

**Town of Blacksburg**  
**Procedures Regarding Requests Made Pursuant to**  
**the Public-Private Education Facilities and**  
**Infrastructure Act of 2002**

*Adopted by the Council of  
the Town of Blacksburg  
on May 8, 2012*

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## **I. INTRODUCTION**

The Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1 to -575.16 (the "PPEA"), grants a public entity the authority to create public-private partnerships for the development of a wide range of projects for public use ("qualifying projects") if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion.

For a project to come under the PPEA, it must meet the definition of a "qualifying project." The PPEA contains a broad definition of qualifying project that includes public buildings and facilities of all types; for example:

(i) An education facility, including but not limited to a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility and land to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;

(ii) A building or facility that meets a public purpose and is developed or operated by or for any public entity;

(iii) 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) 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.

Virginia Code § 56-575.16 provides that a public entity (a "responsible public entity") having the power to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project may not consider any proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available procedures that are sufficient to enable the responsible public entity to comply with the PPEA. Accordingly, these procedures (the "Procedures") have been adopted by the Town Council (the "Council") as the governing body of the Town of Blacksburg (the "Town").

## **II. GENERAL PROVISIONS**

**A. Proposals**

1. Pursuant to Virginia Code § 56-575.4, a proposal to provide a qualifying project to a responsible public entity may be either solicited from private entities by the public entity (a "Solicited Bid/Proposal") or delivered to the public entity by a private entity on an unsolicited basis (an "Unsolicited Proposal"). In either case, any such proposal shall be clearly identified as a "PPEA Proposal."

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. Any Unsolicited Proposal shall be submitted to the Town by delivering six complete copies, together with the required initial review fee as provided below in § IV (C), to the Purchasing Agent, Department of Financial Services, Purchasing Division, P.O. Box 90003, Blacksburg, VA 24062. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the Town Manager to review and evaluate all unsolicited proposals.

4. 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" includes any county, city or town in which all or a portion of a qualifying project is located.

2. Any private entity submitting a Solicited Bid/Proposal or an Unsolicited Proposal to the Town as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the Town. Any such other affected local jurisdiction shall have 60 days from the date it receives its copy of the proposal to submit written comments to the Town and to indicate whether the proposed qualifying project is compatible with the affected local jurisdiction's local comprehensive plan, local infrastructure development plans, capital improvements budget, or other government spending plan. The Town will consider comments received within the 60-day period prior to entering into a comprehensive agreement pursuant to the PPEA regarding the proposal. However, the Town may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

**C. Virginia Freedom of Information Act**

1. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act ("FOIA") except as provided by Virginia Code § 56-575.4 (G).

2. To prevent the release of any confidential and proprietary information that otherwise could be held in confidence pursuant to Virginia Code § 56-575.4 (G), the private entity submitting the information must (i) invoke the exclusion from FOIA 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 proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein. If a private entity fails to designate trade secrets, financial records, or other confidential or proprietary information for protection from disclosure, such information, records or documents may be subject to disclosure under FOIA.

3. Upon receipt of a request from a private entity that designated portions of a proposal be protected from disclosure as confidential and proprietary, the Town will 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 private entity. If the determination regarding protection or the scope thereof differs from the private entity's request, then the Town will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the Town to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below in § IV (A) (1).

4. The Town may withhold from disclosure memoranda, staff evaluations, or other records prepared by the Town, its staff, outside advisors, or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining position of the Town would be adversely affected, and (ii) the basis for the determination is documented in writing by the Town. Cost estimates relating to a proposed procurement transaction prepared by or for the Town shall not be open to public inspection.

5. The Town may not withhold from public access:

(a) procurement records other than those subject to the written determination of the Town;

(b) 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 Town and the private entity;

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(c) information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or

(d) information concerning the performance of any private entity developing or operating a qualifying transportation facility or a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected as required by law, then the Town shall comply with such order.

**D. Use of Public Funds**

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim agreement or comprehensive agreement entered into under the PPEA. 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.

**E. Applicability of Other Laws**

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

**III. SOLICITED BID/PROPOSALS**

The procedures applicable to any particular Solicited Bid/Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Invitation to Bid ("IFB") or Request for Proposal ("RFP") within the meaning of those terms as used in the Town of Blacksburg procurement ordinance. Any proposal submitted pursuant to the PPEA that is not received in response to an IFB or RFP shall be an Unsolicited Proposal under these procedures. Such Unsolicited Proposals include but are not limited to (a) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPEA and provided for below in § IV (A) (2) and (b) proposals received by the Town concerning particular needs when the Town has not issued a corresponding IFB or RFP, even if the Town otherwise has encouraged the submission of proposals pursuant to the PPEA that address those needs.

The RFP or IFB will be posted in such public areas as are normally used for posting of the Town's notices, including the Town's website. Notices will also be advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement site as required by Virginia Code § 56-575.3:1 (B) (11). In addition, solicited proposals will be posted pursuant to Section IV (A). 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 Town.

#### **IV. UNSOLICITED PROPOSALS**

The process for evaluating an Unsolicited Proposal, described in detail below, consists of five steps. Briefly summarized, upon receipt of an Unsolicited Proposal the Town's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the Town will give public notice of the Unsolicited Proposal, and allow for submission of other competing proposals. In step three the Town will post conceptual proposals to provide the public with an opportunity to inspect the proposal. In step four the Town will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step five is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. The Town shall be afforded sufficient time as it deems necessary for complete review and evaluation of all proposals submitted; proposals shall remain valid and not revised, other than by the stated procedure, during this period. However, the Town may, at its sole discretion, discontinue its evaluation of any proposal at any time. Furthermore, if the Town determines that it is in the Town's interest to do so with respect to any Unsolicited Proposal, the Town may eliminate review at the conceptual stage and proceed directly to a review at the detailed stage.

##### **A. Decision to Accept and Consider Unsolicited Proposal; Notice**

1. Upon receipt from a private entity of any Unsolicited Proposal, the Town will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. If the Town determines not to accept the proposal at this stage, it will return the proposal and the accompanying initial review fee to the private entity.

2. If the Town chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by the Town for posting of public notices for a period of not less than 60 days. The Town shall also publish the same notice for a period of not less than 60 days in one or more newspapers or periodicals of general circulation in the jurisdiction to notify any parties that may be interested in submitting competing unsolicited proposals. In addition, the notice should be advertised in *Virginia Business Opportunities* and on the Commonwealth's electronic procurement website. The notice shall state that the Town (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will receive for simultaneous consideration any competing proposals that comply with the procedures adopted by the Town and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

3. To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the Town familiar with the unsolicited proposal and the guidelines established by the Town shall be made available to respond to inquiries and meet with private entities that are considering the submission of a competing proposal. The Town shall conduct an analysis of the information pertaining to the proposal

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included in the notice to ensure that such information sufficiently encourages competing proposals. Further, the Town shall establish criteria, including key decision points and approvals, to ensure proper consideration of the extent of competition from available private entities prior to selection.

**B. Contents of Initial Submission**

1. An Unsolicited Proposal must contain information on the private entity's qualifications and experience, project characteristics, project financing, anticipated public reaction, and project benefit and compatibility. The information should be adequate to enable the Town to evaluate the practicality and sufficiency of the proposal. The private entity may request that the Town consider a two-step proposal process, consisting of an initial conceptual submission to be followed by a more detailed submission.

2. Unsolicited Proposals should provide a concise description of the private entity's capability to complete the proposed qualifying project and the benefits to be derived from the project by the Town. Project benefits to be considered may occur 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, including but not limited to (a) the identity of any parties expected to provide financing for the project and (b) a statement indicating whether the private entity intends to request the Town to provide resources for financing the project and the nature and extent of any such resources. The scope of work shall be of sufficient detail to identify the level of quality of the project commensurate with recognized design standards or by project qualities established or prescribed by the Town of Blacksburg for a given project.

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

**C. Review Fees**

A review fee will not be charged of a private entity submitting an Unsolicited Proposal to the Town.

**D. Posting Requirements**

1. Conceptual proposals, whether solicited or unsolicited, will be posted by the Town within 10 working days after acceptance of such proposals. The posting will be on the Town's website or by publication, in a newspaper of general circulation in the Town, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Commonwealth's Department of General Service's web-based electronic procurement program commonly known as "eVA."



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2. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate by the Town so as to provide maximum notice to the public of the opportunity to inspect the proposals.

3. 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 Virginia Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town 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.

**E. Initial Review at the Conceptual Stage**

1. Only proposals complying with the requirements of the PPEA and these Procedures that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, 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 procurement through competitive sealed bidding as defined in the VPPA or procedures developed by the Town that are consistent with procurement of other than professional services through competitive negotiation as defined in the VPPA. The Town may proceed using such guidelines only if it makes a written determination that doing so is likely to be advantageous to the Town and the public based upon either (i) the probable scope, complexity or priority of need; (ii) the risk sharing including guaranteed cost or completion guarantees, added value or debt, or equity investments proposed by the private entity; or (iii) the increase in funding, dedicated revenue or other economic benefit that would otherwise not be available.

3. After reviewing an unsolicited proposal and any competing proposals submitted during the notice period, the Town may determine:

- (a) not to proceed further with any proposal,
- (b) to proceed to the detailed phase of review with the original proposal,
- (c) to proceed to the detailed phase with a competing proposal,
- (d) to proceed to the detailed phase with multiple proposals, or
- (e) to request modifications or amendments to any proposals.

4. Discussions between the Town and private entities about the need for infrastructure improvements shall not limit the ability of the Town to later determine to use standard procurement procedures to meet its infrastructure needs.

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At all times the Town retains the right to reject any proposal at any time for any reason whatsoever.

**F. Format for Submissions at the Conceptual Stage**

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the Town may request:

**1. Qualification and Experience**

a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team.

b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size, value, quality and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.

d. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent or greater.

e. Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100, et seq.) of Title 2.2.

**2. Project Characteristics**

a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type, quality, value and intent of the project, the location, preliminary value of the land necessary to be acquired, 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.

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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 anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.

e. Identify the projected positive social, economic and environmental impacts of the project.

f. Identify the proposed schedule for the work on the project, including the estimated time for completion.

g. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.

h. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the Town'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, building, engineering, or other applicable standards that the proposed project will meet. Define applicable quality standards to be adhered to for achieving the desired product outcome(s).

**3. 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 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 all anticipated risk factors and methods for dealing with these factors.

e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment.

f. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

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g. Identify an aspect of the project that could disqualify the project from obtaining tax-exempt financing.

**4. Project Benefit and Compatibility**

a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the Town, 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. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the Town and whether the project is critical to attracting or maintaining competitive industries and businesses to the Town or the surrounding region.

e. Explain whether and, if so, how the project is compatible with the Town's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

f. Explain how quality standards of the project will be satisfied in comparison with the qualities anticipated or proposed by the Town of Blacksburg for the project.

g. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

**G. Format for Submissions at the Detailed Stage**

If the Town decides to proceed to the detailed phase of review with one or more Unsolicited Proposals, then the following information must be provided by the private entity unless waived by the Town:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.

3. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject

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property as well as a list of any property the private entity intends to request the public entity to condemn.

4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.

5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.

6. A detailed discussion of assumptions about user fees or rates, and usage of the projects.

7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans.

9. Sufficient design and engineering detail to establish floor plans, elevations, and site characteristics.

10. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.

11. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the 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 (§ 2.2-3100, et seq.) of Title 2.2.

12. Additional material and information as the Town may request.

## **V. PROPOSAL EVALUATION AND SELECTION CRITERIA**

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. However, the Town retains the right at all times to reject any proposal at any time for any reason whatsoever.

**A. Qualifications and Experience**

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

1. Experience with similar projects of comparable scope and value;
2. Demonstration of ability to perform work at the appropriate level of quality standards;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

**B. Project Characteristics**

Factors to be considered in determining the project characteristics may include but are not necessarily 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; and
10. Quality standards to meet proposed project quality.

**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 are not necessarily limited to:

1. Cost and cost benefit to the Town;
2. Financing and the impact on the debt or debt burden of the Town;
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, and past performance of any third party that will provide financing for the project and the nature and timing of that party's commitment;
7. Comparable costs of other project delivery methods; and
8. Opportunity costs assessment.

**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 are not necessarily 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;
6. Fiscal impact to the Town of Blacksburg in terms of revenues and expenditures; and
7. Economic output of the project in terms of jobs and total economic impact on the local economy.

**E. Other Factors**

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

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design of the qualifying project;
4. The eligibility of the project for accelerated documentation, review, and selection;
5. Local citizen and government comments;
6. Benefits to the public, including financial and nonfinancial; and
7. Other criteria that the Town deems appropriate.

**VI. INTERIM AND COMPREHENSIVE AGREEMENT**

Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the Town as provided by the PPEA. Any such comprehensive agreement, and any amendment thereto, must be approved by the Town Council before it is entered into on behalf of the Town. Prior to entering a comprehensive agreement, an interim agreement may be entered into that permits a private entity to perform compensable activities related to the project. The Town Manager 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 Town and the selected proposer with regard to the project.

**A. Interim Agreement Terms**

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

1. Project planning and development;
2. Design and engineering;
3. Environmental analysis and mitigation;
4. Survey;



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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.

**B. Comprehensive Agreement Terms**

As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. 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 the forms and amounts satisfactory to the Town;

2. Review and approval of plans and specifications for the qualifying project by the Town;

3. The right of the Town to inspect the qualifying project;

4. Maintenance of a policy or policies of liability insurance or self-insurance in form and amount satisfactory to the Town and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;

5. Monitoring of the practices of the operator by the Town to ensure proper maintenance;

6. Reimbursement to be paid to the Town for services provided by the Town;

7. Filing by the operator of appropriate financial statements on a periodic basis;

8. Policies and procedures governing the rights and responsibilities of the Town and the operator 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 operator by the Town and the transfer or purchase of property or other interests of the operator by the Town;

9. Provisions for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made;

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10. Requiring a copy of any service contract to be filed with the Town and providing that 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;

11. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying project;

12. Any other provisions required by applicable law;

13. The terms and conditions under which existing site conditions will be assessed and addressed, including identification of the responsible party for conducting the assessment and taking necessary remedial action;

14. The terms and conditions under which the Town will be required to pay money to the private entity and the amount of any such payments for the project; and

15. Such other terms and conditions as the Town may deem appropriate.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment. The comprehensive agreement may provide for the development or operation of phases or segments of a qualifying project.

**C. Notice and Posting Requirements**

1. In addition to the posting requirements of Section VI. D, 30 days prior to entering into an interim or comprehensive agreement, the Town shall hold a public hearing on the proposals that have been received.

2. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the Town, the Town shall post the proposed agreement or a summary of the proposed agreement on the Town's website or by publication in a newspaper of general circulation in the area in which the contract work is to be performed, and the location where a copy of the agreement is available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," at the discretion of the Town.

In addition to the posting requirements, at least one copy of the proposed agreement shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of Virginia Code § 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Town and the private entity.

3. Once an interim agreement or a comprehensive agreement has been entered into, the Town shall make procurement records available for public inspection, upon request.

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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 adverse affect on the financial interest or bargaining position of the Town or private entity in accordance with Section II.C.

b. Confidential and proprietary material shall continue to be protected as set out in Section II. C.

c. Pursuant to Virginia Code § 56-575.17 (D), such procurement records shall not be interpreted to include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Virginia Code § 59.1-336, et seq.) or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

**VII. GOVERNING PROVISIONS**

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

### **Terms and Definitions**

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

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

**"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 Town 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.

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**"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.

**"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 Virginia Code § 56-575.5.

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

**"State"** means the Commonwealth of Virginia.

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**"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 Virginia Code § 56-575.9.