

**Danville City School Division**

**Guidelines for Implementation of the Public-Private  
Education Facilities & Infrastructure Act of 2002**

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## Procedural Guidelines

### 1. Executive Summary of the PPEA Process.

The Public-Private Education Facilities & Infrastructure Act of 2002 (PPEA) is intended to allow a responsible public entity to narrow and channel options through a multi-phase approach. PPEAs may be structured either as “solicited” or “unsolicited.” An unsolicited proposal is for an infrastructure solution where the public body has made it known that a problem exists that it needs to solve. This is often included in a locality’s comprehensive plan, the public body’s capital improvements program, or other strategic or long-term planning documents. A solicited proposal includes release and advertisement of a general request for proposals, for which creative responses are sought and evaluated. Regardless of whether a proposal is solicited or unsolicited, the phases are:

1. *Conceptual Phase.* Firms or groups of firms make proposals to the public body for how they would solve the relevant infrastructure problem. An evaluation committee is formed to analyze the proposals and meet with the proposers and advise the governing body on how best to proceed.
2. *Detail Phase.* The public body may—but need not—proceed to the detail phase with one or more proposers. The selected proposers and the public body’s evaluation committee might meet several more times to refine ideas to meet the public body’s needs.
3. *Interim Phase.* Based on the detail phase, the public body may proceed to the interim phase with one or more proposers. During the interim phase, design work, acquisition of real estate interests, arrangement of financing, permitting, and other contingencies, and negotiations of the comprehensive agreement begin in earnest. The proposer(s) may be paid for this work on a flat fee or time-and-material basis.
4. *Comprehensive Phase.* The comprehensive phase is when the “work” of the agreement really happens. There are really two sub-phases to the comprehensive phase:
  - a. *Construction Phase.* This is when the physical work occurs.
  - b. *Operations Phase.* This is the long-term operation and maintenance involved in achieving the goals of the project.

Not all PPEA comprehensive agreements contain both a construction phase and operations phase; some contain only one or the other.

Because of the flexibility built into the PPEA process, multiple considerations must be taken into account. PPEA proposals fall into several different types, and contain widely differing scopes of work. The simplest proposals focus on designing and building a project (a “Design-Build” or “Cost-Risk” PPEA), in which the contractor may be the designer, builder, or a construction-manager-at-risk. More complex projects can also include financing mechanisms that include both public financing and private financing or equity, ongoing operation of a qualifying project by a private partner, and/or maintenance of a qualifying project by a private partner (a “DBFOM PPEA”). Proposals for qualifying projects often also include combinations of these components.

### 2. Introduction.

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 if the public entity determines that there is a need for a project and that such a partnership might provide the project to the public in a more timely or cost-effective manner than standard procurement under the Virginia Public Procurement Act (“VPPA”). It may also incorporate innovative and creative concepts in project delivery, operation, maintenance,

or finance. The Danville City School Division (the “Schools”) is a responsible public entity under the Act, and adopts these guidelines to manage its implementation of the Act in individual situations.

The PPEA is a method of project delivery and incorporates many provisions of the VPPA, including its ethics provisions and many of its general competitive procurement principles. For reference, these Guidelines provide additional information on specific definitions and processes.

In order for a project to come under the PPEA, the project must meet the definition of a “qualifying project.” The Act contains a broad definition of a “qualifying project,” including most types of infrastructure and services projects undertaken by the Schools.

The Schools are a “responsible public entity,” and most often will be the responsible public entity under any PPEA project under these Guidelines. Among the types of projects relevant to the Schools that the PPEA permits are:

- Any building or facility that meets a public purpose and is developed or operated by or for any public entity;
- Any education facility, including, but not limited to a school building, any functionally related and subordinate facility and land to a school building (including any stadium or other facility primarily used for school events), and any depreciable property provided for use in a school facility that is operated as part of the public school system.

However, under some circumstances the Schools might work with other entities, such as the City of Danville, economic or industrial development authorities, or other political subdivisions of the Commonwealth to form positive partnerships for the community.

### **3. Guidelines for Submission.**

PPEA proposals may either be solicited (i.e., initiated by issuance of a solicitation by the Schools) or unsolicited (i.e., initiated by a potential private partner in response to a need expressed by the Schools).

#### **3.1. Unsolicited Proposals.**

The PPEA permits the Schools to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, finance, or operate a qualifying project. The Schools' general policy is to reserve acceptance of unsolicited proposals for cases of truly innovative ideas, because, in other cases, traditional procurement processes are generally viewed as more likely to achieve full and open competition from the bidding community. Additionally, the Schools discourage unsolicited proposals for capital projects when the Schools have already paid for design of the qualifying project because such a proposal will duplicate work. Accordingly, the Schools will likely reject an unsolicited proposal that lacks truly innovative ideas or are for a project wherein the design is substantially underway or completed.

#### **3.2. Solicited Proposals.**

The Schools may issue solicitations inviting proposals from private entities to develop, finance, operate, and/or maintain qualifying projects. In such a case the Schools will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The timeline of advertisement and acceptance of conceptual proposals for a solicited PPEA will be set forth in the solicitation.

The solicitation should specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation should be posted in such public areas as are normally used for posting of the Schools'

notices, including the Schools’ website. Notices will also be published in a newspaper or other publications of general circulation and posted on the Commonwealth’s electronic procurement website. The solicitation will 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 will be held as deemed appropriate by the Schools.

**3.3. Consultant Review and Proposal Review Fee.**

The Schools shall receive an analysis of the proposal from appropriate internal staff or outside advisers or consultants with relevant experience in determining whether to enter into an agreement with the private entity. In the case of unsolicited and competing unsolicited proposals and if so indicated in the solicitation in the case of solicited proposals, fees shall be paid in accordance with the following table, with percentages being of the total cost of the proposed project:

<b>Stage</b>	<b>Percentage</b>	<b>Minimum</b>	<b>Maximum</b>
<b>Conceptual:</b>	1/2 of 1%	\$2,500	\$25,000
<b>Detailed:</b>	1/2 of 1%	\$5,000	\$50,000

Fees shall be submitted with the proposals for each corresponding phase in the form of a cashier’s or certified check made payable to the Schools. The Schools may elect to refund any portion of fees paid in excess of its direct costs associated with evaluating the proposal. In the event either the initial processing fee of \$2,500 or the additional detailed proposal fee is determined by the executive director to be insufficient to cover all of the direct costs incurred or expected to be incurred by the Schools in reviewing the proposal, the proposer shall pay the additional amount(s) as specified by the executive director. Any proposal submitted without payment of the required fee or any failure to pay the additional amount(s) as specified by the executive director within five days will result in the proposal not being considered. The proposal fee may cover all or part of the initial review process. For example, the Schools may require a proposal fee in the amount sufficient to cover all anticipated direct costs associated with evaluating the proposal, or the Schools may require the smaller initial processing fee with an additional proposal fee to be charged should the project proceed beyond the initial review.

**4. Guidelines for Consideration of Proposals.**

**4.1. Choice of Process and Review Team.**

Upon deciding to issue a solicitation for a solicited proposal or deciding to accept an unsolicited proposal for consideration and competition, the Schools must first decide the appropriate process to follow. The PPEA requires the Schools to choose either to follow a process substantially similar to competitive sealed bidding under VPPA or to competitive negotiation under the VPPA. Competitive sealed bidding is a process in which bids are evaluated primarily on price. The lowest priced responsive (i.e., it will achieve the goal) proposal from a responsible (i.e., the firm has the finances, forces, and business integrity to carry out the job) proposer will be accepted. Competitive negotiation is a process in which multiple proposals are considered on a combination of factors which may include price, and the Schools chooses the best value proposal, i.e., the proposal that provides the optimal solution in terms of cost, expertise and capability of the proposer, and overall benefit to the Schools. The Schools may choose to use a points-based scoring system or a holistic approach to evaluation of proposals under the competitive negotiation approach.

The Schools must also choose an evaluation committee. The evaluation committee will typically be composed of a combination of members of the Schools’ professional staff, one or members of the School Board, and outside consultants unless the School Board determines that Schools staff possess the professional expertise necessary to evaluate the project. The purpose of the evaluation committee

is to evaluate proposals, meet with proposers, and work to negotiate the scope and form of the project, and finally to make a recommendation to the School Board on whether to go forward and with whom.

#### **4.2. Advertisement for Proposals.**

The Schools may issue Requests for Proposals (RFPs) or Invitations for Bids (IFBs) inviting proposals from private entities to develop or operate qualifying projects, for competitive negotiation processes and competitive sealed bidding processes, respectively. The Schools may use a two-part proposal process consisting of an initial conceptual phase and a detailed phase, or of a qualifications phase and a technical review phase. An RFP may invite proposers to submit proposals on individual projects identified by the Schools. In such a case the Schools should set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA. The Schools may establish anticipated timelines for selecting proposals for the review and selection of solicited proposals.

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

#### **4.3. Decision to Accept or Consider Unsolicited Proposals.**

Upon receipt of any unsolicited proposal, or group of proposals, and payment of any required fee by the proposer or proposers, the School Board should determine whether to accept the unsolicited proposal for the purpose of publication for competing proposals and conceptual-phase consideration. If the Schools determine not to accept the proposal and proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the proposer.

If the Schools choose to accept an unsolicited proposal for publication and conceptual-phase consideration, within ten business days of acceptance of the unsolicited proposal, it shall post a notice in a public area regularly used by the Schools for posting of public notices, including the Schools' website, for a period of not fewer than 45 days. The Schools shall also publish the same notice for a period of not fewer than 45 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 (eVA). The notice should state that the Schools (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 Schools and the PPEA. The notice also shall summarize the proposed qualifying project or projects, and identify their proposed locations.

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

#### **4.4. Affected Jurisdictions.**

Any private entity requesting approval from or submitting a conceptual or detailed proposal to the Schools must provide each affected jurisdiction—those localities that will not be part of the comprehensive agreement, but in whose jurisdictions some portion of the project will occur—with a copy of the private entity’s request or proposal by certified mail, express delivery, or hand delivery. Affected jurisdictions that are not “responsible public entities” under the proposed qualifying project shall have 60 days from the receipt of the request or proposal to submit written comments to the Schools and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the Schools, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction.

#### **4.5. Conceptual Review.**

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 shall be considered by the Schools for further review at the conceptual stage. Formatting suggestions for proposals at the conceptual stage are found in Section 5.

After reviewing the original proposal and any competing proposals submitted during the notice period, the Schools may determine:

- not to proceed further with any proposal;
- to proceed to the detailed phase of review with the original proposal;
- to proceed to the detailed phase with a competing proposal;
- to proceed to the detailed phase with multiple proposals; or
- to request modifications or amendments to any proposals.

In the event that more than one proposal will be considered in the detailed phase of review, the Schools will consider whether the unsuccessful proposer should be reimbursed for costs incurred in the detailed phase of review, and such reasonable costs may be assessed to the successful proposer in the comprehensive agreement.

Discussions between the Schools and private entities about the need for infrastructure improvements shall not limit the ability of the Schools to later determine to use standard procurement procedures to meet its infrastructure needs. The Schools retains the right to reject any proposal at any time prior to the execution of an interim or comprehensive agreement. If the Schools rejects a proposal initiated by a private entity that purports to develop specific cost savings, the Schools shall specify the basis for the rejection.

#### **4.6. Detailed Review.**

Review at the detailed state will be specifically tailored to the project and the proposal. Formatting suggestions for proposals at the conceptual stage are found in Section 5.

### **5. Proposal Preparation and Contents.**

#### **5.1. Conceptual Stage.**

The Schools require that proposals at the conceptual stage contain information in the following areas:

(i) qualifications and experience, (ii) project characteristics, (iii) project financing, (iv) anticipated public support or opposition, or both, (v) project benefit and compatibility and (vi) any additional information as the Schools may reasonably request to comply with the requirements of the PPEA. Suggestions for information to be included in proposals at this stage include the items listed below. Not every proposal will include all of these items, nor will this list be sufficient for all proposals. The list is to be used flexibly as a checklist for basic information necessary to review a proposal.

### **1. Qualifications & Experience:**

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach, and how each partner and major subcontractor in the structure fits into the overall team.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.
- 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 Interests Act, Chapter 31 (§§ 2.2-3100 et seq.) of Title 2.2.

### **2. Project Characteristics:**

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the Schools.
- c. Include a list of all federal, state, and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.
- e. Identify the projected positive social, economic, and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.



- g. Propose allocation 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 Schools's use of the project.
- i. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- j. List any other assumptions relied on for the project to be successful.
- k. List any contingencies that must occur for the project to be successful.

### **3. Project Financing:**

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify the proposed risk factors and methods for dealing with these factors.
- e. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the Schools' credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.

### **4. Operations and Maintenance:**

- a. If the proposal includes ongoing maintenance and operation by the private partner, provide a description of tasks the private partner may undertake.
- b. If the proposal includes ongoing maintenance and operation by the private partner, provide a description of major overhauls and life-cycle cost factors.

### **5. Project Benefit and Compatibility:**

- a. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.

- 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 Schools and whether the project is critical to attracting or maintaining competitive industries and businesses to the Schools or the surrounding region.
- e. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.
- f. Provide a statement setting forth participation efforts that are intended to be undertaken in connection with this project with regard to the following types of businesses: (i) minority-owned businesses, (ii) woman-owned businesses, and (iii) small businesses.

## **5.2. Detailed Stage.**

Detailed stage proposals and the procedures to evaluate them will differ significantly based on the type and scope of the project. However, issues to be addressed at the detailed stage include:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project;
2. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings;
3. A statement and strategy setting out the plans for securing all necessary property;
4. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties;
5. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility, and estimated annual operating expenses;
6. A detailed discussion of assumptions about user fees or rates, and usage of the project or projects;
7. Identification of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications;
8. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans or indication of the steps required for acceptance into such plans;
9. Explanation of how the proposed project would impact local development plans of each affected jurisdiction;

10. Identification of the executive management and the officers and directors of the firm or firms submitting the proposal. In addition, identification of any known conflicts of interest or other disabilities that may impact the Schools' consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to the Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§§ 2.2-3100 et seq.) of Title 2.2;
11. Additional material and information as the Schools may reasonably request.

## **6. Substantive Selection Criteria.**

There are several factors that the Schools may wish to consider when evaluating and selecting a proposal under the PPEA. The following are some of the factors that may be considered by the Schools in the evaluation and selection of PPEA proposals; however, the Schools reserve the right to reject any request or proposal at any time for any reason whatsoever.

### **A. Qualifications and Experience**

Factors to be considered in either phase of the Schools' review to determine whether the proposer possesses the requisite qualifications and experience include:

1. Experience with similar projects;
2. Demonstration of ability to perform work;
3. Leadership structure;
4. Project manager's experience;
5. Management approach;
6. Financial condition; and
7. Project ownership.

### **B. Project Characteristics**

Factors to be considered in determining the project characteristics include:

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

### **C. Project Financing**

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

1. Cost and cost benefit to the Schools;
2. Financing and the impact on the debt burden of the Schools;
3. Financial plan, including the degree to which the proposer has conducted due diligence investigation and analysis of the proposed financial plan and the results of any such inquiries or studies;
4. Opportunity costs assessment;
5. Estimated cost;
6. Life-cycle cost analysis;
7. The identity, credit history, past performance of any third party that will provide financing for the project and the nature and timing of its commitment, as applicable; and
8. Such other items as the Schools deems appropriate.

In the event the project is financed through the issuance of obligations that are deemed to be tax-supported by any locality, or if financing such a project may impact the Schools' or any locality's debt rating or financial position, the Schools or locality may select its own finance team, source, and financing vehicle.

### **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 include:

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

### **E. Other Factors**

Other factors that may be considered by the Schools 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;
7. The private entity's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
8. The private entity's plans to employ local contractors and residents;

9. The recommendation of a committee of representatives of members of the Schools and the appropriating body which may be established to provide advisory oversight for the project; and
10. Other criteria that the Schools deems appropriate.

## **7. Additional Posting and Public Notice Requirements.**

- 7.1. In addition to the posting requirements set forth elsewhere in these Guidelines and the PPEA, the Schools shall hold a public hearing on the proposals during the proposed review process, but not later than 30 days prior to entering into an interim or comprehensive agreement.
- 7.2. 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 Schools, the Schools shall post the proposed agreement in the following manner: on the Schools' website or by publication in a newspaper of general circulation in the area in which the contract work is to be performed, to include a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in order to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

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

Any studies and analyses considered by the Schools in its review of a proposal shall be disclosed to the appropriating body at some point prior to the execution of an interim or comprehensive agreement.

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

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 effect on the financial interest or bargaining position of the Schools or private entity.

Such procurement records shall not include (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§§ 59.1-336 et seq.) or (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. However, to the extent access to procurement records are compelled or protected by a court order, then the Schools must comply with such order.

## **8. Freedom of Information Act Requirements.**

### **8.1. General Applicability.**

Documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that subdivision 11 of Virginia Code § 2.2-3705.6 exempts certain documents

from public disclosure. FOIA exemptions, however, are discretionary, and the Schools may elect to release some or all of the documents except to the extent documents are:

- (a) Trade secrets of the private entity as defined by the Uniform Trade Secrets Act (Va. Code §§ 59.1-336 et seq.);
- (b) Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including, but not limited to, balance sheets and financial statements; or
- (c) Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the Schools will comply with the provisions of such order.

### **8.2. Protection from Mandatory Disclosure for Certain Documents Submitted by Private Entity.**

Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the Schools at the time the documents are submitted designating with specificity the documents for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference to one or more of three classes of records listed in Section 8.1.

Upon receipt of a written request for protection of documents, the Schools shall determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the Schools or private entity in accordance with Section 8.1. The Schools shall make a written determination of the nature and scope of the protection to be afforded by the Schools under this subdivision. If the written determination provides less protection than requested by the private entity, the private entity should be afforded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be afforded protection from release although what may be protected must be limited to the categories of records identified in Section 8.1.

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

If a private entity fails to designate trade secrets, financial records, or other confidential information or proprietary information from protection for disclosure, such information, records or documents shall be subject to disclosure under FOIA.

### **8.3. Protection from Mandatory Disclosure for Certain Documents Produced by the Schools.**

The Schools may withhold from disclosure memoranda, staff evaluations, or other records prepared by the Schools, 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 comprehensive agreement, the financial interest or bargaining position of the Schools would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the Schools.

Cost estimates relating to a proposed procurement transaction prepared by or for the Schools shall not

be open to public inspection.

**8.4. Documents that May Not Be Withheld.**

The Schools may not withhold the following documents (among others):

- (a) procurement records other than those subject to the written determination of the Schools;
- (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 Schools and the private entity;
- (c) information concerning the terms and conditions of any financing arrangement that involves the use of 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 by a court order, then the Schools must comply with such order.

**APPENDIX A – CHECKLIST**

<b>Submission Requirement</b>	<b>YES</b>	<b>NO</b>	<b>Waived</b>
<b>Qualifications and Experience</b>			
1. 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.			
2. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.			
3. Provide the names, addresses, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.			
4. 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.			
5. 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 Interests Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.			
<b>Project Characteristics</b>			
6. 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. Identify and fully describe any work to be performed by the Schools.			
8. 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.			
9. Identify any anticipated adverse social, economic, and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project.			
10. Identify the projected positive social, economic, and environmental impacts of the project.			



11. Identify the proposed schedule for the work on the project, including the estimated time for completion.			
12. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.			
13. State assumptions related to ownership, legal liability, law enforcement, and operation of the project and the existence of any restrictions on the Schools' use of the project.			
14. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.			
15. List any other assumptions relied on for the project to be successful.			
16. List any contingencies that must occur for the project to be successful.			
<b>Project Financing</b>			
17. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.			
18. Submit a plan for the development, financing, and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include supporting due diligence studies, analyses, or reports.			
19. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all significant fees associated with financing given the recommended financing approach. In addition complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.			
20. Identify the proposed risk factors and methods for dealing with these factors.			
21. Identify any local, state, or federal resources that the proposer contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the Schools' credit or revenue.			
22. Identify the amounts and the terms and conditions for any revenue sources.			

23. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.			
<b>Project Benefits and Capability</b>			
24. Identify who will benefit from the project, how they will benefit, and how the project will benefit the overall community, region, or state.			
25. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.			
26. 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.			
27. Describe the anticipated significant benefits to the community, region or state, including anticipated benefits to the economic condition of the Schools and whether the project is critical to attracting or maintaining competitive industries and businesses to the Schools or the surrounding region.			
28. Describe compatibility with the local comprehensive plan, local infrastructure development plans, the capital improvements budget, or other government spending plan.			
29. 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.			
<b>Other</b>			
30. Written request for protection of confidential/proprietary materials, providing justification as to (i) trade secrets, (ii) financial records, or (iii) other information that would otherwise affect the financial interest or bargaining position of the Schools or private entity.			

Based on Danville City School Division’s PPEA Guidelines and Va. Code § 56-575.4(A).

**Attach reasons for waivers in separate memorandum.**