

CHAPTER 114

**PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE
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114-1 INTRODUCTION

These Policy Guidelines (“policy”, “Policy”, “Guidelines”, “guidelines”, “policy guidelines”, or “Policy Guidelines”) sets forth the legal authority and responsibility for projects proposed pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002, as amended (Va. Code §§ 56-575.1 to 56-575.18) (“PPEA”), and serves as the required guidelines as referenced in §56-575.1 of the PPEA. Terms used in this policy shall have the definitions set forth in Appendix C to this policy.

114-2 PURPOSE

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§ 56-575.1 to 56-575.18 (the “PPEA”, or the “Act”) grants the Town of Front Royal, Virginia (the “Town”), a

responsible public entity as defined in the Act, the authority to create public-private partnerships for the development of a wide range of projects for public use if the Town determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between a private entity, as defined in the Act, and the Town will define the respective rights and obligations of the Town and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the Town and all private entities to comply with the provisions of the PPEA as applicable and as may be amended. Further definition of terms is found in Appendix C.

114-3 GENERAL PROVISIONS

A. Application

1. In order for a project to come under the terms of the PPEA, it must meet the definition of a "qualifying project" as defined in the Act as meaning (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education; (ii) any building or facility that meets a public purpose and is developed or operated by or for any public entity; (iii) any improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity; (iv) utility and telecommunications and other communications infrastructure; (v) a recreational facility; (vi) technology infrastructure, services, and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; (vii) any services designed to increase the productivity or efficiency of the responsible public entity through the use of technology or other means, (viii) any technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas; (ix) any improvements necessary or desirable to any unimproved locally- or state-owned real estate; or (x) any solid waste management facility as defined in Va. Code § 10.1-1400 that produces electric energy derived from solid waste.

2. The Act establishes requirements that the Town must adhere to when reviewing and approving proposals received pursuant to the PPEA. In addition, the Act specifies the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the Town and the private entity. Any proposal received or solicited by the Town pursuant to the PPEA will be reviewed in accordance with the provisions of the applicable Act and this policy as they may apply.

3. The Town has adopted these policy guidelines to implement the PPEA by Town of Front Royal Town Council resolution dated December 8, 2014. This policy applies to all

procurements under the PPEA where the Town is the “responsible public entity” or where the Town is the “affected local jurisdiction” within the meaning of Va. Code § 56-575.1. For purposes of this policy, unless otherwise indicated, “Town Council” means the Town Council of the Town of Front Royal, Virginia, as applicable, “Town Manager” means the Town Manager of the Town of Front Royal, Virginia, as applicable, and “Town” means the Town of Front Royal, Virginia, or the Town Council of the Town of Front Royal, Virginia, depending upon the context, and as applicable.

4. The Town Manager, or if so decided by Town Council, the Town Council, are authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.

5. The individual designated by the Town Manager to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or this adopted policy shall be the Purchasing Agent; or such other person as shall be designated in writing from time to time by the Town Manager or the Town Council.

6. This policy may only be revised by an amendment adopted by the Town Council.

7. The Town Council shall have overall responsibility and be the primary contact for implementation of this policy.

B. Effective Date

Contracts entered into prior to passage of this policy shall continue to be governed by the policies and regulations of the Town and Commonwealth of Virginia in effect at the time those contracts were executed.

C. Severability

If any provision of this policy or any application thereof is held invalid, such invalidity shall not affect other provisions or applications of this policy which can be given effect without the invalid provision or application, and to this end the provisions of this policy are declared to be severable.

114-4 PROPOSAL PROVISIONS

A. Proposal Submissions in General

1. A proposal under this Act may be either solicited by the Town (“Solicited Bid/Proposal”) or delivered by a private entity on an unsolicited basis (“Unsolicited Proposal”). In either case,

any such proposal shall be clearly identified as a “PPEA Proposal”. Proposers (“Proposer” or “Proposers”) may be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the Town for that particular proposal and shall be consistent with all applicable provisions of the PPEA.

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

4. Proposals should be prepared simply and economically, following the format provided herein and providing a concise description of the Proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the Town. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the Town of the financial feasibility of the proposed project. The Town may, at any time, require the Proposer to provide additional information and clarification to the submission.

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

B. Affected Local Jurisdictions

1. The term “affected local jurisdiction” means any county, city or town in which all or a portion of a qualifying project is located.

2. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the Town must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of submission of the proposal to the Town. The private entity is responsible for documenting evidence of the delivery of the request for proposals to any other affected local jurisdiction and providing same to the Town within five (5) business days of such delivery. Any affected jurisdiction shall have sixty (60) days from the receipt of the request or proposal to submit written comments to the Town and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) jurisdiction's capital improvements budget or (iv) other government spending plan. Comments received within the sixty (60)-day period shall be

given consideration by the Town, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The Town may begin or continue its evaluation of any such proposal during the sixty (60)-day period for the receipt of comments from other affected local jurisdictions.

C. Proposal Review Fee

Unless otherwise specified by the Town, for unsolicited proposals and unsolicited competing proposals, the Town will require an initial processing fee of \$5,000 with an additional proposal fee of \$10,000 to be charged should the project proceed beyond the initial review. The initial processing fee shall be submitted with the initial proposal or competing proposal. The Town will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, and outside consultants, financial advisors, engineers and attorney's fees, associated with evaluating the proposal. In the event either the initial processing fee of \$5,000 or the additional proposal fee of \$10,000 is insufficient to cover all of the direct costs incurred by the Town, the Proposer shall pay such additional direct costs incurred by the Town in reviewing the proposal.

D. Freedom of Information Act

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act, Va. Code §§ 2.2-3700 to 2.2-3714 ("FOIA"). Except as provided by Va. Code § 2.2-3705.6 (11) of FOIA, such documents are subject to release by the Town if requested by a third party, except to the extent that they relate to (i) confidential proprietary records, voluntarily provided by private business pursuant to a promise of confidentiality from the Town, used by the public body for business, trade and tourism development or retention; and memoranda, working papers or other records related to businesses that are considering locating or expanding in Virginia, prepared by the Town, where competition or bargaining is involved and where, if such records are made public, the financial interest of the Town would be adversely affected.

2. Va. Code § 56-575.4 (G) of the PPEA imposes an obligation on the Town and any affected jurisdiction to take appropriate action to protect confidential and proprietary information submitted by a private entity or operator pursuant to Va. Code § 2.2-3705.6 (11). When the private entity requests that the Town not disclose information, the private entity must (i) invoke the exclusion when the data or materials are submitted to the Town 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. A private entity may request and receive a determination from the Town as to the anticipated scope of protection prior to submitting the proposal. The Town is authorized and obligated to protect only confidential and proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire

proposal has been designated confidential and proprietary by the Proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

3. Upon receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the Town shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the Proposer. If the determination regarding protection or the scope thereof differs from the Proposer's request, then the Town will accord the Proposer a reasonable opportunity to clarify and justify its request. Upon a final determination by the Town to accord less protection than requested by the Proposer, the Proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn should be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

E. Use of Public Funds

Virginia constitutional and statutory requirements and Town ordinances and policies as they apply to appropriation and expenditure of public funds apply to any comprehensive agreement entered into under the Act. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

F. Posting of Proposals

Proposals (solicited or unsolicited) submitted in accordance with the requirements herein shall be posted by the Town within ten (10) business days after acceptance such proposals by the Board. Posting shall be on the Town's website for a minimum of ten (10) calendar days, and by publication, in a newspaper of general circulation in the area in which the contract is to be performed with a summary of the proposal(s) and the location where copies of the proposal(s) are available for inspection. A copy of the proposal(s) may also be posted for public inspection on the Commonwealth of Virginia's Department of General Service's centralized electronic procurement website. Provided, however, trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of Va. Code § 2.2-3705.6 (11) shall not be required to be posted, except as otherwise agreed by the responsible public entity 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.

G. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the Town to comply with all other applicable laws not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

114-5 SOLICITED PROPOSALS

A. The Town may solicit proposals from private entities to develop, acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects or qualifying transportation facilities. The Town may use a two-part process consisting of an initial conceptual phase and a detailed phase. The Town will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the applicable Act.

B. The solicitation 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 solicitation will be posted in such public areas as are normally used for posting of the Town's notices, including the Town'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 Town.

C. The requirements for any particular Bid/Proposal shall be as specified in the solicitation by the Town for that particular proposal and shall be consistent with all applicable provisions of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation to Bid ("ITB") or Request for Proposal ("RFP") within the meaning of "competitive sealed bidding" and "competitive negotiation" as used in the Town of Front Royal Procedures For Purchasing and Procurement Manual and the Virginia Public Procurement Act, Va. Code §§ 2.2-4300 to 2.2-4377.

D. Any proposal submitted pursuant to the PPEA that is not received in response to the Town's ITB or RFP shall be deemed an unsolicited proposal under this PPEA Policy, including but not limited to (a) proposals received in response to a notice of the prior receipt of another unsolicited proposal as provide for below in § IV "Unsolicited Proposals" below, and (b) proposals received in response to publicity by the Town concerning particular needs when the Town has not issued a corresponding ITB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

114-6 UNSOLICITED PROPOSALS

A. The PPEA permits the Town to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project. The Town may publicize its needs and may encourage or notify interested parties to submit proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of a solicitation, the proposal shall be treated as an unsolicited proposal.

B. Proposals should be prepared simply and economically, following the format provided herein and providing a concise description of the Proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the Town. Project benefits to

be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the Town of the financial feasibility of the proposed project. The Town may, at any time, require the Proposer to provide additional information and clarification to the submission.

C. An unsolicited proposal must contain the information required in § VII. “PPEA Proposal Preparation and Submission (Solicited and Unsolicited)” as set forth below.

D. The Town may require additional submissions to clarify information previously provided or to address other areas of concern to the Town.

E. All unsolicited proposals shall be submitted to the Town by delivering ten (10) complete copies. For unsolicited proposals and unsolicited competing proposals, the Town will require an initial processing fee of \$5,000 with an additional proposal fee of \$10,000 to be charged should the project proceed beyond the initial review. The initial processing fee shall be submitted with the initial proposal or competing proposal. The Town will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, and outside consultants, financial advisors, engineers and attorney’s fees, associated with evaluating the proposal. In the event either the initial processing fee of \$5,000 or the additional proposal fee of \$10,000 is insufficient to cover all of the direct costs incurred by the Town, the Proposer shall pay such additional direct costs incurred by the Town in reviewing the proposal.

F. The Town may engage the services of qualified professionals, which may include but not be limited to architects, professional engineers, certified public accountants, not otherwise employed by the Town, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long-and short-term costs of any request by an private entity for approval of a qualifying project, and the Town may apply the initial or any additional processing or proposal fee to the cost of the services of such qualified professionals, unless the Town determines that such analysis of a request for approval of a qualifying project shall be performed by an employee of the Town.

G. Upon receipt of any unsolicited proposal or group of proposals accompanied a payment of the required fee or fees by the Proposer or Proposers, the Town will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the Town determines not to accept the proposal and not to proceed to publication and conceptual-phase consideration, it shall return the proposal, together with all fees and accompanying documentation, to the Proposer(s).

H. If the Town chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice within ten (10) working days in a public area regularly used by the Town for posting of public notices for a period of not less than forty-five (45) days. The Town shall also publish the same notice in one or more newspapers or periodicals of general circulation in the

Town to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have forty-five (45) days from the date the notice is published to submit competing unsolicited proposals. The notice shall state that the Town (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the Proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the policy adopted by the Town and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

I. One copy of accepted unsolicited proposal(s) shall be made available for public inspection in accordance with the provisions of § IV.E, above.

J. The Town reserves the right to reject any and all proposals at any time. If the Town rejects a proposal by a private entity that purports to develop specific cost savings, the Town shall specify the basis for rejection.

114-7 PPEA PROPOSAL PREPARATION AND SUBMISSION (UNSOLICITED AND SOLICITED)

A. Format for Submissions at the Conceptual Stage

The Town will require that all proposals (both solicited and unsolicited) at the conceptual stage contain the following information in the following format plus such other information as the Town may reasonably request to complete its review or to comply with the requirements of the PPEA:

1. Completion and inclusion of a Proposer's Certification which is found as Appendix A to this policy.
2. 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, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe the length of time in business, business experience, public sector experience and other engagements of the 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.

- c. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or 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 (Va. Code § 2.2-3100 *et seq.*) of Title 2.2 of the Code of Virginia.
3. 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 Town or any other public 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, environmental and transportation impacts of the project measured against the Town's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.
 - e. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the Town's comprehensive land use plan and applicable ordinances and design standards.
 - f. Identify the proposed schedule for the work on the project, including sufficient time for the Town's review and the estimated time for completion.
 - g. Propose allocation of risk and liability, 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 Town's use of the project.

- i. Provide information relative to phased openings of the proposed project.
4. Project Financing
 - a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
 - b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon any Town's stated or adopted operational standards.
 - 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. Describe methods and remedies associated with any financial default.
 - e. Identify any local, state or federal resources that the Proposer contemplates requesting for the project along with an anticipated schedule of resource requirements. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.
 - f. Identify the need, if any, for the Town to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is not investment grade, the Town may require the use of credit enhancements.
 - g. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or, conversely, if the firm is to receive the sole or primary benefit of this potential.
 - h. Outline the financial penalties, if any, that would result should the Town wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
 - i. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

5. Project Benefit and Compatibility

- a. Identify who will benefit from the project, how they will benefit and how the project will benefit the Town and the overall community.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- c. Explain the strategy and plans, including the anticipated timeline 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 any anticipated significant benefits to the community and the Town, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the Town and whether the project is critical to attracting or maintaining competitive industries and businesses to the Town.
- e. Compatibility with the Town's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.

6. Additional material and information as the Town may reasonably request.

B. Format for Submissions at the Detailed Stage

If the Town decides to proceed to the detailed phase of review with one or more proposals, the following information should be provided by the private entity unless waived by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project or facility.
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity;
3. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the Proposer to accommodate such crossings.

4. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction.
5. A statement and strategy setting out the plans for securing all necessary property interests and/or easements required for the project. The statement must 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 Town or affected jurisdiction to condemn.
6. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
7. If relevant, information relating to the current plans for development of facilities or technology infrastructure to be used by the Town that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction;
8. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals;
9. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity;
10. A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), 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 using Town adopted service levels and standards.
11. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments over the term of the interim or comprehensive agreement, and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time, and usage of the projects over the useful life of the projects.
12. 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.

13. Demonstration of consistency with appropriate Town and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.

14. Explanation of how the proposed project would impact the Town's or affected jurisdiction's (jurisdictions') development plans.

15. The names and addresses of the persons who may be contacted for further information concerning the request;

16. Identification of any known conflicts of interest or other factors that may impact the Town'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 (Va. Code § 2.2-3100 *et seq.*) of Title 2.2.

17. Additional material and information as the Town may reasonably request.

114-8 PROPOSAL EVALUATION AND SELECTION CRITERIA

A. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the Town for further review at the conceptual stage.
2. The Town will determine at this initial stage of review whether it will proceed using:
 - a. Standard "competitive sealed bidding" procurement procedures consistent with the VPPA; or
 - b. Procedures developed by the Town that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in Va. Code § 2.2-4301. The Town may proceed using competitive negotiation procedures only if it makes a written determination that doing so is likely to be advantageous to the Town and the public based upon either (1) the probable scope, complexity or urgency of need, or (2) the risk sharing, added value, increase in funding or economic benefit from the project would otherwise not be available.

3. After reviewing the original proposal(s) submitted during the appropriate notice period(s), the Town may determine:

- a. not to proceed further with any proposal (solicited or unsolicited),
- b. to proceed to the detailed phase of review with the original unsolicited proposal,
- c. to proceed to the detailed phase with a competing unsolicited proposal, or
- d. to proceed to the detailed phase with one or more solicited or unsolicited proposals.

B. In evaluating any request for proposal, the Town may rely upon internal staff reports or the advice of outside advisors or consultants. Some or all of the following items, along with the specified information required herein, shall be considered in the evaluation and selection of PPEA proposals. The Town, however, reserves and retains the right to reject any request for proposal at any time for any reason whatsoever.

1. Qualifications and Experience

Factors to be considered in either phase of the Town's review to determine whether the Proposer possesses the requisite qualifications and experience may include, but are not necessarily limited to:

- a. Experience with similar projects
- b. Demonstration of ability to perform work
- c. Leadership structure
- d. Project manager's experience
- e. Management approach
- f. Financial condition
- g. Project ownership

2. Project Characteristics

Factors to be considered in determining the project characteristics may include, along with the specified information required herein, but are not necessarily limited to, the following:

- a. Project definition
- b. Proposed project schedule
- c. Operation of the project
- d. Technology; technical feasibility
- e. Conformity to State, Town or affected jurisdiction laws, regulations and standards
- f. Environmental impacts
- g. Condemnation impacts
- h. State and local permits
- i. Maintenance of the project

3. 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, along with the specified information required herein, but are not necessarily limited to, the following:

- a. Cost and cost benefit to the Town;
- b. Financing and the impact on the debt or debt burden of the Town
- c. Financial plan including default implications;
- d. Estimated cost; including debt source, operating costs, etc.; and
- e. Life-cycle cost analysis.

4. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the Town's, affected jurisdiction's or regional comprehensive or development plans may include, along with the specified information required herein, but are not necessarily limited to, the following

- a. Community benefits;
- b. Community support or opposition, or both;
- c. Public involvement strategy;
- d. Compatibility with existing and planned facilities;
- e. Compatibility with Town, regional, and state economic development efforts; and
- f. Compatibility with the land use and/or transportation plans of the Town and/or those of any affected jurisdiction.

114-9 COMPREHENSIVE AND INTERIM AGREEMENTS

A. At least thirty (30) days prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals. The Town shall give notice of such hearing by posting on the Town's website and in a newspaper of general circulation in the area where the contract is to be performed, a summary of the proposed agreements and the location where copies of the proposals and proposed agreement are available for public inspection. The Notice shall be provided at least ten (10) days prior to the date of the public hearing.

B. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected Proposer shall enter into a Comprehensive Agreement with the Town. Each contract shall define the rights and obligations of the Town and the selected Proposer with regard to the project.

C. The terms of the Comprehensive Agreement shall be tailored to address the specifics of the project and shall include but not be limited to

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with any acquisition, design, construction, improvement, renovation, expansion, equipping, maintenance, or operation of the qualifying project; in a form and amount satisfactory to the County and on a form provided by the Town.
2. The review and approval of plans and specifications for the qualifying project by the Town;
3. The rights of the Town to inspect the qualifying project to ensure compliance with the contract;
4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. The monitoring of the practices of the operator by the Town to ensure proper maintenance, safety, use and management of the qualifying project;
6. The terms under which the operator will reimburse the Town for services provided;
7. The policy and procedures that will govern the rights and responsibilities of the Town and the operator in the event that the contract is terminated or there is a material default by the operator including the conditions governing assumption of the duties and responsibilities of the operator by the Town and the transfer or purchase of property or other interests of the operator by the Town;
8. The terms under which the operator 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 the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project
 - a. A copy of any service contract shall be filed with the Town.
 - b. A schedule of the current user fees or lease payments shall be made available by the operator 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 Town will contribute financial resources, if any, for the qualifying project; and
 11. Other requirements of the PPEA or provisions that the Town determines serve the public purpose of the PPEA.
- D. Prior to or in connection with the negotiation of the comprehensive agreement, the Town may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. 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. Establishing 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 that the parties may deem appropriate prior to the execution of a comprehensive agreement.
- E. Once negotiations have concluded, the following shall occur:
1. The Town shall make the proposed agreement available on the Town's website and in the offices of the Town Manager or the Town's Finance Department for at least 10 business days prior to the public hearing to be held by the Town.
 2. At least thirty (30) days prior to entering into an interim or comprehensive agreement a public hearing must be held on the proposals. Such hearing may coincide with a regularly scheduled meeting of the Town Council; comments may be submitted to the Town at any time during the notice period and prior to the public hearing. After the public hearing and the end of the public comment period, no additional posting shall be required based on any public comment received.
 3. The proposed agreement shall be posted in the following manner:

- a. On the Town's website.
- b. In addition to the posting requirements, a copy of the proposals shall be made available for public inspection in the offices of the Town Manager or Town's Finance Department. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Va. Code §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town and the private entity.
- c. Any studies and analyses considered by the Town in its review of a proposal shall be disclosed at some point prior to the execution of an interim or comprehensive agreement.
- d. Once an interim agreement or a comprehensive agreement has been entered into, the Town shall make procurement records available for public inspection, upon request.
- e. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents.

F. Any comprehensive agreement, interim agreement, and any amendments thereto shall first be approved by the Town Council and then executed in writing by persons having the authority to do so. For a mixed project involving both public schools and other facilities, the Town Council, Warren County Board of Supervisors and Warren County School Board, may in their discretion, both enter into the same comprehensive agreement with the operator for the entire mixed project, with their respective responsibilities delineated in the agreement.

G. As required by Va. Code § 56-575.9.F., when the Town enters into an agreement pursuant to the PPEA, a copy should be submitted to the Auditor of Public Accounts within 30 days thereafter at the following address:

Audit of Public Accounts
P.O. Box 1295
Richmond, VA 23218

The copy should be sent by certified-mail, return receipt requested, with a copy of the forwarding letter and return-receipt kept in the procurement file.

114-10 PROTESTS OF PPEA PROCUREMENTS

The following are the exclusive procedures for contesting or challenging (protesting) (a) the terms or conditions of any solicitation of proposals by the Town pursuant to the PPEA, (b) nonselection of a PPEA proposal for further consideration, and (c) the selection of any PPEA proposal for entry into an Interim and/or Comprehensive agreement or the entry into an Interim and/or Comprehensive agreement under the PPEA:

A. Any protest to any term or condition of a solicitation must be made in writing and delivered to the Town Manager so it is received by the Town Manager before proposals are due under the solicitation. Any protest not received in this manner shall be deemed to be waived.

B. A protest of a Town decision not to select a PPEA proposal for further consideration may only be made by the entity who submitted the proposal at issue. A protest of a Town decision to select a PPEA proposal for entry into an agreement or to enter into an agreement may only be made by an entity who submitted a proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the Town's decision. Protests shall only be granted if (1) the protester has complied fully with this paragraph X and there has been a violation of law, this policy, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.

C. Any entity desiring to protest a Town decision not to select a PPEA proposal for further consideration, to select a PPEA proposal for entry into an agreement, or to enter into an agreement shall submit the protest in writing and deliver it so that it is received by the Town Manager not later than 10 business days after announcement of the decision. Any protest not received in this manner shall be deemed to be waived.

D. The Town Manager shall issue a written decision on a protest within 10 days of its receipt by the Town Manager.

E. If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing suit in the Circuit Court of Warren County and serving the Town with such suit within 10 days of such denial. Otherwise, the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.

F. The exclusive relief allowed if a protest is granted is to void the decision being protested. Under no circumstances will any monetary relief be allowed.

G. Strictly following these procedures shall be a mandatory prerequisite for any challenge of any nature to a decision by the Town relating to terms and conditions of a PPEA solicitation, non-selection of a PPEA proposal for further consideration, selection of a PPEA proposal, or entry into an interim and/or comprehensive agreement. A failure to follow all these procedures strictly shall constitute a waiver of any right to challenge judicially a Town decision (a) as to terms or conditions in a PPEA solicitation, (b) not to select a PPEA proposal for further consideration, (c) to select a PPEA proposal, or (d) to enter into an interim and/or comprehensive agreement.

114-11 NOTICE AND POSTING REQUIREMENTS

See Section 114-13, Appendix B for an outline of these requirements and the associated timelines.

114-12 VIOLATION NOT MISDEMEANOR

A violation of this Chapter 114 shall not by itself constitute a violation of any criminal ordinance, statute or law of any jurisdiction unless it shall independently violate such other criminal ordinance, statute or law notwithstanding any provision of this Chapter.

114-13 APPENDIX A – PROPOSER’S CERTIFICATION

Proposer’s Name: _____

Proposer’s Address

Proposer’s:
Telephone No.: _____
Facsimile No.: _____

E-mail Address: _____

Propos Proposer’s er’s, or Proposer’s Contractor’s Virginia Class A General Contractor’s License Number:

Proposer’s., or Proposer’s Architects, and Engineers Virginia Registration Numbers:

After first being placed under oath, I hereby certify that I have authority to submit this proposal on behalf of the Proposer whose name appears above, that I am a principal of the Proposer, that the Proposer hereby agrees to all of the terms and conditions in the Town of Front Royal PPEA Policy, as amended, that neither the Proposer nor any member of its team or their principals is currently suspended or debarred from public contracting by any federal, state or local government entity, that I have taken reasonable steps to ascertain the accuracy of all the information contained in this proposal and this certification, and that the information in this proposal and certification is accurate to the best of my knowledge or information and belief.

Signature

Printed/Typed Name

Title (Principal of Proposer)

Commonwealth of Virginia :

: to wit

County/City of _____ :

On _____, (same name as above) appeared before me, and after satisfying me of his/her identity and after being placed under oath, swore to the truthfulness of the above statement.

Notary Public

My commission expires: _____

(If applicable) the Proposer acknowledges receipt of the following addenda:

Addendum No.: _____ Dated: _____

114-14 APPENDIX B – NOTICE AND POSTING REQUIREMENTS CHECKBOX

Requirement	Responsible Party	Unsolicited	Solicited
Provide any affected jurisdiction with a copy of proposal within five (5) business days of proposal to Town	Private Entity	✓	
Any affected jurisdiction shall have sixty (60) days from receipt of proposal to provide comments to the Town	Other affected jurisdictions	✓	
Town may begin or continue evaluation during the sixty (60) day review period	Town	✓	
Post proposals within ten (10) business days of acceptance	Town	✓	✓
Posting shall continue for ten (10) business days	Town		✓
Posting shall continue for not less than forty-five (45) days	Town	✓	
Competing Proposals may be submitted within the forty-five (45) day posting window	Private Entities	✓	
Provide ten (10) day notice of public hearing required for entering into agreement	Town	✓	✓
Public hearing must be held at least thirty (30) days prior to entering into a comprehensive or interim agreement	Town	✓	✓

Summary:

Acceptance of unsolicited proposals will generally require a minimum of 150 days from receipt of proposal to signature of interim or comprehensive agreement. This estimate does *not* include time required for review and evaluation of proposals.

Solicited proposals will generally require a minimum of 60 days from date of issuance of RFP to signature of interim or comprehensive agreement. This estimate does *not* include time required for creation of RFP, posting and distribution of RFP, receipt of proposals, review and evaluation of proposals.

114-15 APPENDIX C – TERMS AND DEFINITIONS

“**Act**” means the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, Va. Code §§ 56-575.1 to 56-575.18.

"**Affected jurisdiction**" means any county, city, or town in which all or a portion of a qualifying project is located.

"**Appropriating body**" means the body responsible for appropriating or authorizing funding to pay for a qualifying project.

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

"**Conceptual stage**" means the initial phase of project evaluation when 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.

"**Cost-benefit analysis**" means an analysis that weighs expected costs against expected benefits in order to choose the best option. For example, a city manager may compare the costs and benefits of constructing a new office building to those of renovating and maintaining an existing structure in order to select the most financially advantageous option.

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

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

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

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

"Lifecycle cost analysis" means an analysis that calculates cost of an asset over its entire life span and includes the cost of planning, constructing, operating, maintaining, replacing, and when applicable, salvaging the asset. Although one proposal may have a lower initial construction cost, it may not have the lowest lifecycle cost once maintenance, replacement, and salvage value is considered. Public-Private Education Facilities and Infrastructure Act of 2002, as amended, Commonwealth of Virginia Procedures Revised.

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

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

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

"PPEA" means the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, Va. Code §§ 56-575.1 to 56-575.18.

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

"Public entity" means the Commonwealth and any agency or authority thereof, any county, city or town and any other political subdivision of the Commonwealth, any public body politic and corporate, or any regional entity that serves a public purpose.

"Qualifying project" means (i) any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land of 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.

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

"Service contract" means a contract entered into between a public entity and the private entity pursuant to § 56-575.5. Public-Private Education Facilities and Infrastructure Act of 2002, as amended Commonwealth of Virginia Procedures Revised January 17, 2008 -30-

"Service payments" means payments to the private entity of a qualifying project pursuant to a service contract.

"State" means the Commonwealth of Virginia.

"Town" means the Town of Front Royal, Virginia, a municipal corporation and body politic.

"Town Council" means the Town Council of the Town of Front Royal, Virginia.

"Town Manager" means the Town Manager of the Town of Front Royal, Virginia.

"User fees" " mean the rates, fees, or other charges imposed by the private entity of a qualifying project for use of all or a portion of such qualifying project pursuant to the comprehensive agreement pursuant to Va. Code § 56-575.9.