



COUNTY OF DINWIDDIE

COMBINED GUIDELINES

FOR THE

**Public-Private Education Facilities and
Infrastructure Act of 2002, as revised**

And

Public-Private Transportation Act of 1995, as revised

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I. Introduction¹

The Public-Private Transportation Act of 1995 (Va. Code §§ 56-556, et seq.) ("PPTA") and the Public-Private Education Facilities and Infrastructure Act of 2002 (Va. Code §§ 56-575.1, et seq.) ("PPEA"), grant responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use if the public entity determines: (i) that there is a public need for or benefit derived from the facility or project; (ii) that the estimated cost of the facility or project is reasonable in relation to similar facilities or projects; (iii) that the public-private partnership's plans will result in the timely development or operation of the project and, in the case of transportation facilities, the more efficient operation of a transportation facility; and, (iv) in the case of transportation facilities, that the proposed development and/or operation of the facility or facilities and the proposed interconnection with existing transportation facilities are reasonable and will address the needs identified in an appropriate state, regional, or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency.

The County of Dinwiddie (the "County") is a political subdivision of the Commonwealth of Virginia with the authority to acquire, construct, and operate facilities in the County of Dinwiddie, Virginia, and therefore is a "responsible public entity" as that term is used in both the PPTA and PPEA. The PPTA and PPEA define "responsible public entity" to include any public entity that "has the power to develop or operate the applicable qualifying project." Individually negotiated interim or comprehensive agreements between a private entity and the County will define the respective rights and obligations of the County and the private entity.

A. Guideline Overview

These Guidelines contain the implementation procedures and guidelines developed by the County to guide the selection of projects as authorized by the PPEA and PPTA. The PPEA provides that a responsible public entity shall not proceed to consider any proposal by a private entity for approval of a qualifying project until the responsible public entity has adopted and made publicly available guidelines that are sufficient to enable the responsible public entity to comply with the provisions of the PPEA; Virginia Code § 56-575.16(4). Guidelines are also required by the PPTA; Virginia Code §§ 56-560.D and 56-573.1.

In order to facilitate the consideration by the County of qualifying projects under the PPEA and PPTA, these Guidelines were adopted by the Board of Supervisors of the County of Dinwiddie, Virginia on May 20, 2008. In addition, these Guidelines shall be made publicly available. The person designated as the primary point of contact for information on these Guidelines and for submission of solicited or unsolicited proposals under the PPEA or PPTA is:

The County Administrator
County of Dinwiddie
P.O. Drawer 70
Dinwiddie, VA 23841

The Guidelines apply to proposals submitted under the authority of the PPTA or PPEA, or both. The County reserves the right to consider a proposal under either or both the PPTA or PPEA. While the

¹ Unless specifically noted, these guidelines apply to all PPEA and PPTA projects.

PPTA and PPEA are fundamentally similar, prospective proposers should review both statutes closely, as there are significant differences between the PPTA and PPEA.

In the event the PPEA or PPTA is amended in a manner that either conflicts with these Guidelines or concerns material matters not addressed by these Guidelines, the County shall appropriately amend the Guidelines. If the Guidelines are not amended prior to the effective date of the new law, the Guidelines nonetheless shall be interpreted in a manner to conform to the new law.

B. Qualifying Facilities and Projects

Under the PPEA, a "qualifying project" includes:

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

Under the PPTA, a "qualifying transportation facility" means one or more transportation facilities developed and/or operated by a private entity pursuant to the PPTA.

C. Reservation of County Rights

As set forth in these Guidelines, the County reserves all rights available to it by law in administering these Guidelines including, without limitation, the right in its sole discretion to:

- (i) Reject any and all proposals at any time;

- (ii) Terminate consideration or evaluation of any and all proposals at any time;
- (iii) Suspend, discontinue and/or terminate discussions regarding confidentiality agreements, interim agreements and comprehensive agreements at any time prior to the authorized execution of such agreements by all parties;
- (iv) Suspend or eliminate Conceptual Phase review and proceed directly to detailed phase review;
- (v) Negotiate with a proposer without being bound by any provision in its proposal;
- (vi) Negotiate with fewer than all proposers at any given time;
- (vii) Request and/or receive additional information regarding any proposal;
- (viii) Issue addenda to and/or cancel any RFP or IFB;
- (ix) Revise, supplement or withdraw all or any part of these Guidelines;
- (x) Assess, retain and/or waive any and all fees required to be paid by proposers in accordance with these Guidelines;
- (xi) Request revisions to conceptual or detailed phase proposals.

II. Definitions

Definitions are applicable to both PPTA and PPEA unless otherwise specified. Additional definitions appear in the text of these Guidelines.

“Affected Jurisdictions” means Affected PPEA Jurisdictions and Affected PPTA Jurisdictions.

"Affected PPEA Jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. (PPEA)

"Affected PPTA Jurisdiction" means any county, city or town in which all or a portion of a qualifying transportation facility is located and any other responsible public entity directly affected by the qualifying transportation facility. (PPTA)

"Comprehensive Agreement" means the comprehensive agreement between the private entity and the responsible public entity required by § 56-566 of the PPTA and § 56-575.9 of the PPEA.

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

"Interim Agreement"

- under the PPTA means an agreement, including a memorandum of understanding or binding preliminary agreement, between the private entity and the responsible public entity that provides for completion of studies and any other activities to advance the

development and/or operation of a qualifying transportation facility.

- under the PPEA means an agreement between a private entity and a responsible public entity that provides for phasing of the development or operation, or both, of a qualifying project. Such phases may include, but are not limited to, design, planning, engineering, environmental analysis and mitigation, financial and revenue analysis, or any other phase of the project that constitutes activity on any part of the qualifying project.

"Lease payment" means any form of payment, including a land lease, by a public entity to the private entity for the use of a qualifying project. (PPEA)

"Maintenance" means that term as defined in Va. Code § 33.1-23.02. (PPTA)

"Material Default" means any event of default by the private entity in performance of its duties under § 56-575.8 (PPEA), or any event of default and the continuance thereof under subsection E of § 56-565 (PPTA, that jeopardizes adequate service to the public from a qualifying transportation facility (PPTA) or qualifying project (PPEA).

"Operate" or "Operation" means to finance, maintain, improve, equip, modify, repair, or operate.

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

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city, or town and any other political subdivision of the Commonwealth (PPTA and PPEA). Under the PPTA, "public entity" shall not include any public service company. Under the PPEA, "public entity" includes any public body politic and corporate, or any regional entity that serves a public purpose.

"Responsible Public Entity" means a public entity, including local government and regional authorities, that has the power to develop and/or operate the applicable qualifying transportation facility (PPTA) or qualifying project (PPEA).

"Revenues" means all revenues, including but not limited to income, earnings, user fees, lease payments, allocations, federal, state and local appropriations, bond proceeds, equity investments, and/or service payments arising out of or in connection with supporting the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA), including without limitation, money received as grants or otherwise from the United States of America, from any public entity, or from any agency or instrumentality of the foregoing in aid of such facility.

"Service Contract" means a contract entered into between a public entity and the private entity pursuant to § 56-561 (PPTA) or § 56-575.5 (PPEA).

"Service Payments" means payments to the private entity in connection with the development and/or operation of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Transportation Facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility,

vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, a commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a “transportation facility.” (PPTA)

"User fees" means the rates, tolls (PPTA), fees or other charges imposed by the private entity for the use of all or a portion of a qualifying transportation facility (PPTA) or qualifying project (PPEA) pursuant to the interim or comprehensive agreement under § 56-575.9 (PPEA) or pursuant to the interim or comprehensive agreement (PPTA).

III. General Provisions

A. Proposal Submission

1. Proposals may be submitted by private entities to the County either on an unsolicited basis ("Unsolicited Bid/Proposal") or in response to a solicitation for such proposals by the County ("Solicited Bid/Proposal").
2. The County may require that any proposal be clarified. Such clarification may include, but shall not be limited to, the submission of additional documentation, responses to specific questions, and interviews with potential project participants.

B. Affected Jurisdictions

1. Any private entity submitting a proposal to the County must provide any other Affected Jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of a proposal to the County. Any such other jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to the County (to the attention of the County Administrator). Such written comments shall indicate whether the proposed project or facility is compatible with the Affected Jurisdiction's: (i) local comprehensive plan; (ii) local infrastructure development plans; or (iii) capital improvements budget, or other government spending plans. The County will consider comments received from other Affected Jurisdictions regarding the proposal within the sixty (60) day period prior to entering into a comprehensive agreement pursuant to the PPEA or PPTA. No negative inference shall be drawn from the absence of comment by an affected jurisdiction. However, the County may begin or continue its evaluation of any such proposal during the sixty (60) day period. Va. Code §§ 56-575.6 (PPEA) and 56-563 (PPTA).
2. Affected PPTA jurisdictions submitting comments to the County shall additionally indicate whether the 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.

C. Proposal Review Fee

1. The County shall receive an analysis of the proposal from appropriate internal staff or outside advisors or consultants with relevant experience in determining whether to enter into an agreement with the private entity. The County shall engage the services of qualified professionals, which may include an architect, professional engineer, certified

public accountant, or other consultant not otherwise employed by the County, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project or qualifying transportation facility unless the governing body of the County determines that such analysis of a request by a private entity for approval of such project or facility shall be performed by employees of the County. The County is authorized by the PPEA and PPTA to charge a fee to the private entity to cover the costs of processing, reviewing, and evaluating any unsolicited proposal or competing unsolicited proposal, including reasonable attorney's fees and fees for financial, technical and other necessary advisors or consultants. Fees charged for such review of a proposal are set forth in Article III.C.3 and are intended to be reasonable in comparison to the level of expertise required to review the proposal and should not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include (i) the cost of materials, supplies and internal staff time required to process, evaluate, review and respond to the proposal; and (ii) the out-of-pocket costs for attorneys, consultants and financial advisors engaged by the County in its sole discretion to assist in such review.

2. No proposal review fee shall be charged for the review of proposals solicited by a Request for Proposal or Invitation for Bid.
3. Review fees shall be charged to any proposer whose Unsolicited Proposal has been accepted by the County for Conceptual Phase review. Such review fees shall be based on the reasonably anticipated costs of the County in accordance with the following schedule:
 - (i) Initial or Conceptual Phase Review Fee: The Initial or Conceptual Review Fee shall be Five Thousand Dollars (\$5000) and must be submitted with the Unsolicited Proposal.
 - (ii) Detailed Phase Review Fees. Upon the County's decision to proceed with a Detailed Phase Proposal, the proposer shall pay an additional review fee calculated at the rate of two and one half percent (2.5%) of the reasonably anticipated total cost of the proposed project, but not more than \$50,000 at the time of the submittal of the Detailed Phase Proposal. Additional fees may be imposed on and paid by the proposer throughout the processing, review, and evaluation of the unsolicited proposal if and as the County reasonably anticipates incurring costs in excess of the initial Detailed Phase Review Fee. The County shall notify the proposer of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue the process, review, and evaluation of the proposal.
4. The County, in its sole discretion, at any time before or during the Detailed Phase Review, may enter into an Interim Agreement with the proposer in accordance with Article VII.A under which the County may compensate the proposer for Detailed Phase Proposal activities described therein.
5. Reimbursement of excess fees paid. In the event the total fees paid by the proposer exceed the County's reasonably estimated total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid.

D. Virginia Freedom of Information Act

1. General Provisions Relating to Disclosure:

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act (Virginia Code § 2.2-3700 et seq.) ("FOIA"), except as provided by Virginia Code §§ 56-575.4(G) (PPEA) and 56-560(G) (PPTA), and the provisions of the FOIA (§ 2.2-3705.6) that exempt certain documents from public disclosure. Proposers are advised to familiarize themselves with the FOIA provisions applicable to these Guidelines. FOIA exemptions, however, are discretionary, and the County may elect to release some or all documents except to the extent the proposer has complied with the requirements in Va. Code § 2.2-3705.6(11) and 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 County or private entity would be adversely affected.

At no time shall the County be liable to a proposer for the disclosure of all or a portion of a proposal submitted under these Guidelines.

2. Protection From Mandatory Disclosure for Certain Documents Submitted By A Private Entity.

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the County at the time the documents are submitted, identifying with specificity the trade secret or other proprietary documents for which protection from disclosure is being sought and providing a clear statement of the reason protection is necessary and invoking the protection with reference to one or more of the three classes of records listed in Article III.D.1.

Upon the receipt of a written request for document protection, the County shall determine whether the documents contain: (i) trade secrets; (ii) financial records; or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity, in accordance with Article III.D.1. The County shall make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity shall be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from

release although what may be protected is limited to the categories of records identified in Article III.D.1. A proposal withdrawn under this Article will be treated in the same manner as a proposal not accepted for publication and Conceptual Phase consideration as provided below in Article V.B.2, except that all or a portion of the proposal review fee may be retained by the County at its sole discretion to cover the costs of processing the proposal, including determinations regarding disclosure pursuant to this Article.

Once a written determination has been made by the County, the documents afforded protection under this subdivision shall continue to be protected from disclosure when in the possession of the County or any affected jurisdiction to which such documents have been provided.

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

3. In accordance with Va. Code § 2.2-3705.11, the County and a private entity may enter a written confidentiality agreement upon mutually acceptable terms regarding the treatment of confidential and proprietary data or materials included in a proposal submitted under these Guidelines.

4. Protection From Mandatory Disclosure for Certain Documents Produced by the County.

Memoranda, staff evaluations, or other records prepared by or for the County for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA or PPTA would adversely affect the financial interest or bargaining position of the County or private entity and the basis for the determination of adverse affect is documented in writing by the County.

5. If a private entity fails to clearly mark confidential or proprietary information, records or documents for protection from disclosure, such information, records or documents shall be subject to disclosure under the FOIA.
6. The County may not withhold from public access: (i) procurement records other than those subject to the written determination of the County; (ii) information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind entered into by the County and the private entity; (iii) information concerning the terms and conditions of any financing arrangement that involves the use of public funds; or, (iv) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.
7. 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 County shall make available, upon request, procurement records in accordance with Va. Code § 2.2-4342.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to the appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA or PPTA. Accordingly, the County shall incorporate all of the processes and procedural requirements associated with the expenditure or obligation of public funds into planning for any PPEA

or PPTA project(s).

F. Applicability of Other Laws

Nothing in the PPEA or PPTA shall affect the duty of the County to comply with all other federal, state, and local laws including provisions of the County's ordinances and resolutions not in conflict therewith. In particular, the applicability of the Virginia Public Procurement Act shall be as set forth in the PPEA and PPTA.

IV. Solicited Proposals

The procedures and requirements applicable to any particular solicited bid or proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA or PPTA and other applicable law. All such solicitations shall be by issuance of a written Invitation for Bid ("IFB") or Request for Proposal ("RFP"), in accordance with the County's ordinances and resolutions. Any proposal submitted pursuant to the PPEA or PPTA that is not received in response to an IFB or RFP shall be deemed an Unsolicited Proposal under Article V. Unsolicited Proposals shall also include (a) proposals received in response to a notice issued by the County that it has received an Unsolicited Proposal and (b) proposals received in response to publicity by the County concerning particular needs but where the County has not issued a formal IFB or RFP.

The RFP or IFB should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The RFP should be posted in such public areas as are normally used for posting of the County's notices, including the County's website. Notices may be advertised in *Virginia Business Opportunities* ("VBO") on the Commonwealth's electronic procurement site commonly known as "eVA". Notices should also be published in a newspaper or other publications of general circulation. The RFP or IFB should 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.

Conceptual Solicited Proposals shall be posted in the manner described for the posting of Unsolicited Proposals set forth in Article V.B.3.

V. Unsolicited Proposals

The County may publicize its needs and may encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA or PPTA. When such proposals are received without issuance of a RFP, the proposal shall be treated as an Unsolicited Proposal.

The following four-step procedure for evaluating Unsolicited Proposals shall serve as the County's general process for encouraging the receipt and consideration of proposed projects under the PPEA or PPTA. This procedure shall not preclude the County, however, from discontinuing its evaluation of any proposal at any time. Furthermore, if the County determines that it is in the County's interest to do so with respect to any Unsolicited Proposal, the County may cease or eliminate review at the Conceptual Phase and proceed directly to the Detailed Review Phase.

A. Step One: Decision to Accept and Consider an Unsolicited Proposal

1. Delivery of Initial Submission

Any private entity seeking to submit an Unsolicited Proposal under the PPEA or PPTA to the County shall deliver six (6) complete copies, as provided below, to the County Administrator, P.O. Drawer 70, Dinwiddie, Virginia 23841. The term "Public Private Education Facilities and Infrastructure Proposal" or "Public Private Transportation Proposal" must be clearly labeled on the outside of the envelope or package. A working group may be designated by the County Administrator to review and evaluate any such proposal. A list of all local jurisdictions being provided a copy of the proposal must accompany the conceptual proposal with the name and address of recipient and date delivered.

Upon receipt of any Unsolicited Proposal, accompanied by the required fee, the County Administrator shall determine whether to accept the Unsolicited Proposal for publication and Conceptual Phase consideration, as described below. If the County Administrator determines not to accept the proposal at this phase, he shall notify the proposer and County Board of Supervisors, with an explanation of why no further consideration is warranted. Fees and accompanying documentation will be returned to the proposer.

2. Contents of Initial Submission

- (i) An Unsolicited Proposal must contain information on the proposer's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. Required format and information to satisfy these requirements are included in Article V.C.5. The information should be adequate to enable the County to evaluate the practicality and sufficiency of the proposal. The private entity may request that the County consider a two part proposal process consisting of an initial conceptual submission (Step Three below, Article V.C.) to be followed by a more detailed submission (Step Four below, Article V.D.).
- (ii) Unsolicited Proposals shall provide a concise description of the proposer's capability to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered may include benefits to be realized during the construction, renovation, expansion or improvement phase as well as during the life cycle of the project. Proposals also shall include a comprehensive scope of work and a financial plan for the project containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project, including but not limited to: (a) identity of any parties expected or provide financing for the project; and (b) a statement indicating whether the proposer intends to request the County to provide resources for financing the project and the nature and extent of any such resources.
- (iii) To become subject to the evaluation and selection process under the PPTA, the proposal must comply with the following additional criteria. First, the proposal must seek approval for a private entity to acquire, construct, improve, maintain, finance, and/or operate specified transportation facilities. Second, the transportation facilities so specified must be one or a combination of the following: a road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods. The County must currently have either the

power itself, or the ability to assert the power, to perform the functions the proposer seeks to perform with respect to at least a portion of the specified transportation facilities.

- (iv) The County may require additional submissions to clarify information previously provided or to address other areas of concern to the County.

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

1. Upon review of the proposer's initial submission, the County may choose to accept an Unsolicited Proposal for Conceptual Phase consideration and will so notify the proposer of its decision.
2. If the County chooses not to accept an Unsolicited Proposal for Conceptual Phase consideration, the Initial Review Fee shall be promptly returned to the proposer.
3. Within ten (10) days of a determination to accept an Unsolicited Proposal for Conceptual Phase consideration, the County shall post and publish a notice of the County's decision to accept the proposal for Conceptual Phase consideration. Such notice is intended to encourage competition **and may be posted in a public area regularly used by the County for the posting of public notices for a period of not less than thirty (30) days.** In addition, the County also may publish the same notice in one or more newspapers of general circulation in the County to notify any parties that may be interested in submitting competing Unsolicited Proposals. **If the County accepts the proposal for consideration under the PPEA, the County may also publish such notice in *Virginia Business Opportunities on the eVA site.*** Said notices shall state that the County: (i) has received and accepted an Unsolicited Proposal under the Act; (ii) intends to evaluate the Unsolicited Proposal; (iii) may negotiate an interim and/or comprehensive agreement with the proposer; and (iv) will accept for simultaneous consideration, within a specific period of time of not less than thirty (30) days, any competing proposals that comply with County regulations. The notice shall also summarize the proposed qualifying project or qualifying transportation facility and identify its proposed location.
4. During the thirty (30) day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal. Representatives of the County are encouraged to answer questions from private entities that are contemplating submission of a competing unsolicited proposal.
5. Posting Requirements:
 - a. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County within 10 working days after the acceptance of such proposals. Posting shall be on the County's website or by publication in a newspaper of general circulation in the area in which the contract is to be performed. The posting shall summarize the proposal(s) and identify the location where copies of the proposal(s) are available for public inspection. At its discretion, the County may also post on the VBO site.
 - b. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the County so as to provide maximum notice to the public of the opportunity to inspect the proposals

- c. In addition to the posting requirements, at least one copy of the proposal(s) shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Step Three: Conceptual Phase Review

1. Only proposals complying with the requirements of the PPEA or PPTA, as applicable, and this Article, that contain sufficient information for a meaningful evaluation, and that are provided in an appropriate format, as described below, will be considered by the County for further review (the “Conceptual Phase”).
2. The County will determine at this point whether it will proceed, using:
 - (i) Guideline that are consistent with procedures for competitive sealed bidding as defined under § 2.2-4301 of the Va. Code; or
 - (ii) Guidelines that are consistent with procedures for competitive negotiation, as defined under § 2.2-4301 of the Va. Code. The County may use competitive negotiation only upon a written determination by the County Administrator that doing so would likely be advantageous to the County and the public based upon either (1) the probable scope, complexity, or priority of the project need; (2) risk sharing including guaranteed cost of completion guarantees, added value or debt or equity investments proposed by the private entity; or (3) an increase in funding, dedicated revenue or other economic benefit from the project that would not otherwise be available. Notwithstanding the foregoing the County shall procure professional services in a manner consistent with the procurement of professional services through competitive negotiation as defined in Va. Code § 2.2-4301 and § 2.2-4310.
3. After reviewing the Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine: (i) not to proceed further with any proposal; (ii) to proceed to the Detailed Review Phase with the original proposal; (iii) to proceed to the Detailed Review Phase with a competing proposal; or (iv) to proceed to the Detailed Review Phase with multiple proposals.
4. Discussions between the County and private entity about the need for infrastructure improvements shall not limit the ability of a public entity to later determine to use standard procurement procedures to meet its infrastructure needs. The County retains the right to reject any proposal at any time for any reason prior to the execution of an interim or comprehensive agreement.
5. Format for Submissions at the Conceptual Phase: Unsolicited Proposals at the Conceptual Phase shall contain, at a minimum, information in the following areas: (i) qualifications and experience; (ii) project characteristics; (iii) project financing; and (iv) anticipated public support and/or opposition. The following format and content are

required in the proposal at this phase. The County may request such additional information as it deems appropriate.

(i) Qualification and Experience

- a. Identify the legal structure of the firm or consortium of firms making the proposal (i.e. corporation, partnership, joint venture, limited liability corporation.). Identify the organizational structure for the project, the management approach, and how each principal (i.e. major shareholder, member, partner) and major subcontractor in the structure fit into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project, including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience, and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. Provide the names, addresses, e-mail and telephone numbers of persons who may be contacted for further information.
- d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of five percent (5%) 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 Virginia State and Local Government Conflict of Interest Act (Va. Code §§ 2.2-3100 *et seq.*).

(ii) Project Characteristics

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other private entity.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate such impacts of the project.
- e. Identify the 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 of risk and liability for work completed beyond the project completion date, and assurances for timely completion of the project.
- h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. Describe any architectural (including, where appropriate, historic district considerations), building, engineering, or other applicable standards that the proposed project will meet or exceed.
- k. Describe the method by which all necessary property interests, including rights-of-way or easements, are to be secured. Include the names and addresses of current property owners, if known, the nature of property to be acquired, and a description of any property that the County is expected to condemn.

(iii) Project Financing

- a. Provide a preliminary estimate and describe the estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds.
- c. Include a list and discussion of assumptions underlying all major elements of the plan.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify of each such source) and the timing of any anticipated commitment.
- f. Identify the amounts and the terms and conditions for any revenue sources, including any third parties that the proposer contemplates will provide financing for the project, and describe the nature and timing of each such commitment.
- g. Identify any aspect of the project that could disqualify the project from eligibility for tax-exempt financing.

(iv) Project Benefit and Compatibility

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

D. Step Four: The Detailed Review Phase

1. If the County decides to proceed to with one or more Unsolicited Proposals (the “Detailed Review Phase”), then the following information shall be provided by the proposer unless included in the Conceptual Phase proposal or expressly waived by the County:
 - (i) A topographical map (1:2000 or other appropriate scale) depicting the location of the proposed project.
 - (ii) 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.
 - (iii) A statement and strategy setting out the plans for securing all necessary property. The statement shall include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County to condemn.
 - (iv) 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.
 - (v) 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.

- (vi) A detailed discussion of assumptions about user fees or rates, and usage of the projects.
- (vii) 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.
- (viii) Demonstration of consistency with appropriate local transportation, comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.
- (ix) Explanation of how the proposed project would impact local development plans of each affected jurisdiction.
- (x) 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 (§ 2.2-3100 *et seq.*).
- (xi) Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financial plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the proposer of the financing plan proposed for the project.
- (xii) Additional material and information as the County may request.

VI. Proposal Evaluation and Selection Criteria

In addition to evaluation of materials and information described in Article V., some or all of the following matters may be considered in the evaluation and selection of PPEA or PPTA 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 may include but shall not be limited to:

1. Experience with similar projects.
2. Demonstration of ability to perform work.
3. Leadership structure.
4. Project Administrator's experience.

5. Management approach.
6. Financial condition.
7. Project ownership.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include but shall not be limited to:

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

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but shall not be limited to:

1. Cost and cost benefit to the County.
2. Financing and the impact on the debt or debt burden of the County.
3. Financial plan, including 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. Estimated cost.
5. Life-cycle cost analysis.
6. The identity, credit history, past performance of any third party that will provide financing or performance guaranties for the project and the nature and timing of their commitment.

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but shall not be limited to:

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

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.

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 private entity.
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 citizen and government comments.
6. Benefits to the public.
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plans.
8. The private entity's plans to employ local contractors and residents.
9. Other criteria that the County deems appropriate.

VII. Interim and Comprehensive Agreements

Prior to developing or operating the qualifying project or qualifying transportation facility, the selected private entity shall enter into a comprehensive agreement with the County and may enter into an interim agreement as described in Article VII.A. Under the PPTA, the County may enter into such

agreements with multiple private entities if the County determines in writing that it is in the public interest to do so. 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. Any such interim or comprehensive agreement, and any amendment thereto, shall be approved by the County Board of Supervisors.

A. Interim Agreement Terms

Prior to entering into a comprehensive agreement with the County, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project.

The scope of an interim agreement may include, but shall not be limited to, the following:

1. Project planning and development.
2. Advanced right-of-way acquisition (PPTA).
3. Design and engineering.
4. Environmental analysis and mitigation.
5. Site planning and survey.
6. Conducting transportation and revenue studies (PPTA).
7. Ascertaining the availability of financing for the proposed facility through financial and revenue analysis.
8. Establishing a process for and timing of the negotiation of the comprehensive agreement.
9. Any other provisions related to any aspect of the development or operation of a qualifying project or qualifying transportation facility that the parties deem appropriate prior to the execution of a comprehensive agreement.

B. Comprehensive Agreement Terms

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

1. Delivery of maintenance, performance, and payment bonds or letters of credit or guaranties in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project or qualifying transportation facility, in the forms and amounts satisfactory to the County;
2. Review and approval of plans and specifications for the qualifying project or qualifying transportation facility by the County;
3. The right of the County to inspect the qualifying project or qualifying transportation facility to ensure compliance with the comprehensive agreement;

4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the County and 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. Monitoring and acting upon the practices of the operator by the County to ensure proper maintenance;
6. The terms under which the private entity will reimburse the County for services provided;
7. Policies and procedures governing the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the operator, including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County;
8. Filing by the private entity of 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 are the same for persons using the facility under like conditions and that will not materially discourage use for the qualifying project. In addition:
 - (i) A copy of any service contract shall be filed with the County.
 - (ii) A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
 - (iii) Classifications according to reasonable categories for assessment of user fees may be made.
10. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project or qualifying transportation facility;
11. The terms and conditions under which existing site conditions will be assessed and addressed, including indemnification of the County for conducting the assessment and taking necessary remedial action;
12. Provisions for the development or operation of phases or segments of a qualifying project or qualifying transportation facility;
13. The date of termination of the private entity's authority and duties under this chapter and dedication to the appropriate public entity, as provided by Va. Code § 56-572 (PPTA – optional under PPEA);
14. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guaranty (PPTA);
15. The process by which earnings in excess of the maximum rate of return shall be

distributed (PPTA); and

16. Other requirements of the PPEA, PPTA, and other applicable law.

In the case of construction or design-build agreements under either the PPEA or PPTA, the County is likely to require the following additional provisions: liquidated damages for delayed completion; warranties regarding workmanship, materials, guarantees that the project will be fully operational and suitable for the County's intended purposes; retainage of progress payments; disputes resolution; and/or mutual waivers of subrogation and of consequential damages. Private entities are urged to address such risk allocation provisions in the preparation of conceptual and/or detailed proposals.

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

C. Comprehensive Agreement Provisions Relating to Construction Projects

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

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

D. Comprehensive Agreement Provisions Relating to Private Entity Legal Structure

The County is willing to enter comprehensive agreements with private entities that have formed business associations such as, but not limited to, joint ventures and limited liability companies ("LLC"). In such cases, however, the County will expect one or more of the principal members of the business association to provide a performance guaranty/bond of all obligations undertaken in the comprehensive agreement. Individuals, corporations and other businesses interested in entering public-private partnerships with the County under the PPEA or PPTA must be willing to provide this security if their proposal is submitted as part of a joint venture, LLC or other business entity that limits the liability of its

members, owners or partners.

E. Notice and Posting Requirements

1. In addition to the posting requirements of Article V., at least thirty (30) days prior to entering into an interim or comprehensive agreement pursuant to the PPEA, the County shall hold a public hearing on the proposals. After the public hearing is held, no additional posting shall be required.
2. In addition to the posting requirements of Article V., at least thirty (30) days prior to entering into an interim or comprehensive agreement pursuant to the PPTA, the County shall provide an opportunity for public comment on the proposals. The public comment period may include a public hearing on the proposals in the sole discretion of the County. After the end of the public comment period, no additional posting shall be required.
3. Once the negotiation phase for the development of an interim or a comprehensive agreement pursuant to the PPEA or PPTA is complete and a decision to award has been made by the County, but before an interim agreement or a comprehensive agreement is entered into, the County shall post the proposed agreement in the following manner:
 - a. Posting shall be on the County's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. At its discretion, the County may also post on the VBO site and eVA
 - b. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.
4. Interim and comprehensive agreements under the PPTA are not subject to the posting requirements set forth above, but the County may do so at its discretion. Once the negotiation phase for the development of an interim or a comprehensive agreement pursuant to the PPTA is complete and a decision to award has been made by the County, but before an interim agreement or a comprehensive agreement is entered into, the major business points of such agreement shall be presented to the County Board of Supervisors at a meeting open to the public.
5. Once an interim or a comprehensive agreement has been entered into pursuant to either the PPEA or the PPTA, the County shall make procurement records available for public inspection, upon request.
 - a. Such procurement records shall include documents protected from

disclosure during the negotiation phase on the basis that the release of such documents would have adversely affected the financial interest or bargaining position of the County or private entity in accordance with Section III.D.2.

- b. Such procurement records shall not include (i) Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336, *et seq.*); or 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.

F. Filing of PPEA Comprehensive Agreement With Auditor of Public Accounts

In compliance with Va. Code § 56-575.9.F, the County, within thirty (30) days of entering into a comprehensive agreement pursuant to the PPEA, shall submit a copy of such agreement to the Auditor of Public Accounts.

VIII. Adoption of Certain Portions of the Virginia Public Procurement Act

- A. The provisions of the Virginia Public Procurement Act, Va. Code § 2.2-4300, *et seq.*, shall not apply to procurements by the County under the PPEA or PPTA except as follows:
 - 1. The definitions of “competitive sealed bidding” and “competitive negotiation” of other than professional services in Va. Code § 2.2-4301 are hereby adopted.
 - 2. The provisions of Va. Code § 2.2-4310 shall apply to all PPEA and PPTA procurements.
 - 3. The provisions from the Ethics in Public Contracting Act, Va. Code § 2.2-4367 through 2.2-4377, shall apply to all PPEA and PPTA procurements.
- B. Before accepting any unsolicited proposal or before issuing any solicitation for proposals, the County will determine whether it will proceed to evaluate proposals, in accordance with V.C.2., using either:
 - 1. “Competitive sealed bidding”, as defined in Va. Code § 2.2-4301; or
 - 2. “Competitive negotiation” of other than professional services as defined in Va. Code § 2.2-4301.