposals in any case.

The Working Group will consult with, and make recommendations to, the County Administrator.

After consulting with the County Administrator, the Working Group, unless otherwise determined by the Board as set forth below, shall engage the services of qualified professionals to provide independent analysis of the specifics, advantages, disadvantages, and the long- and short-term costs of proposals. These professionals may include a cost estimator, architect, professional engineer, or certified public accountant not employed by the County. The Board may determine that such analysis shall be performed by County employees. *See Va. Code § 56-575.3:1(C)(1).*

## **III. Proposals**

### **A. General Proposal Requirements**

Whether solicited, competing, or unsolicited, each proposal shall be clearly identified as a “PPEA PROPOSAL.” Proposals should be prepared simply and economically and provide a concise description of the proposer’s capabilities to complete the proposed project and the benefits to the County. The County will consider project benefits occurring during the construction, renovation, expansion, or improvement phases as well as the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project with enough detail for the County to properly

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analyze the financial feasibility of the proposed project. The proposal shall identify each facility, building, infrastructure, or improvement included in the proposal. The Procurement Manager may request any information that clarifies or supplements a proposal.

For solicited proposals, proposers should submit the number of copies required by the RFP to the Procurement Manager. For unsolicited and competing proposals, proposers shall submit at least one original and nine copies along with the applicable fee to the Procurement Manager.

### **B. Proposal Review Fees**

The PPEA authorizes the County to charge fees to cover the costs of processing, reviewing, and evaluating proposals, including reasonable attorney's fees and fees for financial, technical, and other advisors or consultants.

**Solicited Proposals.** When the County issues a RFP soliciting PPEA proposals, proposers are not required to submit an initial consideration fee. If a solicited proposal is advanced for detailed review, the proposer is not required to pay the detailed review fee in the Fee Schedule below.

**Unsolicited and Competing Proposals.** For unsolicited and competing proposals, proposers shall pay the following fees:

1. An initial consideration fee paid with certified funds shall accompany any unsolicited proposal, in accordance with the Fee Schedule below.
2. If the County accepts an unsolicited proposal for consideration and seeks competing proposals, competing proposers are not required to pay the initial consideration fee.
3. If an unsolicited or competing proposal is advanced to the detailed review phase, a detailed review fee shall accompany the proposer's

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detailed proposal. The detailed review fee shall be paid with certified funds.

## **FEE SCHEDULE:**

<b>Review Phase</b>	<b>Fee</b>
Initial Consideration	\$5,000.00
Detailed	\$10,000.00

4. The County Administrator is authorized to refund all or part of these proposal review fees to all proposers during the initial consideration or detailed review phases.
5. In the event either the initial consideration fee or the detailed review fee is insufficient to cover all of the direct costs incurred by the County, the proposer shall be required to pay all such additional direct costs incurred by the County in reviewing the proposal.

### **C. Required Notification of Affected Local Jurisdictions; Response Thereto**

Regarding affected jurisdiction, under the PPEA, the term “affected jurisdiction” means any county, city or town in which all or a portion of a qualifying project is located. Private entities shall provide notice to affected jurisdictions as follows:

1. Any private entity requesting approval from, or submitting a proposal to, the County must contemporaneously, and no later than five (5) business days from the date of submission of the proposal to the county, provide any and all other affected jurisdictions with a copy of the private entity’s request or proposal by certified mail, express delivery utilizing written confirmation of delivery, or hand delivery.

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2. Written evidence of the delivery of the proposal to any and all other affected jurisdictions shall be provided to the County within five (5) business days following such delivery.
3. Any and all affected jurisdictions shall have sixty (60) days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan; (ii) jurisdiction's infrastructure development plans; and (iii) jurisdiction's capital improvements budget or other government spending plan.
4. Comments received within the sixty (60) day period shall be given consideration by the County prior to entering into any comprehensive agreement, if any, and no inferences shall be drawn from the absence of comment by an affected jurisdiction.
5. The County may begin or continue its evaluation of any such proposal during the sixty (60) day period for any affected jurisdiction to comment.

### **D. Required Information in Solicited Proposals**

The RFP shall specify the information that must accompany each solicited proposal and the factors to be used in evaluating proposals. The Procurement Manager shall post the RFP in public areas normally used for posting of the County's notices, including the County's procurement website. The Procurement Manager may also publish notice of the RFP in newspapers or other publications of general circulation. Pre-proposal conferences may be held as the Procurement Manager deems appropriate.

Solicited proposals shall address and meet all requirements of the RFP.

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## **E. Required Information in Unsolicited and Competing Proposals**

Unsolicited proposals and competing proposals shall contain the information required in Appendix B. *See* Va. Code § 56-575.4(A).

## **IV. Consideration of Unsolicited Proposals and Solicitation of Competing Proposals**

A. After receipt and review of an unsolicited proposal, the Working Group shall recommend to the County Administrator whether to accept the unsolicited proposal for consideration. The Working Group may request additional information from the proposer prior to making its recommendation.

1. The County Administrator shall receive the Working Group's recommendation and shall recommend to the Board whether the unsolicited proposal should be accepted for consideration.
2. The Board shall make the final decision on whether to accept an unsolicited proposal for consideration. If the Board accepts the proposal for consideration, it shall specify the time period between 90 and 120 days during which competing proposals may be submitted after the Procurement Manager posts notice of its decision as provided in IV (B) below. If the Board rejects an unsolicited proposal that purports to develop specific cost savings, the Board shall specify the basis for rejection. *See* Va. Code § 56-575.3 (D).
3. The Procurement Manager shall return any unsolicited proposal documents not accepted for consideration, together with the initial consideration fee and accompanying documentation, to the private entity.

B. If the Board decides to accept an unsolicited proposal for consideration, the Procurement Manager shall post a notice within ten (10) days of the

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- Board’s decision on the County’s procurement website. The notice shall be posted for at least ninety (90) days. The Procurement Manager may also publish the notice in one or more newspapers or periodicals of general circulation in the County.
- C. The notice shall state that the County (i) has accepted an unsolicited proposal for consideration; (ii) intends to further evaluate the unsolicited proposal; and (iii) will accept for simultaneous consideration any competing proposals that comply with these guidelines and the PPEA. The notice also shall summarize the proposed project and identify its proposed locations.
- D. Interested parties may submit competing proposals within the time period specified by the Board and listed in the notice. Competing proposals shall provide the information required for unsolicited proposals in Appendix B.

### **V. Posting and Inspection of Submitted Proposals**

Within ten (10) days of the County’s acceptance of an unsolicited proposal for consideration and within ten (10) days of the County’s receipt of a solicited proposal or a competing proposal, the Procurement Manager shall post the proposal on the County’s procurement website for a period of not less than forty-five (45) days. *See* Va. Code § 56-575.3:1(B)(11). The Procurement Manager shall also make at least one copy of each proposal available for public inspection.

However, trade secrets, financial records, or other records of the proposer excluded from disclosure under state law shall not be posted or made available for public inspection unless the County and private entity agree otherwise. *See* Va. Code § 56-575.17(A) (2).

The Procurement Manager may publish a summary of the proposals and the location where a copy of the proposals is available for public inspection on

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the County's procurement website and in one or more newspapers or periodicals of general circulation in the County.

### **VI. Consideration of Proposals**

The Working Group shall review solicited proposals, accepted unsolicited proposals, and competing proposals using the criteria listed in Appendix D. The Working Group shall recommend in writing one of the five actions listed below to the County Administrator. Upon receipt of the Working Group's recommendation, the County Administrator shall present the Working Group's recommendation to the Board together with any independent recommendation of the County Administrator. Upon receipt of the Working Group's recommendation and the County Administrator's recommendation, if any, the Board shall determine:

- (i) not to proceed further with any proposal;
- (ii) to proceed to the detailed review phase with the original unsolicited proposal;
- (iii) to proceed to the detailed review phase with a competing proposal;
- (iv) to proceed to the detailed review phase with a solicited proposal;  
or
- (v) to proceed to the detailed review phase with multiple proposals.

The Procurement Manager shall give written notice to all proposers of the decision of the Board in writing.

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## **VII. Detailed Review Phase**

If the Board decides to proceed to the detailed review phase, the Procurement Manager's written notice to proposers shall establish a reasonable deadline for submission of detailed proposals based upon the complexity of the project. The required information for detailed proposals is listed in Appendix C. The Procurement Manager's notice may require additional information in the detailed proposals.

Each proposer shall submit at least one original and nine copies of its detailed proposal along with the detailed review fee, in accordance with Part III (B) above, to the Procurement Manager.

The Working Group shall evaluate each detailed proposal using the criteria listed in Appendix D. After the Working Group has reviewed the detailed proposals, it shall make its recommendations to the County Administrator.

The Board shall receive the County Administrator's recommendation and hold a public hearing on the detailed proposals. The public hearing shall be held at least thirty (30) days before execution of an Interim or Comprehensive Agreement.

After the public hearing, the Board shall determine by resolution:

- (i) not to proceed further with any proposal;
- (ii) to defer a decision until it has received additional information from one or more proposers; or
- (iii) to proceed to the negotiation phase with one or more proposers.

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## **VIII. Negotiation Phase**

### **A. Negotiations**

If the Board agrees to proceed to the negotiation phase, the Working Group shall begin negotiations with one or more proposers on a Comprehensive Agreement. If desirable or necessary, the Working Group may also negotiate an Interim Agreement while the Comprehensive Agreement is being negotiated. The negotiations shall be based on the detailed proposals that were the subject of the public hearing at the end of the detailed review phase.

The private entity must enter into a Comprehensive Agreement with the County prior to developing or operating the project.

### **B. Duration of Negotiation Phase**

The County anticipates that the negotiation phase may last three (3) months or longer for simple projects and six (6) months or longer for more complex projects.

## **IX. Posting and Filing of Proposed Agreements**

Once the negotiation phase for an Interim or a Comprehensive Agreement is complete, but before an Interim or a Comprehensive Agreement is executed, the Procurement Manager shall post the negotiated agreement on the County's website or on the Commonwealth of Virginia Department of General Services' central electronic procurement website for at least ten (10) days.

In addition, the Procurement Manager may at his discretion publish a summary of the negotiated agreement and the location where copies of the negotiated agreement are available for public inspection in a newspaper of general circulation in the County.

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The Procurement Manager shall make at least one copy of the negotiated agreement available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of Va. Code § 2.2-3705.6(11) shall not be required to be posted, except as otherwise agreed to by the County and the private entity.

### **X. Interim Agreement**

Prior to, or in connection with, the negotiation of the Comprehensive Agreement, the County may enter into an Interim Agreement with the private entity. The Interim Agreement may (i) permit the private entity to commence and be compensated for initial activities related to the qualifying project, such as project planning and development, design and engineering, environmental analysis and mitigation, surveying, and ascertaining the availability of financing for the proposed facilities or services; (ii) establish the process and timing of the negotiation of the Comprehensive Agreement; and (iii) contain other provisions related to the development or operation of a qualifying project. *See* Va. Code § 56-575.9:1.

The Board must review, and by Board resolution authorize the County Administrator to execute, an Interim Agreement for qualifying projects, except for those qualifying projects set forth in Appendix A (1) (i). The Board must review, and by Board resolution authorize the School Board to execute, an Interim Agreement for qualifying projects set forth in Appendix A (1) (i). *See* Va. Code §§ 56-575.16(5); 56-575.3:1(C)(2). This shall not be interpreted to limit the Board's discretion with respect to any Interim Agreement but shall govern the required procedure for any approval desired by the Board.

### **XI. Comprehensive Agreement**

The Comprehensive Agreement shall include, but not be limited to, the components listed in Appendix E and any other terms agreed to by the

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parties. Any changes in the Comprehensive Agreement shall be made by written amendment.

The Board must review, and by Board resolution authorize the County Administrator to execute, a Comprehensive Agreement for qualifying projects, except for those qualifying projects set forth in Appendix A (1) (i). The Board must review, and by Board resolution authorize the School Board to execute, a Comprehensive Agreement for qualifying projects set forth in Appendix A (1) (i). *See Va. Code §§ 56-575.16(5); 56-575.3:1(C)(2)*. This shall not be interpreted to limit the Board's discretion with respect to any Comprehensive Agreement but shall govern the required procedure for any approval desired by the Board.

Within thirty (30) days after the County enters into a Comprehensive Agreement, the Procurement Manager shall submit a copy to the Commonwealth of Virginia's Auditor of Public Accounts.

## **XII. Posting of Procurement Records**

Once an Interim or Comprehensive Agreement has been executed, the Procurement Manager shall make procurement records available for public inspection upon request. Procurement records shall not include trade secrets of the private entity or financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise. *See Va. Code § 56-575.17(D)*.

## **XIII. Miscellaneous**

### **A. Freedom of Information Act**

These guidelines shall be administered in accordance with the Virginia Freedom of Information Act as set forth in Section 2 of Appendix A.

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## **B. Reservation of Rights**

The County reserves its rights and disclaims all liabilities with respect hereto, including but not limited to, those set forth in Section 3 of Appendix A.

## **C. Use of Public Funds**

Interim Agreements and Comprehensive Agreements are subject to all Virginia constitutional and statutory requirements and Spotsylvania County Code provisions governing the expenditure of public funds.

## **D. Applicability of other Laws**

Nothing in the PPEA shall affect the duty of the County or private entities to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (Va. Code § 2.2-4300 *et seq.*) is as set forth in the PPEA.

## **E. Sovereign Immunity**

Nothing herein shall be interpreted to waive the County's sovereign immunity or the sovereign immunity, as applicable, of any other public entity.

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## APPENDIX A. General Provisions

### A. Qualifying Projects

PPEA projects must meet the statutory definition of “qualifying project” which includes public buildings and facilities, including:

1. An education facility, including a school building, any functionally-related and subordinate facility to a school building (including any stadium or other facility primarily used for school events), and any depreciable property for use in a public school facility;
2. A building or facility that meets a public purpose and is developed or operated by or for a public entity;
3. Improvements and equipment to enhance public safety and security of buildings principally used by a public entity;
4. Utility, telecommunications, and other communications infrastructure;
5. A recreational facility;
6. Technology infrastructure, services, and applications, including telecommunications, automated data processing, word processing and management information systems, and related equipment, goods, and services;
7. Services to increase the productivity or efficiency of the responsible public entity through technology or other means;
8. Technology, equipment, or infrastructure to deploy wireless broadband services to schools, businesses, or residential areas;
9. Necessary or desirable improvements to unimproved publicly-owned real estate; or

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10. A solid waste management facility that produces electric energy derived from solid waste.

### **B. Virginia Freedom of Information Act**

Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act (Va. Code § 2.2-3700 *et seq.*) (“FOIA”).

In accordance with Va. Code § 2.2-3705.6(11)(b), proposal documents are subject to disclosure if requested, except to the extent that they relate to (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if such information was made public prior to the execution of an Interim Agreement or a Comprehensive Agreement, the financial interest or bargaining position of the County or private entity would be adversely affected. The private entity must invoke this exception in accordance with Va. Code § 2.2-3705.6(11)(b).

Va. Code § 56-575.4(G) imposes an obligation on the County to protect confidential proprietary information submitted by a private entity. When the private entity requests that the County not disclose information, the private entity must make a written request to the County:

1. Invoking the exclusion upon submission of the data or other materials to the County;
2. Identifying with specificity the data or other materials for which protection is sought; and
3. Stating the reasons why protection is necessary.

The County is only authorized and obligated to protect confidential proprietary information. The County will not protect any portion of a proposal from disclosure if the entire proposal has been designated

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

Upon timely receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the Procurement Manager shall determine whether the requested exclusion from disclosure is necessary to protect the trade secrets or financial information of the private entity. The Procurement Manager will send the proposer a written determination of the nature and scope of the protection.

To protect other information submitted by the private entity from disclosure, the Procurement Manager shall determine whether public disclosure prior to the execution of an Interim Agreement or Comprehensive Agreement would adversely affect the financial interest or bargaining position of the County or the private entity. In accordance with Va. Code § 56-575.4(G), the Procurement Manager shall take appropriate action to protect confidential and proprietary information provided by the private entity pursuant to an agreement under Va. Code § 2.2-3705.6(11).

Upon a final determination by the Procurement Manager to afford less protection than requested by the proposer, the proposer will be afforded an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for consideration.

Once an Interim Agreement or Comprehensive Agreement has been entered into, the County will make the procurement records available upon request in accordance with Va. Code § 2.2-4342. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have an adverse effect on the financial interest or bargaining position of the County or private entity in accordance with Va. Code § 2.2-3705.6(11)(b)(iii). Such procurement records shall not include (i) trade secrets of the private entity; (ii) financial information of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity where if such information was made public prior to the execution of an Interim Agreement or Comprehensive Agreement, the financial interest

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or bargaining position of the County or the private entity would be adversely affected.

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

The County shall administer these guidelines in accordance with the PPEA and shall have the right to:

1. Terminate evaluation of a proposal or to reject a proposal at any time for any reason. Proposers shall have no recourse against the County for such termination or rejection. Proposers will be notified in writing of the County's rejection of their proposal. When the County rejects a proposal that purports to develop specific cost savings, the County will specify the basis for rejection. *See Va. Code § 56-575.3(D).*
2. Suspend or terminate negotiations with a proposer before execution of an Interim Agreement or Comprehensive Agreement.
3. Request revisions of, and negotiate with proposers about, provisions in a proposal.
4. Request or obtain additional information about any proposal.
5. Issue addenda to or cancel any request for proposals or invitation to bid.
6. Revise, supplement, or withdraw any part of these guidelines.
7. Modify the Fee Schedule in these guidelines for a specific project or for all future projects.
8. Keep review fees required by these guidelines unless an unsolicited proposal is not accepted by the County.
9. Submit one or more proposals for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be required to maintain the

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confidentiality of information that has been designated as confidential and to refer all requests for confidential information to the County.

The County shall not be liable for, or reimburse, the costs incurred by proposers in developing proposals or in negotiating agreements. Any information the County makes available to proposers shall be provided solely 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 to the Procurement Manager, and the County will respond in writing as it determines appropriate.

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## APPENDIX B. Required Information for Unsolicited and Competing Proposals

### A. Qualifications and Experience

1. Identify the legal structure, *i.e.*, type of business entity, of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, and how each partner and major subcontractor (\$500,000 or greater than twenty percent [20%] of total overall cost of the proposal) in the structure fits into the overall team. Identify all members of the private entity's team, including major subcontractors known to the proposer, at the time a proposal is submitted for the conceptual phase. State the status of the applicable Virginia license of each partner, proposer, contractor, and major subcontractor.
2. Describe the experience of the firm or consortium of firms making the proposal and the key principals and project managers involved in the proposed project. Include experience with projects of comparable size and complexity and 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 firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm or consortium of firms. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims or litigation by or against the firm or consortium of firms. Identify any firms that will provide design, construction, and completion guarantees and warranties and a description of such guarantees and warranties.
3. For each firm or major subcontractor (\$500,000 or greater than twenty percent [20%] of total overall cost of the proposal) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past five years and their contact information. If a firm has worked on more than ten (10) projects

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during this period, it may limit its prior project list to ten (10) but shall first list all projects similar in scope and size to the proposed project and then list its most recent projects. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, safety, and other matters relevant to successful project development, operation, and completion.

4. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
5. Provide a current or most recently audited financial statement of the firm or consortium of firms and the financial statement of each partner with an equity interest of 10 percent (10%) or greater, and each entity or partner that has performed work of aggregate value exceeding Two Hundred Fifty Thousand Dollars (\$250,000.00) in Spotsylvania County in the past ten (10) years.
6. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interests Act (Va. Code § 2.2-3100 *et seq.*) (“COIA”).
7. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
8. For each firm or subcontractor that will perform construction or design activities, provide the following information:
  - (a) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

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(b) A completed qualification statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources, and business integrity of the firm, including bonding capacities, insurance coverage, and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past five years any of the following:

- i. bankruptcy filings
- ii. claims for liquidated damages
- iii. fines, assessments or penalties
- iv. judgments or awards in contract disputes
- v. contract defaults, contract terminations
- vi. license revocations, suspensions, other disciplinary actions
- vii. debarments or suspensions by a governmental entity
- viii. denials of prequalification
- ix. findings of non-responsibility
- x. safety performance issues, including fatality incidents, “Experience Modification Rating,” “Total Recordable Injury Rate” and “Total Lost Workday Incidence Rate”
- xi. violations of any federal, state or local criminal or civil law
- xii. criminal indictments or investigations
- xiii. claims filed by or against the firm

9. Worker safety programs: Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.

### **B. Project Characteristics**

1. Provide a topographic map (1:2000 or other appropriate scale) indicating the location of the qualifying project.
2. 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.

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3. Identify any facility, building, infrastructure, or improvement included in a proposal as part of a qualifying project specifically or conceptually.
4. Identify and fully describe any work to be performed by the County, and any work to be performed by any other public entity, and the timeline for its performance.
5. 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.
6. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known or anticipated adverse impacts of the project. Indicate if any environmental or archaeological assessment has been completed.
7. Identify the projected positive social, economic, and environmental impacts of the project independently and also measure these impacts against the County's Comprehensive Plan and any and all applicable ordinances, regulations, and design standards. Specify the strategies or actions to mitigate known impacts of the project.
8. Identify the proposed schedule for the work on the project, including sufficient time for the County to review the proposal and plans, and the estimated time for completion.
9. Identify contingency plans for addressing public needs if the project is not completed according to projected schedule.
10. Propose allocation of risk and liability for work completed beyond the Comprehensive Agreement's completion date and assurances for timely completion of the project.
11. State assumptions related to ownership, legal liability, and operation of the project and the existence of any restrictions on the County's use of the project.

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12. Provide information about phased or partial openings of the proposed project prior to completion of the entire work.
13. List other assumptions relied on or any contingencies that must occur for the project to be successful.
14. Identify any impacts on local law enforcement agencies.

### **C. Project Financing**

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
2. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon any operational standards adopted or identified by the County. Include any supporting due diligence studies, analyses or reports.
3. Include a list and discussion of assumptions underlying all major financial elements of the plan.
4. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
5. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and ongoing.
6. Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a

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“Service agreement”, for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is not investment grade, the County may require the use of credit enhancements.

7. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or does the firm only receive benefit of this potential.
8. Outline the financial penalties, if any, that would result should the County wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
9. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a finance component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.
10. An acknowledgment that in the event the initial consideration fee is insufficient to cover all of the direct costs incurred by the County, the proposer shall be required to pay all such additional direct costs incurred by the County in reviewing the proposal.

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

1. Identify who will benefit from the project, how they will benefit, and how the project will benefit the County and the overall community, including, but not limited to, the economic impact the project will have on the County and local community in terms of amount of tax revenue to be generated for the County, the number of jobs generated for County residents, the 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 County subcontractors.

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2. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
3. Explain the strategy and plan, including but not limited to anticipated timelines, to involve and inform the general public, business community, local governments, and governmental agencies in areas affected by the project.
4. Describe the compatibility of the project with local, regional, and state economic development efforts.
5. Describe the compatibility with the County's comprehensive plan (including related environmental, land use, building code, design standard ordinances, regulations, and manuals, where applicable), infrastructure development plans, transportation plans, capital improvement plans, capital budget and any other spending plans.

In the County's discretion, the proposer shall also provide any additional information deemed necessary by the County.

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## **APPENDIX C. Required Information for Detailed Review Proposals**

1. For a proposed construction project, construction plans and specifications that are at least fifty percent (50%) complete, as determined by the County.
2. Conceptual site plan indicating proposed location and configuration of the project on the proposed site. Any facility, building, infrastructure, or improvement included in a proposal as part of a qualifying project shall be identified specifically or conceptually.
3. Conceptual (single line) plans and elevations depicting the general scope, appearance, and configuration of the proposed project.
4. 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, and an acknowledgment that any amount to be paid for crossing construction, moving or relocation of utilities facilities shall be paid by the private entity, in accordance with Va. Code § 56-575.13.
5. Detailed description of the proposed participation of, use by, and financial involvement of the County.
6. List of public facilities or other public improvements required of the County to complete the project.
7. Statement of the plans for securing all necessary real property interests, such as easements, rights-of-way, etc., for the project. The statement must include the names and addresses, if known, of the current owners of the necessary property and the location of any property the proposer requests the County to condemn, and an acknowledgment that any amount to be paid for such easements, rights-of-way, etc. shall be paid by the private entity, in accordance with Va. Code § 56-272.12.

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8. Detailed listing of all firms that will provide design, construction, and completion guarantees and warranties, and a brief description of the guarantees and warranties.
9. Total life-cycle costs, methodology, assumptions of the project, and the proposed project start date. The life-cycle cost analysis should include a detailed analysis of the projected return, rate of return, or both; the expected useful life of the facilities; and estimated annual operating expenses. The information should also include each party's anticipated commitment; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs.
10. Detailed discussion of assumptions about user fees or rates and about usage of the project.
11. Identification of known government or public support or opposition for the project. Government or public support should be demonstrated through resolutions of government departments or boards, minutes of meetings, letters, or other official communications.
12. Demonstration of consistency with the County's comprehensive plan or a schedule of the steps necessary to amend the comprehensive plan.
13. Description of an ongoing evaluation system to track key performance criteria, including schedules, cash management, quality, worker safety, change orders, and legal compliance.
14. Identification of any known conflicts of interest or other factors that may impact consideration of the proposal, including the identification of persons who would be obligated to disqualify themselves from participation in any transaction in connection to the project because of COIA.
15. Acknowledgment of conformance with the Ethics in Public Contracting provisions of Va. Code §§ 2.2-4367 through 2.2-4377.

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16. An acknowledgment that in the event the detailed review fee is insufficient to cover all of the direct costs incurred by the County, the proposer shall be required to pay all such additional direct costs incurred by the County in reviewing the proposal.

In the County’s discretion, the proposer shall also provide any additional information deemed necessary by the County.

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## **APPENDIX D. Proposal Evaluation Criteria**

In addition of any criteria listed in a Request for Proposals, the County will consider the following items in its evaluation of PPEA proposals.

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

Factors to be considered in determining whether the proposer possesses the requisite qualifications and experience include:

1. Professional qualifications and experience with similar projects;
2. Demonstrated 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. Project ownership;
6. Leadership structure;
7. Project manager's experience;
8. Management approach;
9. Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project; and
10. Financial condition of the proposer.

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## **B. Project Characteristics**

Factors to be considered in evaluating the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project after completion;
4. Technological and technical feasibility;
5. Conformity to state, County, and any affected jurisdiction laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project after completion.

## **C. Project Financing**

Factors to be considered about the proposed project financing include:

1. Cost and economic 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; degree to which proposer has conducted due diligence investigation; maintenance and operational costs after completion; and

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4. Life-cycle cost analysis.

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

Factors to be considered in determining the proposed project's compatibility with the County's long-term development goals and objectives include the following:

1. Community benefits, including, but not limited to, the economic impact the project will have on the County in terms of amount of tax revenue generated for the County, the number of jobs generated for area residents, the level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for 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 and any affected jurisdiction's land use plans, transportation plans, and capital improvement plans.

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## **APPENDIX E. Required Components of Comprehensive Agreement**

- A. Delivery of maintenance, performance, and payment bonds or letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the County and in compliance with Va. Code § 2.2-4337 for those components of the qualifying project that involve construction;
- B. Review and approval of plans and specifications for the qualifying project by the County;
- C. County's unlimited right to inspect the qualifying project and any terms under which the County would receive certified third party inspections of the qualifying project to ensure the private entity's compliance with the Comprehensive Agreement;
- D. Maintenance 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;
- E. County's monitoring of the practices of the private entity to ensure proper maintenance, safety, use and management of the qualifying project;
- F. Terms under which the private entity will reimburse the County for County services, if any;
- G. Policy and procedures governing the rights and responsibilities of the parties if the Comprehensive Agreement is terminated or there is a material default by the private entity (*See* Va. Code § 56-575.9(A)(8)), these rights, responsibilities, and remedies shall include, at a minimum, those set forth in Va. Code § 56-575.11;
- H. Filing of appropriate financial statements by private entity on a periodic basis;

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- I. User fees, lease payments, or service payments as may be established upon agreement of the parties. While classifications according to reasonable categories may be made, any payments or fees shall be the same for persons using the facility under like conditions and shall not materially discourage use of the qualifying project;
  1. A copy of any service contract shall be filed with the County; and
  2. 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.
- J. Any grants from, or loans by, the County from amounts received from federal, state, or local government (including the County) sources;
- K. Incorporation of the duties of the private entity from the PPEA;
- L. Certification by the private entity and its team members that all material representations, information, and data provided in connection with a proposal are true and correct. If material changes occur with respect to any representations, information or data provided for a proposal, the private entity shall immediately notify the County. Any violation of this section of the Comprehensive Agreement by the private entity 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;
- M. Requirement for the written approval of the County for the private entity to substitute or replace identified team members, including major subcontractors performing at least \$500,000 or greater than twenty percent (20%) of the overall cost of work;
- N. The date for the commencement of activities related to the qualifying project and an allowance for the County to extend such date from time to time, in its sole discretion. *See* Va. Code § 56-575.4(F); and

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- O. Other requirements of the PPEA or terms that the County determines serve the public interest, such as liquidated damages and reporting of requirements.