

MIDDLESEX COUNTY

PURCHASING POLICY IMPLEMENTING PUBLIC-PRIVATE EDUCATION FACILITIES AND INFRASTRUCTURE ACT OF 2002 AND PUBLIC-PRIVATE TRANSPORTATION ACT OF 1995

I. Introduction

- A. The Public-Private Education Facilities and Infrastructure act of 2002, Va. Code Sections 56-575.1, *et seq.*, (the "PPEA") and the Public-Private Transportation Act of 1995, Va. Code Section 56-556, *et seq.*, (the "PPTA") (together, the "Acts") grant the County of Middlesex (the "County"), a responsible public entity as defined in the Acts, the authority to create public- private partnerships for the development of a wide range of projects for public use if the County determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the Acts, and the County will define the respective rights and obligations of the County and the private operator. Although guidance with regard to the application of the PPEA and PPTA is provided herein, it will be incumbent upon the County and all private entities to comply with the provisions of the PPEA or PPTA as applicable.
- B. In order for a project to come under the PPEA or the PPTA, it must meet the definition of a "qualifying project" as defined in the applicable Acts. The Acts contain broad definitions of qualifying projects that include, but are not limited to public buildings and facilities and transportation facilities of all types. For example:
1. An education facility, including, but not limited to, a school building (including any stadium or other facility primarily used for school purposes), 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;
 2. A building or facility for principal use by any public entity;
 3. Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
 4. Utility and telecommunications and other communications infrastructure;
 5. A recreational facility; or
 6. A transportation facility such as a road, mass transit facility, parking facility or other commercial facility used for the transportation of persons or goods.

- C. The Acts establish requirements that the County must adhere to when reviewing and approving proposals received pursuant to the PPEA or the PPTA. In addition, the Acts specify the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the County and the private entity. Any proposal received or solicited by the County pursuant to either the PPEA or the PPTA will be reviewed in accordance with the provisions of the applicable Act and these regulations as they may apply.
- D. The Middlesex County Board of Supervisors (the "Board") adopted this policy effective August 5, 2014 to implement the PPEA and the PPTA. Therefore, in accordance with Board directives, the County Administrator will follow this policy to receive and evaluate any proposal submitted to the County under the provisions of the PPEA or the PPTA. The procedures and regulations provided in this policy may be amended only by an act of the Board.
- E. The County Administrator is authorized to designate a working group to be responsible for evaluating proposals and negotiating the comprehensive agreement.
- F. The individual designated by the County Administrator to serve as the point of contact for implementation of procedures, to receive proposals submitted under the PPEA or the PPTA and to respond to inquiries regarding the PPEA or the PPTA or this adopted policy shall be the Purchasing Manager.

II. General Provisions

A. Proposal Submission

A proposal under either Act may be either solicited by the County or delivered by a private entity on an unsolicited basis. Proposers may be required to follow a two- part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein.

1. The Acts allow private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations. 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 2002 for the development of education facilities using public- private partnerships.
2. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the proposed qualifying project and the benefits to be derived from the project by the County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a comprehensive scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the

financial feasibility of the proposed project. Initial proposal submittals should include not less than ten (10) originals. The County may, at any time, require the proposer to provide additional information, additional copies of prior submissions, and/or clarification to any submission.

B. Affected Local Jurisdictions

The term "affected local jurisdiction" means any county, city or town in which all or a portion of a qualifying project is located. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County must provide any other affected jurisdiction with a copy of the private entity's request or proposal by certified mail, express delivery or hand delivery within five (5) business days of submission of the proposal to the County. Evidence of the delivery of the proposal to any other affected local jurisdiction shall be provided within five (5) business days of such delivery. Any affected jurisdiction shall have sixty (60) days from the receipt of the request or proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) jurisdiction's comprehensive plan, (ii) jurisdiction's infrastructure development plans, and (iii) capital improvements budget or other government spending plan. Comments received within the sixty (60) day period shall be given consideration by the County, and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the sixty (60) day period for the receipt of comments from other affected local jurisdictions.

C. Proposal Review Fee

For unsolicited proposals and unsolicited competing proposals, the County will require an initial processing fee of Five Thousand Dollars (\$5,000.00) with an additional proposal fee of Ten Thousand Dollars (\$10,000.00) to be charged should the project proceed beyond the initial review. The initial processing fee shall be submitted with the initial proposal or competing proposal. The County will refund any portion of fees paid in excess of its direct costs which include, but are not limited to, all staff costs, outside consultants, financial advisors, engineers and attorney's fees associated with evaluating the proposal. In the event either the initial processing fee of Five Thousand Dollars (\$5,000.00) or the additional proposal fee of Ten Thousand Dollars (\$10,000.00) is insufficient to cover all of the direct costs incurred by the County, the proposer shall pay such additional direct costs incurred by the County in reviewing the proposal.

D. Freedom of Information Act

1. Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information act ("FOIA"). In accordance with Section 2.2-3705 of FOIA, such documents are releasable, if requested, except to the extent that they relate to (i) confidential proprietary information submitted to the County under a promise of confidentiality or (ii) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the County or the private entity or the bargaining position of either party.

2. Subsection 56-575.4 G of the PPEA imposes an obligation on the County and any affected jurisdiction to protect confidential proprietary information submitted by a private entity or operator. When the private entity requests that the County not disclose information, the private entity must (i) invoke the exclusion in writing when the data or materials are submitted to the County or before such submission, (ii) identify the specific data and particular materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

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

E. Use of Public Funds

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

F. Applicability of Other Laws

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

III. Solicited Proposals

- A. The County may invite bids or proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain or operate qualifying projects. The County may use a two-part process consisting of an initial conceptual phase and

a detailed phase. The County will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the applicable Act.

- B. The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the County's notices, including the County's website. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Informational meetings and/or pre-proposal conferences may be held as deemed appropriate by the County.

IV. Unsolicited Proposals

- A. The PPEA and the PPTA permit the County to receive and evaluate unsolicited proposals from private entities to acquire, design, construct, improve, renovate, expand, equip, maintain, or operate a qualifying project.
- B. The County 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.
- C. Decision to Accept and Consider Unsolicited Proposal; Notice
 1. Upon receipt of any unsolicited proposal or group of proposals and payment of the required fee by the proposer or proposers, the County will determine whether to accept the unsolicited proposal for publication and conceptual-phase consideration. If the County determines not to accept the proposal and not proceed to publication and conceptual-phase consideration, it should return the proposal, together with all fees and accompanying documentation, to the proposer.
 2. If the County chooses to accept an unsolicited proposal for conceptual-phase consideration, it shall post a notice in a public area regularly used by the County for posting of public notices for a period of not less than forty-five (45) days. The County shall also publish the same notice in one or more newspapers or periodicals of general circulation in the County and the Virginia Business Opportunities to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have at least forty-five (45) days from the date the notice is first published by the County to submit competing unsolicited proposals. The notice shall state that the County (i) has received and accepted an unsolicited proposal under the PPEA or PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with the procedures adopted by the County and the PPEA or PPTA. The notice also shall summarize the proposed qualifying project or projects,

and identify their proposed locations.

D. Initial Review at the Conceptual Stage

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

V. Unsolicited Proposal Preparation and Submission

A. Format for Submissions at the Conceptual Stage

The County will require that unsolicited proposals at the conceptual stage contain the following information in the following format plus such other information as the County may reasonably request to complete its review or to comply with the requirements of the PPEA or PPTA:

B. Qualifications and Experience

1. Identify the legal structure of the entity or consortium of entities making the proposal. Identify the organizational structure for the project, the management approach and how each entity in the structure fits into the overall team.
2. Describe the experience of the entity or consortium of 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 the length of time in business, business experience, public sector experience and other engagements of the entity or consortium of entities. Include the identity of any entities that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties.

3. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the entity or consortium of entities who will be directly involved in the project or who may be contacted for further information.
4. Provide a current or most recently audited financial statement of the entity or entities and each partner with an equity interest of ten percent (10%) or greater, and/or each entity or partner that has performed work of aggregate value exceeding Two Hundred and Fifty Thousand Dollars (\$250,000.00) in Middlesex County in the past ten (10) years.
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 Interest Act, Chapter 31 (Section 2.2-3100 et seq.) of Title 2.2.
6. For each entity, major subcontractor, key principal, and/or project manager that will be utilized or involved in the project, provide a statement, listing the prior projects and clients of each for the past five (5) years and contact information for same (name, address, telephone number, e-mail address). If an entity 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 shall be required to submit all performance evaluation reports or other documents, which are in its possession evaluating performance during the preceding five (5) years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project development, operation and completion.

C. Project Characteristics

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.
2. Identify and fully describe any work to be performed by the County or any other public entity.
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.

4. Identify any anticipated adverse social, economic, environmental and transportation impacts of the project measured against the jurisdiction's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.
5. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the jurisdiction's comprehensive land use plan and applicable ordinances and design standards.
6. Identify the proposed schedule for the work on the project, including sufficient time for the County's review and the estimated time for completion.
7. Proposed allocation of risk and liability, and assurances for timely completion of the project.
8. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the County's use of the project.
9. Provide information relative to phased openings of the proposed project.

D. Project Financing

1. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
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 County's adopted operational standards.
3. Include a list and discussion of assumptions underlying all major elements of the plan.
4. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.
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.

6. Identify the need, if any, for the County to provide either its general obligation or moral obligation backing. The underlying assumptions should address this need and/or state that the credit would be via a "Service Agreement", for example. Any debt issuance should be expected to receive an investment grade rating from a nationally recognized statistical rating agency. If the natural rating is not investment grade, the County may require the use of credit enhancements.
7. Outline what impact, if any, a drop in interest rates would have on the ultimate annual project cost. Indicate if there is a method to refinance for cost savings or does the firm only receive benefit of this potential.
8. Outline the financial penalties, if any, that would result should the County wish to terminate a project early or restructure the cash flows for some reason of its own choosing. The firm should be specific on this point.
9. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) is (are) using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

E. Project Benefit and Compatibility

1. Identify who will benefit from the project, how they will benefit and how the project will benefit the County and the overall community.
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.
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.
4. Describe any anticipated significant benefits to the community and the County, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the County and whether the project is critical to attracting or maintaining competitive industries and businesses to the County.
5. Describe compatibility with the County's and/or affected jurisdiction's local comprehensive plan (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvements plan and capital budget or other government spending plan.
6. Any additional information as the County may request

F. Format for Submissions at the Detailed Stage

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

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposal project. 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.
2. Information relating to the current plans for development of facilities to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected jurisdiction.
3. 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 County or affected jurisdiction to condemn.
4. A detailed listing of all entities, 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.
5. 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 County adopted service levels and standards.
6. 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. 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 County and/or affected jurisdiction's 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.

9. Explanation of how the proposed project would impact the County's or affected jurisdiction's development plans.
10. Identification of any known conflicts of interest or other factors that may impact the County's consideration of the proposal, including the identification of any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Section 2.2-3100 et seq.) of Title 2.2
11. Additional material and information as the County may reasonably request.

VI. Proposal Evaluation and Selection Criteria

In evaluating any request or proposal, the County may rely upon internal staff reports or the advice of outside advisors or consultants. Some or all of the following items, along with the specified information required under V. above, shall be considered in the evaluation and selection of PPEA and PPTA proposals. The County, however, reserves and retains 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 County's review to determine whether the proposer possesses the requisite qualifications and experience may include, but are not necessarily limited to, the following:

- 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 may include, along with the specified information required under V. above, but are not necessarily limited to, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology and technical feasibility;
5. Conformity to state, County or affected jurisdiction laws, regulations, and standards;
6. Environmental impacts;

7. Condemnation impacts;
8. State and local permits; and
9. Maintenance of the project.

C. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include, along with the specified information required under V. above, but are not necessarily limited to, the following:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan including default implications;
4. Estimated cost; including debt source, operating costs, etc.; and
5. Life-cycle cost analysis.

D. Project Benefit and Compatibility

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

1. Community benefits;
2. Community support or opposition, or both;
3. Public involvement strategy;
4. Compatibility with existing and planned facilities;
5. Compatibility with County, regional, and state economic development efforts; and
6. Compatibility with County's and any affected jurisdiction's land use plan, transportation plan, and capital improvements plan.

VII. Contract

A. Prior to acquiring, designing, constructing, improving, renovating, expanding, equipping, maintaining, or operating the qualifying project, the selected proposer shall enter into a written contract with the County. Each contract shall define the rights and obligations of the County and the selected proposer with regard to the project.

B. The terms of the contract shall be tailored to address the specifics of the project and shall include, but not be limited to, the following:

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;
2. The review and approval of plans and specifications for the qualifying project by the County;

3. The rights of the County to inspect and/or terms under which the County would receive certified third-party inspections of the qualifying project to ensure compliance with the contract;
 4. The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;
 5. The monitoring of the practices of the operator by the County to ensure proper maintenance, safety, use and management of the qualifying project;
 6. The terms under which the operator will reimburse the County for services provided;
 7. The policy and procedures that will govern the rights and responsibilities of the County and the operator in the event that the contract is terminated or there is a material default by the proposer, including the conditions governing assumption of the duties and responsibilities of the proposer by the County, and the transfer or purchase of property or other interests of the proposer by the County;
 8. The terms under which the proposer will file appropriate financial statements on a periodic basis;
 9. The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
 - (a) A copy of any service contract shall be filed with the County.
 - (b) A schedule of the current user fees or lease payments shall be made available by the operator to any member of the public upon request.
 - (c) Classifications according to reasonable categories for assessment of user fees may be made.
 10. The terms and conditions under which the County will contribute financial resources, if any, for the qualifying project; and
 11. Other requirements of the PPEA or PPTA or provisions that the County determines serve the public purpose of the PPEA or PPTA.
- C. The contract and any amendments thereto shall be approved and entered into in writing by the County Board of Supervisors.