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# **City of Falls Church**

## **Guidelines for Implementation**

**of the**

**Public-Private Education Facilities and Infrastructure**

**Act of 2002, as amended**

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## 1. Applicability of the Guidelines

- 1.1 The Falls Church City Council ("City Council" or "City") has adopted these guidelines to implement the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§ 56-575.1, et seq., as amended ("PPEA"), by resolution dated July 27, 2015. This policy applies to all procurements under the PPEA conducted by the City and its staff after the date of the resolution where the City Council is the "responsible public entity" within the meaning of Va. Code §56-575.1.
- 1.2 The City Manager, City Purchasing Agent, and all officers and employees of the City shall follow the PPEA and this policy in any PPEA procurement in which they are involved.
- 1.3 The City Purchasing Agent may delegate his or her duties under this policy to members of staff.

## 2. Overview

- 2.1 The PPEA grants "responsible public entities" the authority to enter into public-private partnerships with private entities for the development of certain "qualifying projects" if the public entity determines, under criteria established by the PPEA, that such a project serves the public purpose. PPEA proposals are also subject to review by any "affected local jurisdiction" in which the "qualifying project" will be located.
- 2.2 Either the City Council, or the Falls Church City School Board ("School Board") can be the "responsible public entity" for a project in the City of Falls Church, depending upon the nature of the project. Typically, the City Council would be the "responsible public entity" under the PPEA for projects in the City, except for any project involving the public schools, and the City will be the "affected local jurisdiction" under the PPEA. However, the special relationship, both financial and otherwise, that exists between the School Board and the City Council makes close coordination and cooperation between the School Board, and City Council desirable for proposals tendered to the School Board under the PPEA. Also, proposals may be made that are for a "mixed" project (for example, projects including both schools and public parks), where, for certain components, the School Board may be the responsible public entity, and for certain components, the City Council may be the responsible public entity.
- 2.3 Proposals for qualifying projects may either be solicited or unsolicited. PPEA procurements typically will be conducted as a two-phase process, first involving submission and evaluation of conceptual-phase proposals resulting in selection of certain proposers to submit detailed-phase proposals, and then submission and evaluation of detailed-phase proposals. If the purposes and requirements of the PPEA are met and the

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City Council so elects, in its discretion, it will then select a detailed-phase proposal or proposals and enter into a "comprehensive agreement" for the project.

- 2.4 Individually-negotiated interim agreements and comprehensive agreements between private entities and the City Council, along with the PPEA and these guidelines, ultimately will define the respective rights and obligations of the parties for PPEA projects involving the City Council.
- 2.5 Although these guidelines provide guidance for application of the PPEA, the version of the PPEA that is in effect at the time the interim or comprehensive agreement is executed is controlling in the event of any conflict.

### **3. Eligible Projects**

- 3.1 A PPEA procurement may only be for a "qualifying project". The PPEA contains a broad definition of "qualifying project" that includes public buildings and facilities of all kinds, for example:
  - 3.1.1 An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school events), any functionally-related and subordinate facility and land to a school building, and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
  - 3.1.2 A building or facility that meets a public purpose and is developed or operated by or for any public entity;
  - 3.1.3 Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
  - 3.1.4 Utility and telecommunications and other communications infrastructure;
  - 3.1.5 A recreational facility;
  - 3.1.6 Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; or
  - 3.1.7 Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

- 3.2 The examples set forth herein are merely provided here for convenience. The definition of "qualifying project" in the PPEA as of the time in which the procurement is concluded by an interim or comprehensive agreement is controlling, and the version of the PPEA then in effect should be consulted to determine what is a "qualifying project."

#### **4. General Provisions**

##### 4.1 Proposal Submission

- 4.1.1 A proposal for a PPEA "qualifying project" may be either solicited by the City or submitted by a private entity on an unsolicited basis. In either case, the proposal shall be clearly identified as a "PPEA Proposal". To be considered, one original and ten (10) copies of any unsolicited proposal must be submitted along with the applicable fee to Purchasing Agent, City of Falls Church, Virginia, 300 Park Avenue, Suite 303 East, Falls Church, Virginia 22046. Solicited proposals shall be submitted in accordance with the instructions in the applicable solicitation.
- 4.1.2 Proposers will be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein. For unsolicited proposals, the conceptual phase of the proposal shall contain the information specified by paragraph 7.1 of these guidelines, and the detailed phase of the proposal shall contain the information specified at paragraph 7.2 of these guidelines. For solicited proposals, the solicitation and subsequent instructions by the Purchasing Agent will prescribe the information that proposals shall contain.
- 4.1.3 Proposals should be prepared simply and economically. Solicited proposals should contain all information requested by the solicitation or subsequent instructions by the City. Unsolicited proposals should contain information specified by these guidelines and also should include a comprehensive scope of work and, if applicable, a financial plan for the project, containing enough detail to allow an analysis by the City of the feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The City may request, in writing, from any proposer of an unsolicited proposal, clarification of any submission.
- 4.14 Representations, information and data supplied in, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the City Council. Accordingly, as part of any proposal, the proposer shall certify that all material representations, information and data provided in support of, or in connection with, its proposal are true and correct. Such certification shall be made by authorized individuals who are principals of the proposer and who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations,

information or data provided for a proposal, the proposer shall immediately notify the City Council of the same.

- 4.1.5 The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. In solicited procurements where public financing is available, the City Council's general policy is to use public financing as the less costly alternative unless indicated otherwise. However, where appropriate, a private entity may propose alternative financing that may include user fees, service payment components, and/or other innovative financing methods beneficial to the City and the proposed qualifying project. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.

4.2 Affected Jurisdictions

Under the PPEA, an "affected jurisdiction" is any county, city or town in which all or a portion of a qualifying project is located. Any private entity submitting a conceptual or detailed proposal to the City Council must provide any affected jurisdiction with a copy of the private entity's proposal by certified mail, express delivery or hand delivery. In the case of solicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt at the time proposals are due to be submitted to the Purchasing Agent. In the case of unsolicited proposals, such copy should be submitted to any affected jurisdiction to ensure its receipt within 5 business days after receiving notice from the City Council that the City Council has decided to accept the proposal pursuant to Section 6.1.1 hereof. Any affected jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the City Council and to indicate whether the proposed qualifying project is compatible with the jurisdiction's (i) comprehensive plan, (ii) infrastructure development plans, and (iii) capital improvements budget or other government spending plan. The City Council shall give consideration to comments received in writing within the 60-day period, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The City Council may begin or continue its evaluation of any such proposal during the 60-day period for affected jurisdictions to submit comments.

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4.3 Proposal Review Fees

4.3.1 The City Council will require payment of a review fee by a private entity submitting an unsolicited proposal to the City Council and by any private entities submitting competing proposals in response to the unsolicited proposal. Also, if the solicitation so indicates, the City Council will require payment of a review fee by any private entities submitting solicited proposals. Review fees are to cover the costs of processing, reviewing, and evaluating proposals, including the cost to compare a proposal to any competing proposals. Such costs include, but are not limited to, City staff time, the cost of any materials or supplies expended, the cost of meals and travel related to the review process, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, and financial advisors used by the City in its sole discretion, to assist in processing, reviewing, or evaluating the proposal. Such fees generally will be in the amount necessary to completely cover all of the City's and, where applicable, the School Board's costs. All fees and additional fees shall be submitted in the form of a cashier's check payable to the City of Falls Church.

4.3.2 Such fees shall be imposed at the conceptual phase as follows:

4.3.2.1 For unsolicited proposals and competing proposals submitted in response to the unsolicited proposal, the City Council shall require an initial processing fee of \$7,500 with an additional conceptual-phase proposal fee of \$20,000 or such greater amount as determined by the City Council, based upon the complexity of the proposed project, to be charged should the proposal proceed beyond the initial review at the conceptual phase. Payment of the initial processing fee must accompany the submission of the proposal to the City Council in order for the City Council to proceed with initial processing and review. In the event either the initial processing fee or the additional proposal fee is insufficient to cover the costs referenced in paragraph 4.3.1 of this policy, the City Council, in its discretion, may require a proposer to pay such additional costs.

4.3.2.2 If the City Council determines that an initial processing or proposal review fee will apply to a solicited conceptual-phase proposal, the solicitation shall specify the amount(s) and payment terms.

4.3.3 Additional fees shall be paid by proposers throughout the processing, review, and evaluation of the proposals, if and as the City Manager requires, based upon costs in excess of initial review fees assessed that the City Manager reasonably anticipates incurring. The City Manager may impose additional fees on proposers selected for detailed-phase consideration as a condition of consideration of their detailed-phase



proposals. The City Manager will notify the proposers concerned of the amount of such additional fees. Proposers must promptly pay such additional fees before the City Council will continue to process, review, and evaluate the proposer's proposal. Unless otherwise specified by the City Manager, additional fees for detailed-phase review will be based upon the costs that the City Manager reasonably anticipates incurring, but will be no less than \$5,000 nor more than \$50,000. The City Manager, in his or her discretion, may waive additional fees or require lower additional fees.

4.3.4 If the total fees paid by proposers for a phase of a PPEA procurement exceed the total costs incurred in processing, reviewing, and evaluating proposals for that phase, then the City Council shall reimburse the proposers the difference on a reasonable, pro rata basis. Otherwise, the City may retain all fees paid.

#### 4.4 Virginia Freedom of Information Act

4.4.1 Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("VFOIA"). In accordance with Va. Code § 2.2-3705.6.11, such documents are releasable if requested, except to the extent that they contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336, *et seq.*); (ii) financial records of the private entity, including balance sheets and financial statements, that are not generally available to the public through regulatory disclosure or otherwise; or (iii) other information submitted by the private entity, where, if the records were made public prior to the execution of an interim agreement or a comprehensive agreement, the financial interest or bargaining position of the City Council or private entity would be adversely affected. Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the City Council shall make the procurement records available upon request, in accordance with Va. Code §§ 2.2-4342 and 56.575.16.5.

4.4.2 In order for the records specified in clauses (i), (ii) and (iii) of 4.4.1 to be excluded from release pursuant to the Virginia Freedom of Information Act, the private entity shall make a written request to the City Council that (a) invokes such exclusion upon submission of the data or other materials for which protection from disclosure is sought; (b) identifies with specificity the data or other materials for which protection is sought; and (c) states the reasons why protection is necessary. In addition, the proposer must clearly mark each page of its proposal that it contends is not discloseable under the VFOIA with the legend "Confidential – Not Releasable under VFOIA." The City Council may only protect information excluded from release by Va. Code § 2.2-3705.6.11 and will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably

differentiating between the proprietary and non-proprietary information contained therein.

- 4.4.3 The Purchasing Agent or City Manager shall determine whether a private entity's request to exclude documents from disclosure pursuant to 4.4.2 is necessary to protect the trade secrets or financial records of the private entity. To protect other records submitted by the private entity from disclosure, the Purchasing Agent or City Manager shall determine whether public disclosure prior to the execution of an interim agreement or a comprehensive agreement would adversely affect the financial interest or bargaining position of the City Council or private entity. The Purchasing Agent or City Manager shall make a written determination of the nature and scope of the protection to be afforded under these guidelines and the PPEA. Once a written determination is made by the Purchasing Agent or City Manager, the records afforded protection under 4.4.1 through 4.4.3 shall continue to be protected from disclosure when in the possession of the City and any affected jurisdiction to which such records are provided by the City.
- 4.4.4 Nothing in this 4.4 shall be construed to authorize the withholding of (a) procurement records as required by Va. Code §§ 56-573.1:1 or 56-575.17; (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 City and the private entity; (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 project.
- 4.4.5 Once an agreement has been entered into, the City Council shall make the procurement records available upon request, in accordance with Va. Code §§ 56-575.1:1 and 56-575.17. However, the following, if properly designated by the private entity under this Section 4.4 as "Confidential-Not Releasable under VFOIA" are not considered procurement records: (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act, Va. 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. Further, costs estimates relating to a proposed procurement transaction prepared by or for the City Council shall not be made available for public inspection.
- 4.4.6 Any inspection of procurement records under these guidelines will be subject to reasonable restrictions to ensure the security and integrity of the records.
- 4.4.7 Subsection 56-575.4(G) of the PPEA imposes an obligation on the City and any affected jurisdiction to protect confidential proprietary

information that is provided to it by a private entity pursuant to a proposal for a procurement under these guidelines if the private entity follows all the steps required by paragraph 4.4 of these guidelines to designate the information as confidential proprietary information excluded from disclosure under VFOIA, and if the information is, in fact, information that is properly exempt from release under VFOIA. The Purchasing Agent and City Manager shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the City, other affected jurisdictions, staff, and outside consultants having a need to know the information to carry out the procurement. However, nothing contained herein shall constitute a waiver of sovereign immunity, a consent to suit, or a contractual undertaking, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the City Council or City Government for any failure to maintain confidentiality of information.

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

#### 4.5 Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds should be incorporated into planning for any PPEA project, and any PPEA procurement should comply with City fiscal policies. Virginia constitutional and statutory restrictions that apply to the City regarding expenditures of public funds shall be deemed to be incorporated into any "interim agreement" or "comprehensive agreement" into which the City Council enters pursuant to the PPEA and to condition the City Council's obligations thereunder.

#### 4.6 Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the City Council or any of its officers, employees, or agents to comply with all other applicable law.

### **5. Solicited Bids/Proposals**

- 5.1 The City Council may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects. The City Council may use a two-part process consisting of an initial conceptual phase and a detailed phase. The City Council will set forth in the solicitation the format and supporting

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information that is required to be submitted, consistent with the provisions of the PPEA and these guidelines.

- 5.2 Prior to inviting any bids or proposals, the City Council shall determine pursuant to Va. Code § 56-575.16 whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services, and if using competitive negotiation, indicate the justification, consistent with the PPEA, for proceeding in that manner, and the evaluation criteria to be used to evaluate proposals.
- 5.3 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 City's notices, including the City's website. In addition, the solicitation shall be advertised in Virginia Business Opportunities and posted on the Commonwealth electronic procurement 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 City Council.
- 5.4 Initial (conceptual) proposals received in response to a solicitation by the City shall be posted by the City within 10 business days after their acceptance by one of the following methods: (i) posting on the City's website of a summary of the proposals and the location where copies of the proposals are available for public inspection; or (ii) publication in a newspaper of general circulation where the qualifying project will be performed of a summary of the proposals and the location where copies of the proposals are available for public inspection. The City may, in its discretion, post proposals by other means, including without limitation, on the Virginia Department of General Service's web-based electronic procurement program, commonly known as eVa, or by other methods deemed appropriate by the City so as to provide maximum opportunity to the public to inspect the proposals.
- 5.5 Subject to exclusions from disclosure in 4.4., at least one copy of each of the proposals shall be made available for public inspection. Unless otherwise agreed by the City Council and the private entity submitting a proposal, portions of the proposal properly designated pursuant to 4.4 and containing trade secrets, financial records, or other records excluded from disclosure by Va. Code § 2.2-3705.6.11 and these guidelines shall not be made available for public inspection.
- 5.6 The City will receive comments from the public on any proposals. Comments should be in writing and directed to the Purchasing Agent. Comments will be accepted after the proposals have been received, and a public comment period of at least 30 days will be allowed before entry

into any interim agreement or comprehensive agreement. The City Council shall hold a public hearing or hearings on proposals at least 30 days prior to entering into an interim or comprehensive agreement.

## **6. Unsolicited Proposals**

The PPEA permits the City to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project. The City Council's general policy is to reserve acceptance of unsolicited proposals for cases of truly innovative ideas, because, in other cases, solicitation of proposals is more likely to achieve full and open competition.

The City Council 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. Proposals received as a result of the City Council receiving an unsolicited proposal and then publishing a Notice of Receipt of Unsolicited Proposal will also be treated as unsolicited proposals.

To ensure the City receives the best value for any qualifying project, the City will seek and encourage competing unsolicited proposals.

### **6.1 Decision to Accept and Consider Unsolicited Proposal; Notice**

6.1.1 Upon receipt of any unsolicited proposal or group of proposals and payment of any required fee by the proposer or proposers, the City Council will determine whether to accept the unsolicited proposal for publication of notice and conceptual-phase consideration. If the City Council determines not to accept the proposal and not to proceed to publication of notice and conceptual-phase consideration, the City Council will return the proposal, together with all fees and accompanying documentation, to the proposer.

6.1.2 If the City Council chooses to accept an unsolicited proposal for conceptual-phase consideration, the City Council shall:

6.1.2.1 Determine whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services consistent with Va. Code § 56-575.16, and if using competitive negotiation, indicate the justification, consistent with the PPEA and paragraph 10 of these guidelines, for proceeding in that manner, and the evaluation criteria to be used to evaluate the unsolicited proposal and competing unsolicited proposals;

6.1.2.2 Determine what if any conditions that the City Council will authorize the City Manager or Purchasing Agent to place upon

the proposer and any competing proposers beyond those contained in these guidelines for going forward with the unsolicited proposal and for receiving competing unsolicited proposals;

6.1.2.3 Have the Purchasing Agent or City Manager (i) prepare a short document entitled "Notice of Receipt of Unsolicited Proposal" for purposes of publication, and (ii) prepare a lengthier document entitled "Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals" that will not be published but will be available upon request.

a. The Notice of the Receipt of Unsolicited Proposal shall state that the City Council (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim agreement or a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these guidelines and the PPEA. The notice shall include a brief summary of the proposal and state the location where the proposal is available for public inspection. The notice shall indicate that conditions have been imposed upon proposers for proceeding to the initial conceptual phase and inform them how to obtain the Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals containing the conditions and evaluation criteria for the procurement.

b. Within 10 business days of acceptance of the unsolicited proposal, the Purchasing Agent or City Manager shall post the Notice of Receipt of Unsolicited Proposal in a public area regularly used by the City for posting of public notices and on the City's web site for a period of not less than 45 days. The Purchasing Agent or City Manager shall also publish the same notice at least once in one or more newspapers or periodicals of general circulation to notify the public and any persons that may be interested in submitting competing unsolicited proposals, with the first such publication to occur at least 45 days before competing proposals are due. In addition, the notice shall be advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement website at least 45 days before competing proposals are due. Competing proposals may be submitted to the Purchasing Agent during the period specified in the notice following the publication required above.

- c. The Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals shall contain the following information and shall be provided to prospective competing offerors and members of the public on request:
  - (i) The instructions, terms and conditions applicable to the procurement;
  - (ii) A summary of the project proposed in the unsolicited proposal that is more detailed than the summary in the Notice of Receipt of unsolicited proposals.
  - (iii) The evaluation criteria to be used for the procurement (which should be approved by the City Council);
  - (iv) Instructions for obtaining any portions of the unsolicited proposal that are releasable; and
  - (v) Such other instructions and information as the Purchasing Agent or City Manager deems reasonable and desirable.
- d. Copies of unsolicited proposals are available to the public, upon request, pursuant to the Virginia Freedom of Information Act ("VFOIA"), except as exempted from release under the PPEA and VFOIA.

## 6.2 Competing Proposals

Competing proposals shall be posted by the City Council within 10 business days after their receipt by one of the following methods: (i) posting on the City's website of a summary of the proposals and the location where copies of the proposals are available for public inspection; or (ii) publication in a newspaper of general circulation in the City or other jurisdiction where the qualifying project will be performed of a summary of the proposals and the location where copies of the proposals are available for public inspection. In addition, the City Council may, in its discretion, post proposals by other means, including without limitation, on the Virginia Department of General Service's web-based electronic procurement program commonly known as eVa, or by other methods deemed appropriate by the City Manager so as to provide maximum opportunity to the public to inspect the proposals.

## 6.3 Availability of Proposals for Public Inspection

Subject to exclusions from disclosure in 4.4., at least one copy of each of the proposals shall be made available for public inspection. Unless otherwise agreed by the City and the private entity submitting a proposal,

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portions of the proposal properly designated pursuant to 4.4 and containing trade secrets, financial records, or other records excluded from disclosure by Va. Code 2.2-3705.6.11 shall not be made available for public inspection.

**6.4 Initial Review at the Conceptual Stage**

6.4.1 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 City Council for further review at the conceptual stage. Content and format requirements for proposals at the conceptual stage are found at Section 7.1.

6.4.2 After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the City Council may determine:

6.4.2.1 Not to proceed further with any proposal,

6.4.2.2 To proceed to the detailed phase of review with the original proposal,

6.4.2.3 To proceed to the detailed phase with a competing proposal, or

6.4.2.4 To proceed to the detailed phase with multiple proposals.

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

**6.5 Receipt of Public Comments/Hearings**

The City will receive comments from the public on any proposals, both unsolicited and competing. Comments should be in writing and directed to the Purchasing Agent. Comments will be accepted after the proposals have been received and a public comment period of at least 30 days will be allowed before entry into any interim agreement or comprehensive agreement. The City Council shall hold a public hearing or hearings on proposals at least 30 days prior to entering into an interim or comprehensive agreement.

**7. Proposal Preparation and Submission**

7.1 Proposal Content and Format for Submissions at the Conceptual Stage (Solicited, Unsolicited and Competing Proposals)

The City Council may generally require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and



experience, (2) project characteristics, (3) project financing, but only if public financing is unavailable or potentially less advantageous, (4) project benefit and compatibility, and (5) any additional information as the City Council may reasonably request. Conceptual-phase proposals should include an executive summary of the proposal at the beginning of the proposal. An unsolicited proposal shall include an executive summary not designated as "Confidential-Not Releasable under VFOIA" that describes the proposed qualifying project sufficiently so that potential competitors can reasonably formulate meaningful competing proposals from a review of the summary and publicly-available information. Unless otherwise indicated in the solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, conceptual-phase proposals should contain the information in the format indicated below in paragraphs 7.1.1 through 7.1.5. Solicitations may require project-specific content and format that differs from these general requirements, in the City Manager's discretion.

#### 7.1.1 Qualifications and Experience

7.1.1.1 Identify the legal structure of the private entity making the proposal. Identify the organizational structure for the project, the management approach, and how each participant in the structure fits into the overall team. If the private entity that would be signing any comprehensive agreement would be a corporation, limited liability company, limited partnership, or an entity formed especially for the project, and if the proposer is relying at all on the past experience, name, or financial statements of any other person or entity to show the private entities' capabilities and responsibility, state what guaranty of performance will be provided by such other persons or entities.

7.1.1.2 Describe the experience of the entities 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 past safety performance and current safety capabilities. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims relating to such projects. Describe the length of time in business, business experience, public sector experience, and other engagements. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.

7.1.1.3 For each firm or major subcontractor that will be utilized in the project, provide a statement listing the firm's prior projects and

clients for the past 3 years and contact information for same (name, address, telephone number, e-mail address). If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and, second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents, which are in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, claims, change orders, lawsuits, safety and other matters relevant to the successful project development, operation, and completion.

- 7.1.1.4 Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or who will be directly involved in the project or who may be contacted for further information.
- 7.1.1.5 Provide the current or most recent financial statements of the firm (audited financial statements to the extent available), and if the firm is a joint venture, limited liability company, partnership or entity formed specifically for this project, provide financial statements (audited if available) for the firm's principal venturers, members, partners, or stockholders that show that the firm or its constituents have appropriate financial resources and operating histories for the project.
- 7.1.1.6 Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Va. Code § 2.2-3100, et seq.).
- 7.1.1.7 Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- 7.1.1.8 For each firm or major subcontractor that will perform construction and/or design activities, provide an accurately completed Commonwealth of Virginia Department of General Services (DGS) Form 30-168.
- 7.1.1.9 Describe efforts to facilitate participation of small businesses and businesses owned by women and minorities and the success of those efforts for the project.

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### 7.1.2 Project Characteristics

- 7.1.2.1 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.
- 7.1.2.2 Identify and fully describe any work to be performed by the City or any other public entity.
- 7.1.2.3 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.
- 7.1.2.4 Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the City's or other affected jurisdiction's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project. Indicate if an environmental and archaeological assessment have been completed.
- 7.1.2.5 Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the City's or other affected jurisdiction's comprehensive land use plan and applicable ordinances and design standards.
- 7.1.2.6 Identify the proposed schedule for the work on the project, including sufficient time for the City Council's review and the estimated time for completion.
- 7.1.2.7 Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- 7.1.2.8 Propose allocation of risk and liability, and assurances for timely completion of the project.
- 7.1.2.9 State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the City's use of the project.
- 7.1.2.10 Provide information relative to phased openings of the proposed project.
- 7.1.2.11 Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.

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### 7.1.3 Project Financing

- 7.1.3.1 Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment (e.g., design, construction, and operation), or both.
- 7.1.3.2 Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs based upon the City's adopted operational standards. Include any supporting due diligence studies, analyses, or reports.
- 7.1.3.3 Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach, including but not limited to, underwriter's discount, placement agent, legal, rating agency, consultants, feasibility study and other related fees. A complete discussion of interest rate assumptions should be included given current market conditions. Any ongoing operational fees should also be disclosed, as well as any assumptions with regard to increases in such fees and escalator provision to be required in the Comprehensive Agreement.
- 7.1.3.4 Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
- 7.1.3.5 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.
- 7.1.3.6 Clearly describe the underlying support and commitment required by the City under your recommended plan of finance. Include your expectation with regard to the City providing its general obligation or moral obligation backing.
- 7.1.3.7 Identify any dedicated revenue, source or proposed debt or equity investment on behalf of the private entity submitting the proposal.

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### 7.1.4 Project Benefit and Compatibility

- 7.1.4.1 Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the City, or other affected jurisdiction, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
- 7.1.4.2 Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- 7.1.4.3 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.
- 7.1.4.4 Describe any anticipated significant benefits to the community, including anticipated benefits to the economic, social, environmental, transportation, Comprehensive Plan, etc., and whether the project is critical to attracting or maintaining competitive industries and businesses to the City, or other affected jurisdiction.
- 7.1.4.5 Describe the project's compatibility with the City'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.

7.1.5 Any additional information as the City Manager or Purchasing Agent may reasonably request

### 7.2 Proposal Content and Format for Submissions at the Detailed Stage

If the City Council decides to proceed to the detailed phase of review with one or more proposals, the following information, along with an executive summary of the proposal at its beginning, should be provided by the private entity unless waived by the Purchasing Agent or City Manager:

- 7.2.1 A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
- 7.2.2 Conceptual site plan indicating proposed location and configuration of the project on the proposed site;

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- 7.2.3 Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
- 7.2.4 Detailed description of the proposed participation, use and financial involvement of the City Council or other public entity. Include the proposed terms and conditions for the project,
- 7.2.5 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.
- 7.2.6 Information relating to the current plans for development of facilities that are similar to the qualifying project being proposed by the private entity in any affected jurisdiction;
- 7.2.7 A statement and strategy setting out the plans for securing all necessary property and/or easements. 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 City Council or affected jurisdiction to condemn.
- 7.2.8 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.
- 7.2.9 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 the City Council's adopted service levels and standards.
- 7.2.10 A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.
- 7.2.11 Identification of any known government support or opposition, or general public support or opposition for the project or financing thereof. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.

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- 7.2.12 Demonstration of consistency with appropriate City, 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.
- 7.2.13 Explanation of how the proposed project would impact the City's, or other affected jurisdictions' development plans.
- 7.2.14 Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.
- 7.2.15 Identification of any known conflicts of interest or other factors that may impact the City Council'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.).
- 7.2.16 Acknowledge conformance with Sections 2.2-4367 through 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act.
- 7.2.17 Additional material and information as the City Manager or Purchasing Agent may reasonably request.

**8. Proposal Evaluation And Selection Criteria**

**8.1 Manner of Evaluation and Use of Outside Professionals**

Unless the City Council directs a different manner of evaluation in writing, evaluations of proposals shall be by such persons or group or committee of persons as the City Manager or Purchasing Agent may designate, subject to such review as the City Council may direct. Evaluations of proposals shall include, without limitation, analysis of the proposals' specifics, advantages, disadvantages, long-term costs, and short-term costs, using the evaluation criteria specified for the procurement. The City Council shall engage the services of qualified professionals not employed by the City, which may include an architect, professional engineer, certified public accountant, or other consultant, to provide an independent analysis as part of the evaluation. Notwithstanding the preceding sentence, if the City Council determines that such analysis of proposals will be performed by City, the City Council need not engage such an outside professional.

**8.2 Evaluation Criteria**

Evaluation criteria for proposals should be specified in the solicitation, or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, for the procurement concerned. Evaluation criteria may include the following factors, among others: (1) price; (2) the proposed cost of the qualifying facility; (3) the general reputation, industry experience and capability of the private entity; (4) the proposed design of the qualifying project; (5) the eligibility of the facility for accelerated selection, review, and documentation timelines under these guidelines; (6) local citizen and government comments; (7) benefits to the public; (8) the private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such a plan; and (9) the private entity's plans to employ local contractors and residents. If the evaluation criteria are not specified in the solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, then the criteria in the preceding sentence along with following items, and the specified information required under 7.1 and 7.2 above, should be considered in the evaluation and selection of such PPEA proposals:

**8.3 Qualifications and Experience**

Factors to be considered in either phase of the City Council's review to determine whether the proposer possesses the requisite qualifications and experience will include, the following:

- 8.3.1 Experience, training, and preparation with similar projects;
- 8.3.2 Demonstration of ability to perform work;
- 8.3.3 Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control, lack of excessive claims, change orders, and litigation, and project safety;
- 8.3.4 Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
- 8.3.5 Leadership structure;
- 8.3.6 Project manager's experience;
- 8.3.7 Management approach;
- 8.3.8 Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;



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- 8.3.9 Financial condition;
- 8.3.10 Project ownership; and
- 8.3.11 Efforts to facilitate participation of small businesses and businesses owned by women and minorities in the project.
- 8.3.12 Willingness to assume full responsibility for design and intent of project design, including but not limited to, willingness to use design-build method of project delivery.

8.4 Project Characteristics

Factors to be considered in determining the project characteristics include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.4.1 Project definition;
- 8.4.2 Proposed project schedule;
- 8.4.3 Operation of the project;
- 8.4.4 Technology; technical feasibility;
- 8.4.5 Conformity to State, County, City, or other affected jurisdiction laws, regulations, and standards;
- 8.4.6 Environmental impacts;
- 8.4.7 Condemnation impacts;
- 8.4.8 State and local permits; and
- 8.4.9 Maintenance of the project.

8.5 Project Financing

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

Factors to be considered in determining whether the proposed project financing allows access to the necessary capital, at the lowest practical

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cost given the project, to finance the project include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.5.1 Cost and cost benefit to the City;
- 8.5.2 Financing and the impact on the debt or debt burden of the City;
- 8.5.3 Financial plan including overall feasibility and reliability of plan; default implications; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.
- 8.5.4 Estimated cost; including financing source, operating costs, etc., and
- 8.5.5 Life-cycle cost analysis.
- 8.6 Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the City's and, other affected jurisdiction's or regional comprehensive or development plans include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.6.1 Community benefits; including the economic impact the project will have on the City in terms of amount of tax revenue to be generated for the City, the number of jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
- 8.6.2 Community support or opposition, or both;
- 8.6.3 Public involvement strategy;
- 8.6.4 Compatibility with existing and planned facilities;
- 8.6.5 Compatibility with City, regional, and state economic development efforts; and
- 8.6.6 Compatibility with the City's, and any other affected jurisdiction's land use, environmental and transportation plans.
- 8.6.7 Participation of small and minority-owned business.

**9. Comprehensive Agreement**

- 9.1 Except as provided in 9.3, prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating

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the qualifying project, the selected proposer shall enter into a comprehensive agreement with the City Council. The City Council will only enter into an agreement if it determines that the qualifying project that is the subject of the agreement serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4(C). Each agreement shall define the rights and obligations of the City Council and the selected proposer(s) with regard to the project.

- 9.2 The terms of the comprehensive agreement shall be tailored to address the specifics of the project and shall include, if applicable, but not be limited to:
  - 9.2.1 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, including, without limitation, bonds or letters of credit that comply with Va. Code § 2.2-4337 for components of the qualifying project that include construction;
  - 9.2.2 The review and approval of plans and specifications for the qualifying project by the City;
  - 9.2.3 The rights of the City Council to inspect the qualifying project to ensure compliance with the comprehensive agreement;
  - 9.2.4 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;
  - 9.2.5 The monitoring of the practices of the private entity by the City Council and its staff to ensure proper maintenance, safety, use and management of the qualifying project;
  - 9.2.6 The terms under which the private entity will reimburse the City Council for services provided;
  - 9.2.7 The policy and procedures that will govern the rights and responsibilities of the City Council and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including without limitation, the conditions governing assumption of the duties and responsibilities of the private entity by the City Council and the transfer or purchase of property or other interests of the private entity by the City Council;

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- 9.2.8 The terms under which the private entity will file appropriate financial statements on a periodic basis.
  - 9.2.9 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;
    - 9.2.9.1 A copy of any service contract shall be filed with the City Council.
    - 9.2.9.2 A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
    - 9.2.9.3 Classifications according to reasonable categories for assessment of user fees may be made.
  - 9.2.10 The terms and conditions under which the City Council will contribute financial resources, if any, for the qualifying project;
  - 9.2.11 If the private entity is a limited purpose or "shell" entity, such as a limited liability company, limited partnership, or corporation, that lacks its own substantial resources and operating history and that will depend on its members, partners, shareholders or others for resources to perform, then guarantees of performance by such operator's principal members, etc., or other similar arrangements that adequately assure performance.
  - 9.2.12 The procedures at paragraph 12 of these guidelines; and
  - 9.2.13 Other requirements of the PPEA or provisions that the City Council determines serve the public purpose of the PPEA.
- 9.3 In limited circumstances, the City may enter into an "interim agreement" within the meaning of the PPEA prior to or in connection with the negotiation of a comprehensive agreement for a qualifying project when doing so clearly is in the City's best interests. The City will only enter into an "interim agreement" if it determines the qualifying project that is the subject of the agreement serves the public purpose under the criteria of Va. Code § 56.575.4.C. As a matter of policy, the City does not favor entry into "interim agreements" with proposers because this technique tends to reduce competition in circumstances involving competitive negotiation. The City does not anticipate entering into an interim agreement with a proposer absent compelling reasons and without first reaching an agreement as to the material terms of a comprehensive agreement.

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- 9.4 After the City Council has negotiated an interim or comprehensive agreement with a private entity and decided to make award to the private entity, but prior to entry into such agreement, the City Council shall:
- 9.4.1 Post a summary of the agreement and the location where a copy of the agreement is available for public inspection. Posting shall be in the same manner as the posting of initial (conceptual) proposals specified by 5.4. A copy of the agreement shall be made available for public inspection.
- 9.5 Any comprehensive agreement, any interim agreement, and any amendments thereto shall first be approved by the City Council, and any appropriating entity, 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 City Council and the School Board may in their discretion, both enter into the same comprehensive agreement with the private entity for the entire mixed project, with their respective responsibilities delineated in the comprehensive agreement.
- 9.6 Parties submitting proposals understand that representations, information and data supplied in support of, or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the City. Accordingly, as part of the agreement, the proposing private entity shall certify that all material representations, information and data provided in support of, or in connection with, a proposal are true and correct. Such certification shall be made by an authorized individual who is a principal of the private entity and who has knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the proposing private entity shall immediately notify the City of same. Any violation of this section shall give the City the right to terminate the Agreement, withhold payment or other consideration due, and seek any other remedy available at law or in equity.
- 9.7 As required by Va. Code § 56-575.9.F., when the City Council 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.

## **10. Terms and Conditions on Proposal Submission**

- 10.1 The following terms and conditions apply to submission of any proposals to the City pursuant to the PPEA, whether unsolicited, competing unsolicited, or solicited, and by submitting any proposal to the City Council, the private entity submitting the proposal agrees to them:
  - 10.1.1 Neither these guidelines, nor any request or solicitation, nor the City's receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by the City to any proposer, or any other obligation by the City Council to any proposer. The City Council makes no promise, express or implied, regarding whether it will enter into an interim agreement or a comprehensive agreement with any proposer or regarding the manner in which it will consider proposals. The City Council will only be bound by the terms of any interim and/or comprehensive agreement(s) into which it enters should it choose to enter into any such agreements.
  - 10.1.2 The City Council will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal, or in engaging in oral presentations, discussions, or negotiations.
  - 10.1.3 Proposers may be required to make an oral presentation or oral presentations of their proposal in Falls Church, Virginia, at their own expense. The City Manager or Purchasing Agent may request the presence of proposers' representatives from their development, financial, architectural engineering and construction teams at these presentations. The City Manager or Purchasing Agent will schedule the time and location for these presentations. By submitting its proposal, the offeror agrees to make these representatives reasonably available in Falls Church, Virginia.
  - 10.1.4 The City Council reserves the right to waive, through its Purchasing Agent or City Manager, any informalities with respect to any proposal submitted.
  - 10.1.5 The City Council reserves the right to accept or reject any and all proposals received, in whole or in part, without explanation, and to negotiate separately in any manner necessary to serve the best interests of the City Council. Any procurement under these guidelines may result in multiple awards to multiple proposers.
- 10.2 The provisions of this paragraph 10 of these guidelines shall apply automatically to all PPEA procurements by the City Council.
- 10.3 The City will not discriminate against a proposer because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

**11. Participation of Small and Minority-Owned Business**

- 11.1 The City Council's policy is to facilitate participation of small businesses and businesses owned by women and minorities in its procurement transactions, including procurement transactions under the PPEA.
- 11.2 Persons making proposals to the City Council pursuant to the PPEA should ensure that reasonable efforts are made to facilitate participation of small businesses and businesses owned by women and minorities as part of their proposals. Resort to lists of such businesses available from the Virginia Department of Minority Enterprise is encouraged.

**12. Proposers' Agreement to Terms and Conditions of This Policy**

The City Council shall require as a condition of accepting any proposal for consideration that its proposer agrees to be bound by all the terms and conditions of these guidelines. Proposers shall submit with any proposal the certification that is set out in Appendix A hereto.

**APPENDIX A**

**Proposer's Certification**

Proposer's Name: \_\_\_\_\_  
\_\_\_\_\_

Proposer's Address  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Proposer's:  
Telephone No.: \_\_\_\_\_  
Facsimile No.: \_\_\_\_\_  
E-mail Address: \_\_\_\_\_

Proposer's or Proposer's Contractor's Virginia Class A General Contractor's License Number  
\_\_\_\_\_

Proposer's or Proposer's Architect's and Engineer's 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 City of Falls Church Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, 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)



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Commonwealth of Virginia :  
: to wit  
County/City of \_\_\_\_\_ :

On \_\_\_\_\_, 2015, \_\_\_\_\_, (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 agenda:

Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____
Addendum No.:	_____	Dated:	_____