

County of Frederick, Virginia
Procedures Regarding Requests Made
Pursuant to
The Public-Private Education Facilities and
Infrastructure Act of 2002
And
The Public-Private Transportation Act of
1995

Table of Contents

- I. Applicability
- II. Overview
- III. General Provisions
 - A. Proposal Submissions
 - B. Affected Jurisdictions
 - C. Proposal Review Fees
 - D. Virginia Freedom of Information Act
 - E. Use of Public Funds
 - F. Applicability of Other Laws
- IV. Solicited Bids/Proposals
- V. Unsolicited Proposals
 - A. Decision to Accept and Consider Unsolicited Proposal; Notice
 - B. Initial Review at the Conceptual Stage
- VI. Proposal Preparation and Submission
 - A. Proposal Content and Format for Submission at the Conceptual Stage
 - B. Proposal Content and Format for Submission at the Detailed Stage
- VII. Proposal Evaluation and Selection Criteria
- VIII. Public Private Partnership Oversight Committee
- IX. Interim and Comprehensive Agreements
 - A. Interim Agreement Terms
 - B. Comprehensive Agreement Terms
- X. Governing Provisions
- XI. Terms and Conditions on Proposal Submission
- XII. Definitions

I. Applicability of Guidelines

1. The Board of Supervisors of the County of Frederick, VA (“County of Frederick”, “the County”, “Board of Supervisors”, or “the Board”) has adopted these guidelines to implement the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code § 56-575.1, et seq. (“PPEA”), and the Public-Private Transportation ACT of 1995, Va. Code § 56-556, et seq. (“PPTA”) (individually an “Act”; together, the “Acts”). These guidelines apply to all procurements under the PPEA and PPTA where the County of Frederick is the “responsible public entity” (RPE) within the meaning of Virginia Code § 56-575.1 and Va. Code § 56-556.
2. The County Administrator and all officers and employees of the County shall follow the PPEA, PPTA, and these guidelines in any PPEA or PPTA procurement in which they are involved.
3. The County Administrator may delegate his or her duties under these guidelines to members of staff.

II. Overview

1. The Acts grant “responsible public entities” (RPEs) the authority to create public-private partnerships with private entities for the development or operation of certain “qualifying projects” if the public entity determines, under criteria established by the Acts, that such a project serves a public purpose. Proposals under the Acts are also subject to review by any “affected local jurisdiction” in which the “qualifying project” will be located.
2. The Board of Supervisors will be the “responsible public entity” under the Acts for any project involving the County Government.
3. Proposals for qualifying projects may either be solicited or unsolicited. Procurement typically will be conducted as a two-phase process, first involving submission and evaluation of conceptual-phase proposals resulting in selection of certain proposers to submit detail-phase, and then submission and evaluation of detailed-phase proposals. If the purpose and requirements of the Acts are met and the Board of Supervisors so elects, in its discretion, it will then have the County Administrator or his or her designees negotiate with two or more proposers (unless the Board of Supervisors determines, in writing, that only one proposer is fully qualified or that one proposer is more highly qualified than the others) and select a detailed-phase proposal or proposals and enter into a “comprehensive agreement” for the project.

4. Individually-negotiated comprehensive agreements between private entities and the Board of Supervisors, along with the PPEA, PPTA and this policy, ultimately will define the respective rights and obligations of the parties for PPEA or PPTA projects involving the County of Frederick.
5. The version of the Acts that is in effect (up to the time of execution of a comprehensive agreement under a procurement as to that procurement) is controlling in the event of any conflict.

III. General Provisions

Procurement under the Acts may only be for a “qualifying project”.

The PPEA contains a broad definition of “qualifying project” that includes, for example:

1. An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
2. A building or facility that meets a public purpose and is developed or operated by or for any public entity;
3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
4. Utility and telecommunications and other communications infrastructure;
5. A recreational facility; or
6. Technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
7. Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or
8. Any improvement necessary or desirable to any unimproved locally-owned real estate.

PPTA “qualifying transportation facilities” are one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA.

These examples are merely provided here for convenience. The definition of “qualifying project” or “qualifying transportation facilities” in effect in the Acts as of the time of the procurement is concluded by a comprehensive agreement is controlling, and the version of the Acts then in effect should be consulted to determine what is a “qualifying project” or “qualifying transportation facilities”.

A. Proposal Submissions

1. A proposal for a PPEA “qualifying project” or PPTA “qualifying transportation facilities” may be either solicited by the Board of Supervisors or submitted by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a “PPEA Proposal” or “PPTA Proposal”. To be considered, one original and 10 copies of any unsolicited proposal must be submitted along with the applicable fee to Frederick County Finance Department. Solicited proposals shall be submitted in accordance with the instructions in the applicable solicitation.
2. Proposers will be required to follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase, as described herein. For unsolicited proposals, the conceptual phase of the proposal shall contain the information specified by Section VII (A) of these guidelines, and the detailed phase of the proposal shall contain the information specified in Section VII (B) of these guidelines. For solicited proposals, the solicitation and subsequent instructions by the County will prescribe the information that proposals shall contain.
3. Proposals should be prepared simply and economically. Solicited proposals should contain all information requested by the solicitation or subsequent instructions by the County. Unsolicited proposals should contain information specified by these guidelines and also should include a comprehensive scope of work and, if applicable, a financial plan for the project, containing enough detail to allow an analysis by the Board of Supervisors of the feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The County may request, in writing, clarification of any submission.
4. Representations, information and data supplied in, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Board of Supervisors. Accordingly, as part of any proposal, the proposer shall certify that all material representations, information and data provided in support of, or in connection with, its proposal are true and correct. Such certification shall be made by authorized individuals who are principals of the proposer and who have knowledge of the information provided in the proposal. In the

event that material changes occur with respect to any representations, information or data provided for a proposal, the proposer shall immediately notify the Board of Supervisors of the same.

5. The Acts allow private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. However, the County reserves the right to utilize its own finance team as a less costly alternative.

B. Affected Jurisdictions

Under the Acts, an “affected jurisdiction” is any county, city, or town in which all or a portion of a qualifying project is located. Any private entity submitting a conceptual or detailed proposal to the County must provide any affected jurisdiction with a copy of the private entity’s proposal by certified mail, express delivery, or hand delivery. In the case of solicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt at the time proposals are due to be submitted to the County. In the case of unsolicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt within five (5) business days after receiving notice from the County that the County has decided to accept the proposal pursuant to Section VI (A) hereof. Any affected jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the Board of Supervisors to indicate whether the proposed qualifying project is compatible with the jurisdiction’s (i) local comprehensive plan; (ii) local infrastructure development plans; and (iii) capital improvements budget or other governmental spending plan. Under the PPTA, such written comments shall indicate whether the proposed transportation facility will address the needs identified in the appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency. The Board of Supervisors shall give consideration to comments received in writing within the 60-day period, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The Board of Supervisors may begin or continue its evaluation of any such proposal during the 60-day period for affected jurisdictions to submit comments.

C. Proposal Review Fees

1. The County will require payment of a review fee by a private entity submitting an unsolicited proposal to the County and by any private entities submitting competing proposals in response to the unsolicited proposal. Review fees are to cover the direct costs of processing, reviewing, and evaluating proposals, including the cost to compare a proposal to any competing proposal. “Direct costs” include but are not limited to, the cost of staff time required to process, evaluate, review, and respond to the proposal and the out of pocket costs of any outside advisors or consultants, including but not limited to attorneys, consultants, and financial advisors, used by the Board of Supervisors in their sole discretion,

to assist in processing, reviewing, or evaluating the proposal. Such fees will be in the amount necessary to completely cover all of the County's costs. All fees and additional fees shall be submitted in the form of a cashier's check payable to the County of Frederick.

2. Such fees shall be imposed as follows:
 - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 nor more than \$50,000, regardless of the anticipated total cost.
 - b. Additional fees. Additional fees shall be paid by proposers throughout the processing, review, and evaluation of the proposals, if and as the County Administrator or his or her designee requires, based upon costs in excess of initial review fees assessed. The County Administrator or his or her designee may impose additional fees on proposers selected for detailed-phase consideration as a condition of consideration of their detailed-phase proposal. The County Administrator or his or her designee will notify the proposers concerned of the amount of such additional fees. Proposers must promptly pay such additional fees before the Board of Supervisors will continue to process, review, and evaluate the proposer's proposal.
 - c. Reimbursement of excess fees paid. If the total fees paid by proposers for a phase of procurement exceed the total costs incurred in processing, reviewing, and evaluating proposals for that phase, then the Board of Supervisors shall reimburse the proposers the difference on a reasonable, pro rata basis.

D. Virginia Freedom of Information Act

1. General applicability of disclosure provisions.

Proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("VFOIA").except that subdivision 11 of § 2.2-3705.6 exempts certain documents from public disclosure. The Board may elect to release some or all of documents except to the extent the documents are:

(a) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);

(b) financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or

(c) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the Board must comply with the provisions of such order. Once a comprehensive agreement has been entered into and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the Board shall make the procurement records available upon request, in accordance with Virginia Code §§ 2.2-4342 and 56-575.16 (5). However, proprietary, commercial, or trade secrets provided by a private entity as evidence of its qualifications and properly designated under this Section D (4) as “Confidential - Not Releasable under VFOIA” are not considered procurement records.

2. If requesting that the Board of Supervisors not disclose information, the proposer must (i) invoke an exclusion when the data or materials are submitted to the County or before such submission; (ii) identify the data and materials for which protection from disclosure is sought; and (iii) state why the exclusion from disclosure is necessary. In addition, the proposer must clearly mark each page of its proposal that it contends not to be discloseable under the VFOIA with the legend “Confidential - Not Releasable under FOIA”. The Board of Supervisors may only protect confidential proprietary information and will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.
3. Except as reasonably necessary for the Board of Supervisors, staff, and consultants to review proposals, the Board promises to maintain the confidentiality of confidential proprietary information that is provided to it by a private entity pursuant to a proposal for a procurement under these procedures if the private entity follows all the steps required by paragraph 2 of this policy to designate the information as confidential proprietary information excluded from disclosure under VFOIA, and if the information is, in fact, information that is properly exempt from release under VFOIA. The County Administrator shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the Board of Supervisors, staff, and consultants having a need to know the information to carry out the procurement. Despite the Board’s sincere intent to honor this promise of confidentiality, 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 Board of Supervisors or County of Frederick for failure to maintain confidentiality of information.

4. Any information in a proposal that becomes incorporated into a Comprehensive Agreement or Interim Agreement with the proposer submitting it, such as by becoming an exhibit, shall become a public record releasable under VFOIA upon execution of the agreement and its approvals by the Board of Supervisors.

E. Use of Public Funds.

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA or the PPTA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds should be incorporated into planning for any PPEA or PPTA project(s), and any PPEA or PPTA procurement should comply with County of Frederick fiscal policies. Virginia constitutional and statutory restrictions that apply to the County regarding expenditure of public funds shall be deemed to be incorporated into any “comprehensive agreement” into which the Board of Supervisors enters pursuant to the Acts and to condition the County’s obligations thereunder.

F. Applicability of Other Laws.

Nothing in the PPEA or PPTA shall affect the duty of the Board of Supervisors or any of its officers, employees, or agents to comply with any other applicable law including the Virginia Public Procurement Act (the “VPPA”).

IV. Solicited Bids/Proposals

1. The County may issue Requests for Proposals (RFPs) or Invitations for Bids (IFB) inviting private entities to develop or operate qualifying projects. The County may use a two-part process consisting of an initial conceptual phase and a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the Acts and this policy.
2. The RFP will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP will be posted in such public areas as are normally used for posting of the County’s notices, including the County’s website or, in the case of PPTA solicitations, VDOT’s website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

V. Unsolicited Proposals

The Acts permit the County to receive and evaluate unsolicited proposals from private entities to develop or operate a qualifying project.

The County may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the Acts. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal. Proposals received as a result of the County receiving an unsolicited proposal and the publishing a Notice of Receipt of Unsolicited Proposal will also be treated as unsolicited proposals.

To ensure the County receives the best value for any qualifying project, the Board of Supervisors will seek and encourage competing unsolicited proposals when it receives an unsolicited proposal.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. Upon receipt of any unsolicited proposal and payment of any required fee by the proposer, or proposers, the Board of Supervisors will determine whether to accept the unsolicited proposal for the purpose of publication of notice and conceptual-phase consideration. If the Board of Supervisors determines not to accept the proposal and proceed to publication of notice and conceptual-phase consideration the County will return the proposal, together with all fees and accompanying documentation, to the proposer.
2. If the Board of Supervisors chooses to accept an unsolicited proposal for conceptual-phase consideration, the Board shall:
 - a. Determine whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services, and if using competitive negotiation, indicate the justification for proceeding in that manner, and the evaluation criteria to be used to evaluate the unsolicited proposal and competing unsolicited proposals;
 - b. Determine what if any conditions the Board of Supervisors will authorize the County Administrator to place upon the proposer and any competing proposers beyond those contained in these guidelines for going forward with the unsolicited proposal and for receiving competing unsolicited proposals;
 - c. The County Administrator or his/her designee shall post the Notice of conceptual proposals, whether solicited or unsolicited, within 10 working days after acceptance of such proposal, in a public area regularly used by the County for posting of public notices and on the County's website for a period of not less than 45 days. The County Administrator or his/her designee shall also publish the

same notice at least once in one or more newspapers or periodicals of general circulation in Frederick County, Virginia, to notify any persons that may be interested in submitting competing unsolicited proposals, with the first such publication to occur at least 45 days before competing proposals are due. In addition, at least one copy of the proposal shall be made available for public inspection. Inspections shall be subject to reasonable restrictions to ensure the security and integrity of records. Competing proposals may be submitted to the Frederick County Department of Finance during the period specified in the notice following the publication required above.

- d. The County shall make available representatives familiar with the unsolicited proposal and the established guidelines to respond to inquiries and meet with private entities that are considering submission of a competing proposal.
3. The Receipt of Unsolicited PPEA or PPTA Proposal and Solicitation of Competing Proposals shall contain the following information and shall be provided to prospective competing offers and members of the public on request:
 - a. The instructions, terms and conditions applicable to the procurement;
 - b. A summary of the project proposed in the unsolicited proposal;
 - c. The evaluation criteria to be used for procurement;
 - d. Instructions for obtaining any portions of the unsolicited proposal that are releasable; and
 - e. Such other instructions and information as the County Administrator deems reasonable and desirable.
 4. Copies of Unsolicited proposals are available to the public, upon request, pursuant to the Virginia Freedom of Information Act (“VFOIA”), except as exempted from release under the PPEA, PPTA, and VFOIA.

B. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the Acts that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the Board of Supervisors for

further review at the conceptual stage. Content and format requirements for proposals at the conceptual stage are found at Section VI (A).

2. The County will determine at the initial stage of review whether it will proceed using:
 - a. Standard procurement procedures consistent with the VPPA; or
 - b. Guidelines developed by the County that are consistent with the procurement of other than professional services through “competitive negotiation” as the term is defined in §2.2-4301 of the Code of Virginia. The County may proceed using such guidelines after making a written determination that doing so is likely to be advantageous to the County and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (iii) increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.
3. After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the Board of Supervisors may determine:
 - a. Not to proceed further with any proposal,
 - b. To proceed to the detailed phase of review with original proposal,
 - c. To proceed to the detailed phase with a competing proposal, or
 - d. To proceed to the detailed phase with multiple proposals.

However, the County may not proceed to the detailed phase with only one proposal unless it has determined in writing that only one proposer is qualified or that the only proposer to be considered is clearly more highly qualified than any other proposer.

VI. Proposal Preparation and Submission

A. Proposal Content and Format for Submission at the Conceptual Stage

The County may generally require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience; (2) project characteristics; (3) project financing; (4) anticipated public support or opposition or both, (5) project benefit and

compatibility; and (6) any additional information as the County may reasonably request. Conceptual-phase proposals should include an executive summary of the proposal at the beginning of the proposal. An unsolicited proposal shall include an executive summary not designated as “Confidential-Not Releasable under VFOIA” that describes the proposed qualifying project sufficiently so that potential competitors can reasonably formulate meaningful competing proposals from a review of the summary and publicly-available information. Unless otherwise indicated in the solicitation or Receipt of Unsolicited PPEA or PPTA Proposal and Solicitation of Competing Proposals, as applicable, conceptual-phase proposals should contain the information indicated below in the format below, as well as any additional information or documents the County may request:

1. Qualifications and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.
- 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 description of such guarantees and warranties.
- c. Provide the names, addresses, telephone numbers, and e-mail addresses of persons within the firm or consortium of firms 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 or greater.
- e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et. seq.) of Title 2.2.

2. Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that

type and intent of the project, the location, and the communities that may be affected are clearly identified.

- b. Identify and fully describe any work to be performed by the County.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Propose allocation risk and liability for work completed beyond the agreement's 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. List any other assumptions relied on for the project to be successful.
- k. List any contingencies that must occur for the project to be successful.

3. Project Financing

- a. Provide preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources

and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.

- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increase such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

4. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the overall community or region.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the anticipated significant benefits to the community or region, including anticipated benefits to the economic condition of the public entity and whether the project is critical to attracting or

maintaining competitive industries and businesses to the public entity or the surrounding region.

- e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget or other governmental spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses; (ii) woman-owned businesses; and (iii) small businesses.
- g. For PPTA projects, explain whether the proposed improvements are compatible with present and planned transportation systems and whether the project will provide continuity with existing local and state facilities.

B. Proposal Content and Format for Submission at the Detailed Stage

If the Board of Supervisors or their designees decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the proposer unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A 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;
3. A statement and strategy setting out the plans for securing all necessary property;
4. 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;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.

6. A detailed discussion of assumptions about user fees or rates, and usage of the projects.
7. 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.
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction.
10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
11. Additional material and information as the County may request.

VII. Proposal Evaluation and Selection Criteria

There are several factors the County may consider when evaluating and selecting a proposal under the Acts. The following are some of the factors that may be considered by the County in the evaluation and selection of PPEA proposals.

A. Qualifications and Experience

Factors to be considered in either 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 determining the project characteristics include:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformity to laws, regulations, and standards;
6. Environmental impacts;
7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

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

- 1 Cost and cost benefit to the County;
- 2 Financing and the impact on the debt burden of the County;
- 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 cost;

- 5 Estimated cost;
- 6 Life-cycle 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 at the County deems appropriate.

In the event that any project is financed through the issuance of obligations that are deemed to be tax-supported debt of the County, or if financing such a project may impact the County's debt rating or financial position, the County may select its own finance team, source, and financing vehicle. The decision to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the Board of Supervisors discretion.

D. Project Benefits 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, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities; and
5. Compatibility with local, regional, and state economic development efforts.

E. Other Factors

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

- 1 The proposed cost of the qualifying project or qualifying transportation facility;
- 2 The general reputation, industry experience, and financial capacity of the proposer;
- 3 The proposed design of the qualifying project or qualifying transportation facility;

- 4 The eligibility of the project for accelerated documentation, review, and selection;
- 5 Local citizens and government comments;
- 6 Benefits to the public, including financial and non-financial;
- 7 The proposer's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
- 8 The proposer's plans to employ local contractors and residents; and
- 9 The recommendation of a committee of representatives of county staff, subcommittee members, and Board of Supervisors' members, which may be established to provide advisory oversight for the project; and
- 10 Other criteria that the County deems appropriate.

VIII. Public Private Partnership Oversight Advisory Committee

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

IX. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project or qualifying transportation facility, the selected proposer shall enter into a comprehensive agreement with the County. Prior to entering into a comprehensive agreement an interim agreement may be entered into that permits a proposer to perform compensable activities related to the project. The County may designate a working group to be responsible for negotiating any interim or comprehensive agreement. Any interim or comprehensive agreement shall define the rights and obligations of the County and the selected proposer with regard to the project.

A. Interim Agreement Terms

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

- 1 Project planning and development;

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

B. Comprehensive Agreement Terms

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

- 1 The delivery of maintenance, performance and payment of bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project or qualifying transportation facility;
- 2 The review of plans and specifications for the qualifying project by the County;
- 3 The rights of the responsible County to inspect the qualifying project to ensure compliance with the comprehensive agreement;
- 4 The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project or qualifying transportation facility;
- 5 The monitoring of the practices of the proposer by the County to ensure proper maintenance;
- 6 The terms under which the proposer will reimburse the County to ensure proper maintenance;
- 7 The policy and procedures that will govern the rights and responsibilities of the County and the proposer in the event that the comprehensive

agreement is terminated or there is a material default by the proposer including the conditions governing assumption of the duties and responsibilities of the proposer by the County and the transfer or purchase of property or other interests of the proposer by the County;

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

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

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

Any material violation of Section III (A) (4) of these guidelines by a proposer shall give the Board of Supervisors the right to terminate the comprehensive agreement with that proposer, withhold payment or other consideration due, and seek any other remedy available at law or in equity.

X. Governing Provisions

In the event of any conflict between these provisions and the PPEA or PPTA, the terms of the PPEA or PPTA shall control.

XI. Terms and Conditions on Proposal Submission

The following terms and conditions apply to submission of any proposals to the County pursuant to the PPEA or PPTA, whether unsolicited, competing unsolicited, or solicited, and by submitting any proposal to the County, the private entity submitting the proposal agrees to them.

1. Neither these guidelines, nor any request or solicitation, nor the Board of Supervisors' receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by Frederick County to any proposer, or any other obligation by the Frederick County to a proposer. The Board of Supervisors makes no promise, express or implied, regarding whether it will enter into a comprehensive agreement with any proposer or regarding the manner in which it will consider proposals. The Board of Supervisors will only be bound by the terms of any comprehensive agreement(s) or interim agreements into which it enters should it choose to enter into any such agreements.
2. The Board of Supervisors will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal or in engaging in oral presentations, discussions, or negotiations.
3. Proposers may be required to make an oral presentation or oral presentations of their proposal in Frederick County at their own expense. The County Administrator may request the presence of proposers' representatives from their development, financial, architectural, engineering, and constructional teams at these presentations. The County Administrator or his/her designee will schedule the time and location for these presentations. By submitting its proposal, the proposer agrees to make these representatives reasonably available in Frederick County.
4. The Board of Supervisors reserves the right of the County Administrator to waive any informalities with respect to any proposal submitted.

5. The Board of Supervisors reserves the right to accept or reject any and all proposals received, in whole or in part, and to negotiate separately in any manner necessary to serve the best interests of the County. Any procurement under these guidelines may result in multiple awards to multiple offerors.
6. The Board of Supervisors reserves the right to reject any and all proposals without explanation.
7. The provisions of Section XI of these guidelines shall apply automatically to all PPEA or PPTA procurements by the Board of Supervisors.
8. The Board of Supervisors will not discriminate against an offeror because of race, religion, color, sex, origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

XII. Definitions

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

“Appropriating Body” means the body responsible for appropriating or authorizing funding to pay for a qualifying project, in this instance, the Frederick County Board of Supervisors.

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

“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.

Cost-Benefit Analysis” means an analysis that weighs expected costs against expected benefits in order to choose the best option.

“Detailed Stage” means the second phase of project evaluation where the County has completed the conceptual state and accepted the proposal and may request additional information regarding a proposed project prior to entering into competitive negotiations with one or more private entities to develop an interim or comprehensive agreement.

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

“Interim Agreement” means an agreement between a private entity and the County that provides for phasing of the development or operation, or both, of a qualifying project. Such

phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

“Lease Payment” means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project.

“Lifecycle Cost Analysis” means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost it may not have the lowest lifecycle cost once maintaining, replacement, and salvage value is considered.

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

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

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

“Private Entity” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, public benefit corporation, non-profit entity, or their business entity.

“Public Entity” means Frederick County and the Frederick County Board of Supervisors

“Qualifying Project” means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure and services, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; or (viii) any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

“Responsible Public Entity” means a public entity that has the power to develop or operate the applicable qualifying project in this instance the County of Frederick or Frederick County Board of Supervisors.

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

“Service Contract” means a contract entered into between the County and the private entity pursuant to 56-575.5.

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

“User Fees” means the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to 56-575.9.