

These PPEA Guidelines are adopted by the Charlottesville City Council, as a “Responsible Public Entity”, pursuant to Va. Code §56-575.3:1. The purpose of these guidelines is to provide a framework for compliance with The Public Private Education Facilities and Infrastructure Act of 2002 (Va. Code §§56-575.1 et seq.) The City intends that these PPEA Guidelines will be used to promote timely establishment, implementation, or installation of education facilities, technology infrastructure and other public infrastructure and government facilities that will serve a public need and purpose.



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I. Introduction

The Public Private Education Facilities and Infrastructure Act of 2002, set forth within §§56-575.1 et seq. of the Virginia Code (“PPEA”) allows a **Private Entity** to develop or operate certain “**Qualifying Projects**,” specifically:

- education [public school] facilities;
- any building or facility that meets a public purpose and is developed or operated by or for the City;
- any improvements necessary to enhance public safety or security of buildings to be principally used by the City;
- technology infrastructure; or
- improvements necessary or desirable to any unimproved City-owned real estate, including, without limitation, City parks.

As defined in Virginia Code §56-5751: “**Private entity**” means any natural person, corporation, general partnership, limited liability company, limited partnership, joint venture, business trust, or other business entity, as well as any public benefit corporation or non-profit entity.

A “**Qualifying Project**” may be undertaken by a Private Entity pursuant to an agreement with a public entity (such as the City of Charlottesville) which has the power/authority to develop or operate the Qualifying Project. These agreements are sometimes referred to as a public-private partnerships or “PPEA Agreements”. A PPEA agreement may include provisions by which the parties (i) plan, design, develop, finance, lease, acquire, install, construct or expand a Qualifying Project, and (ii) arrange for the delivery of services to be provided as part of a Qualifying Project.

The Charlottesville City Council adopts these Guidelines to comply with the requirements of the PPEA. The provisions of the PPEA, as amended, are incorporated into these Guidelines by reference, as if set forth herein verbatim. In the event of a conflict between these Guidelines and any provision of PPEA, the PPEA provision shall govern and the Guidelines shall be interpreted and applied in a manner that will conform to the requirements of the PPEA. A copy of the current PPEA enacted by the Virginia General Assembly can be accessed at:

<https://law.lis.virginia.gov/vacode/title56/chapter22.1/>

II. General Provisions

A. Administration

1. Whenever these Guidelines require an action to be taken by “City Council”, then the action may only be taken or authorized by the Charlottesville City Council.
2. The Charlottesville City Manager (“City Manager”) is authorized to act as City Council’s agent for administration and interpretation of these Guidelines. If these Guidelines do not expressly require an action to be taken by the Charlottesville City Council, then any action

specified to be taken by the “City” may be taken by the City Manager or any person(s) to whom he or she delegates responsibility for such action.

- a. The City Manager is hereby designated as the City official to whom PPEA inquiries and Unsolicited PPEA Proposals must be directed.
- b. Upon receipt of a PPEA inquiry or an Unsolicited PPEA Proposal, the City Manager may delegate responsibility to others for responding to an inquiry, for evaluating a proposal, and for other actions, consistent with the requirements of these Guidelines.
- c. The City Manager is authorized to establish a standing working group of City employees, to be responsible for evaluating any PPEA Proposal, negotiating terms and conditions for any interim or comprehensive PPEA Agreement, and for making recommendations to the City Manager on those matters.

B. Consultants

Analysis of a Private Entity’s request for approval of a Qualifying Project shall be performed by: (1) City employees, or (2) qualified professionals (which may include an architect, professional engineer, or certified public accountant) who are not City employees and who are selected in accordance with requirements of the Virginia Public Procurement Act or the City’s Small Purchase Procedures.

C. Commencement of a PPEA Transaction

Any Private Entity seeking authorization to develop or operate a Qualifying Project must first obtain the City Council’s approval.

A Private Entity may initiate the approval process itself (*see Sec. III*, regarding “**Unsolicited Proposals**”), or it may respond to a solicitation issued by the City seeking PPEA Proposals for a desired project (*see Sec. IV*, regarding “**City Initiated PPEA Transactions**”).

D. Relationship to the Virginia Public Procurement Act

The Virginia Public Procurement Act, set forth within Va. Code §§2.2-4300 t seq. (“VPPA”) does not apply to PPEA agreements.

However, the PPEA prohibits the City from entering into comprehensive agreements with Private Entities, unless the procedures used by the City to evaluate PPEA Proposals are *consistent with* certain competitive selection procedures referenced within VPPA. *See* PPEA §56-575.16. These Guidelines have incorporated the PPEA’s requirements for implementation of competitive selection procedures.

E. Relationship to the Virginia Freedom of Information Act (FOIA)

The Virginia Freedom of Information Act (“FOIA”) provides an express exemption for records of

PPEA transactions, to protect parties' information during the review of proposals and negotiation of an agreement, and to protect a Private Entity's trade secrets and proprietary business information. *See* VPPA §2.2-3705.6(11); *see also* PPEA §56-575.17.

Every Private Entity is responsible for familiarizing itself with the provisions of PPEA §56-575.15, and for taking actions necessary to protect its confidential information. Rarely will the entire contents of a proposal or other submission consist of protectable information; therefore, simply marking an entire file or submission as "confidential" may not be enough to satisfy the PPEA's requirement for marking and justification of specific information to be protected.

The City shall not be responsible for marking any records, or for protecting records which have not been adequately marked by a Private Entity. If a Private Entity wishes to protect *specific information or records, or portions thereof*, from disclosure, *the Private Entity must clearly mark such information or records prior to submitting them to the City*. The markings shall designate, *with specificity* (i) the specific information and records, or portions thereof, for which the protection is being sought, and (ii) the legal basis for protection.

F. **Affected Jurisdictions**

If a Private Entity submits a PPEA Proposal to the City for a Qualifying Project that would be located, in part, in Albemarle County, then the Private Entity must provide Albemarle County a copy of the PPEA Proposal. Albemarle County will have 60 days from the receipt of the Proposal to submit written comments to the City and to indicate whether the proposed Qualifying Project is compatible with (i) its Comprehensive Plan, (ii) its infrastructure development plans, or (iii) its capital improvements budget or other government spending plan. Comments received within the 60-day period shall be given consideration by the City; however, no negative inference shall be drawn from the absence of comment by the County.

G. **Other Applicable Legal Requirements**

When engaged in a PPEA transaction, and when engaged in the development or operation of a Qualifying Project, the City and a Private Entity will each remain obligated to comply with applicable provisions of federal and state laws and regulations, except as may expressly be excused or exempted by the PPEA.

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. The City's budget, appropriations and public accounting standards associated with the expenditure or obligation of public funds shall be incorporated into the planning and execution of Qualifying Projects.

III. Submission of Unsolicited PPEA Proposals

A. General Instructions and Information

A Private Entity may initiate a PPEA process by submitting an Unsolicited PPEA Proposal for a Qualifying Project to the City for consideration. (*Ref. PPEA §56-575.3(A)*)

1. *Contents; format*

Every Unsolicited PPEA Proposal shall be accompanied by the materials and information required by PPEA §56-575.4 (A)(1) through (9). The Private Entity shall also provide such additional materials and information as the City may reasonably request, *see* PPEA §56-575.4(A)(10).

Each Unsolicited PPEA Proposal shall be submitted in a dual format:

- a. Initially, the Private Entity shall submit a “**Conceptual Proposal**”, containing a description of the proposed Qualifying Project, and the information set forth within PPEA §56-575.4(A)(1) through (A)(4). Each facility, building, improvement and item of infrastructure which is to be included as part of a Qualifying Project shall be identified within the Conceptual Proposal.
- b. If the City elects to proceed with a detailed review of an Unsolicited PPEA Proposal, or any competing proposals, then each Private Entity whose proposal is under consideration shall, upon request by the City, submit a “**Detailed Proposal**”. The Detailed Proposal will expand the information presented in the conceptual proposal, by including all of the materials and information referenced within PPEA § 56-575.4(A)(5) through (A)(10).

2. *Application Fee*

Every Unsolicited PPEA Proposal shall be accompanied by an application fee in the amount of five hundred dollars (\$1,500.00).

The application fee will not apply to a charitable institution or nonprofit organization, if the City enters into an agreement with the entity and the building, facility or improvements to be constructed or installed are to be funded primarily by private fundraising efforts of the institution/organization.

3. *Acceptance or Rejection*

Upon receipt by the City of an Unsolicited PPEA Proposal, the City will determine whether or not to accept the proposal for consideration. The City will consider only those Unsolicited PPEA Proposals which: (i) comply with requirements of the PPEA and these Guidelines, (ii) contain sufficient information for a meaningful evaluation of public benefits, financial and non-financial, and (iii) are provided in an appropriate format.

The City may reject any Unsolicited PPEA Proposal at any time. If the City rejects an Unsolicited PPEA Proposal that purports to develop specific cost savings, the City will specify the basis for the rejection. An Unsolicited PPEA Proposal rejected prior to posting of public notice (*see* paragraph (B), below) shall be returned to the Private Entity together with all fees and accompanying documentation.

If an Unsolicited PPEA Proposal is accepted by the City for consideration, public notice of the proposal shall be given as provided below.

B. Public Notice of Receipt of an Unsolicited Proposal

1. *Notice of Receipt*

Within ten (10) working days after acceptance of an Unsolicited PPEA Proposal for consideration, the City will post a copy of the Conceptual Proposal so that it will be available for public inspection in accordance with the posting requirements of PPEA §56-575.17(A), which shall include, without limitation, posting on the Commonwealth of Virginia’s electronic procurement website. Records and information exempt from FOIA requirements shall not be required to be posted or otherwise made available for public inspection.

2. *Solicitation of Competing Proposals*

At the same time an Unsolicited PPEA (Conceptual) Proposal is posted for public inspection, the City shall also post notice that the City will receive competing PPEA Proposals for a period of time specified in the notice, no fewer than 45 days from the date of such posting (“Solicitation”).

The Solicitation shall set forth in detail a description of the Unsolicited PPEA Proposal, sufficient to encourage the submission of competitive proposals.

3. *Staff Responsibility for Assurance of Competition*

To ensure that sufficient information is available upon which to base the development of a serious competing proposal, representatives of the City familiar with the Unsolicited PPEA Proposal shall respond to inquiries received from Private Entities interested in submitting competing proposals, and upon request shall meet in person with those Private Entities.

C. Consideration of competing proposals

1. *Evaluation Process*

The City will evaluate an Unsolicited PPEA Proposal, and any competing proposals received in response to the public notice referenced in ¶ III.B.1, above, using one of the following evaluation procedures:

- a. *Competitive negotiation process*—upon a written determination that a competitive negotiations process would be advantageous to the City and the general public, the City may utilize a competitive negotiations process to evaluate competing PPEA Proposals. The determination shall be rendered in accordance with PPEA §56-575.16(2).

If a competitive negotiations process is utilized, a protocol for such process shall be established by the City Manager consistent with the procurement of “services other than professional services” by “competitive negotiation” as set forth in VPPA §2.2-4301 and § 2.2-4310(B) (*see also* PPEA §56-575.16(2)). The written protocol shall include elements and evaluation factors best suited to the type of project that is the subject of the unsolicited PPEA. Prior to the posting of public notice as referenced in ¶ III.B.1, above, the written protocol must be approved in advance by the City’s Procurement Manager and City Attorney’s Office as being consistent with the statutory provisions referenced in this paragraph.

- b. *Competitive sealed bidding*—unless the City proceeds pursuant to paragraph (a), above, the City will utilize a competitive bidding process, consistent with the procedures for *competitive sealed bidding*, as defined in VPPA §2.2-4301. (*See* PPEA §56-575.16(1)). A written protocol for the competitive bid process shall be established by the City Manager, consistent with the procedures set forth in Va. Code §2.2-4310, including such elements and evaluation factors as may be best suited for the type of project that is the subject of the unsolicited PPEA. Prior to the posting of public notice as referenced in ¶ III.B.1., above, the written protocol must be approved in advance by the City’s Procurement Manager and City Attorney’s Office as being consistent with the statutory provisions referenced in this paragraph.

2. *Criteria for Choosing Among Competing Proposals*

Each of the procedures referenced in ¶ III.C.1, above, shall include reasonable Project-specific criteria for choosing among competing Conceptual and Detailed Proposals. Project-specific criteria shall be appropriate to the framework selected by the City for evaluation of proposals (competitive negotiation or competitive bidding). Any one or more of the following may be included among such criteria:

- a. Public purposes and public benefits (financial and non-financial)
- b. Priority/ urgency of public need
- c. Cost-benefit analysis
- d. Assessment of Opportunity Cost
- e. Risk sharing, including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the Private Entity
- f. Revenue sources (including, without limitation, “user fees”, lease payments, service fees, etc.);
- g. Sources of financing and funding
- h. Schedule for delivery (anticipated time needed to establish the project, including all phases (design, construction, equipping, commencement of use, etc.)
- i. Life-cycle costing
- j. Specific cost savings, if any, that the Private Entity will achieve in developing and/or operating a Qualifying Project, and demonstration that the promised cost savings could not be achieved by usual methods of local government funding, procurement or construction

- k. Corroboration of data and information (e.g., disclosure of studies and analyses relied upon by a Private Entity)
- l. Value analysis
- m. Inspection, testing, quality, workmanship, delivery schedule, and suitability for a particular purpose
- n. Scope, costs and duration of the Qualifying Project
- o. Scope, costs and duration of services to be provided as part of a Qualifying Project
- p. Willingness/ ability to enter into interim and comprehensive agreements compliant with all mandatory requirements of the PPEA
- q. Local citizen comments; comments of City departments
- r. Compliance with a minority business enterprise (MBE) participation plan, or good faith efforts to comply
- s. Plans to employ local contractors and residents
- t. Special Qualifications of the Private Entity
- u. General reputation, industry experience and financial capacity of the Private Entity
- v. Special qualifications, knowledge, skills and experience of the employees and contractors proposed to be used by a Private Entity
- w. Proposed design of the Qualifying Project
- x. Consistency of the general nature and location of proposed public facilities with the City's Comprehensive Plan
- y. Consistency with City Council's Vision and Strategic Plan
- z. Any other criteria deemed necessary or appropriate by the City

3. *Review and Evaluation of Proposals by the City*

The City will review and evaluate proposals, in accordance with the protocol and criteria established in C.1. and C.2, above.

IV. PPEA Transactions Initiated by the City

A. **Competitive negotiation or bidding process is required**

The City may solicit proposals (or invite bids) from Private Entities for the development or operation of a desired Qualifying Project. *However*, the City Council may enter into a comprehensive agreement with a Private Entity only if the City has utilized one of the procedures listed in Section III.C.1.a or III.C.1.b, above. Within its solicitation/ invitation, the City shall specify reasonable selection criteria, consistent with Section III.C.2, above.

B. **Two-stage consideration: Concept Proposals and Detailed Proposals**

The competitive process utilized by the City shall be designed so that it can be implemented in **two stages: (1)** submission and review of initial bids or proposals (each, a “**Conceptual Proposal**”) and then **(2)** submission and review of detailed bids or proposals (each, a “**Detailed Proposal**”).

1. ***Posting of Conceptual Proposals; public hearing***

Conceptual proposals received by the City shall be posted as set forth in Section III.B.1, above.

2. ***Review and Evaluation of Proposals by the City***

The City will review and evaluate Detailed Proposals, in accordance with the process specified within the City's solicitation/invitation. The City may reject any Proposal, at any time.

V. City Council Approval of a Qualifying PPEA Project

PPEA Proposals under consideration by the City pursuant to Sections III (Unsolicited) or IV (City Initiated) above, shall be reviewed and acted upon by City Council as follows:

A. Review of Proposals at a Public hearing

In the event the City determines that a proposed Qualifying Project warrants consideration by City Council, then the competing PPEA Detailed Proposals shall be scheduled for a public hearing by City Council during the proposal review process. The public hearing shall be held at least 30 days prior to the City Council's vote to enter into any interim or comprehensive agreement. Trade secrets, financial records, and other records of a Private Entity which are exempt under applicable provisions of FOIA, shall not be posted or disclosed in connection with the public hearing.

(Ref. PPEA §56-575.17(B))

Following the public hearing, and upon completion of the City's review and evaluation of Detailed Proposals, the City shall prepare final recommendations for City Council's consideration.

B. Approval of PPEA Project by City Council

City Council may grant approval for a Private Entity to develop and/or operate a Qualifying Project, if City Council determines that the Qualifying Project will serve the public purpose of the PPEA pursuant to PPEA §56-575.4(c)(1)-(3). In connection with its approval, City Council shall establish a date for the commencement of activities related to the Qualifying Project.

City Council is not required to grant approval, and may reject any or all PPEA Proposals, at its sole discretion. If City Council declines to grant approval for a Private Entity to develop or operate a Qualifying Project, and the Private Entity's proposal purports to deliver specific cost savings, then City Council shall specify the basis for its rejection of the proposal.

C. Interim or Comprehensive PPEA Agreement

City Council's approval, if granted, shall be subject to the Private Entity's entering into an interim agreement pursuant to PPEA §56-575.9:1 or a comprehensive agreement pursuant to PPEA §56-575.9. City Council shall review and approve a proposed interim or comprehensive agreement prior to its execution. *(Ref. PPEA §56-575.4(E))*

Once final terms and conditions for an interim or comprehensive agreement have been negotiated with a Private Entity, but before the agreement is executed by the City, then (a) the City shall post the proposed agreement on the City's website and on the state's electronic procurement website, and (b) a copy of the proposed agreement shall simultaneously be made available for public inspection (i) electronically, by posting on the City's website, and (ii) by appointment for in-person inspection, within the Office of the City Manager. (*Ref. PPEA §56-575.17(C)*).

All interim and comprehensive agreements shall be consistent with the PPEA, and each party to any such agreement shall have all of the rights, duties and remedies set forth within the PPEA.

Copies of interim and comprehensive agreements, and supporting documents, must be electronically filed with the Auditor of Public Accounts for the Commonwealth of Virginia. Electronic agreements shall be made available in the online database maintained pursuant to § 30-133.