

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

I. Introduction

The Public-Private Education Facilities and Infrastructure Act of 2002 (the "PPEA")¹ grants the Bedford County School Board (the "Board"), a responsible public entity as defined in the PPEA, the authority to create public-private partnerships for the development of a wide range of projects for public use (qualifying projects) if the Board 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 interim or comprehensive agreements between a private entity, as defined in the PPEA, and the Board will define the respective rights and obligations of the Board and the private entity. Although guidance with regard to the application of the PPEA is provided herein, it will be incumbent upon the Board and all private entities to comply with the provisions of the PPEA.

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

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

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

(iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;

(iv) Utility and telecommunications and other communications infrastructure;

¹ Chapter 571, 2002 Va. Acts; Va. Code § 56-575.1 through § 56-575.16.

(v) A recreational facility;

(vi) Technology infrastructure, services and applications, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;

(vii) Any services designed to increase productivity or efficiency through the direct or indirect use of technology;

(viii) Any technology, equipment or infrastructure designed to deploy wireless broadband services to schools, businesses or residential areas; or

(ix) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.

The PPEA establishes requirements that the Board must adhere to when considering proposals received pursuant to the PPEA. In addition, the PPEA specifies the criteria that must be used to select a proposal and the contents of the interim and comprehensive agreement detailing the relationship between the Board and the private entity.

The Board adopted these guidelines on May 14, 2009 to implement the PPEA. Therefore, the Board, the Superintendent and employees of the Board will follow these guidelines to receive and evaluate any proposal submitted to the Board under the provisions of the PPEA. The Board must adopt any amendments to these guidelines. The Board designates the Superintendent to serve as the point of contact to receive proposals submitted under the PPEA and to respond to inquiries regarding the PPEA or the guidelines. The Board authorizes the Superintendent to delegate duties of the Superintendent under these guidelines to members of the Superintendent's staff.

The Board may designate a working group to be responsible for evaluating proposals and negotiating the interim and comprehensive agreement.

II. General Provisions

A. Proposal Submission

A proposal may be either solicited by the Board 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.

The PPEA allows 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 federal Economic Growth and Tax Relief Reconciliation Act of 2001² for the development of education facilities using public-private partnerships.

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 Board. 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 Board of the financial feasibility of the proposed project. The Board may require the proposer to provide additional information and clarification to the submission as deemed necessary, in the sole discretion of the Board.

The PPEA is intended to encourage proposals from the private sector that offer the provision of private financing in support of the proposed public project and the assumption of commensurate risk by the private entity but also offer benefits to the private entity through innovative approaches to project financing, development and use. However, while substantial private sector involvement is encouraged, qualifying facilities will still be devoted primarily to public use and typically involve facilities critical to the public health, safety and welfare. Accordingly, the Board shall continue to exercise full and proper due diligence in the evaluation and selection of private entities for these projects. In this regard, the qualifications, capabilities, resources and other attributes of

² Public Law 107-16; Section 142(k)(5) of the Internal Revenue Code of 1986, as amended.

a prospective private entity and its whole team will be carefully examined for every project. In addition, private entities proposing projects shall be held strictly accountable for representations or other information provided regarding their qualifications, experience or other contents of their proposals, including all specific aspects of proposed plans to be performed by the private entity.

B. Affected Jurisdictions

Any private entity submitting a conceptual or detailed proposal to the Board shall provide each affected local jurisdiction with a copy of the private entity's proposal by certified mail, express delivery or hand delivery within 5 business days of submission of the proposal to the Board. Any affected local jurisdiction shall have 60 days from the receipt of the proposal to submit written comments to the Board 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 60-day period shall be given consideration by the Board and no negative inference shall be drawn from the absence of comment by an affected jurisdiction. However, the Board may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

Evaluation and acceptance of proposals tendered under the PPEA will require coordination with Bedford County. Proposals submitted pursuant to the PPEA will require comment from the County Government as an "affected local jurisdiction", and in order to accelerate decision making, selected County staff may work with Board staff to review PPEA proposals concurrently. The Superintendent shall ensure that the Board of Supervisors has an opportunity to review any proposed interim or comprehensive agreement prior to execution. The Board shall seek Board of Supervisors approval to enter into any interim or comprehensive agreement.

C. Proposal Review Fee

The Board may seek the advice of internal staff or outside advisors or consultants or any combination thereof, with relevant experience in determining whether to enter into an agreement with the private entity. The Board may charge a fee to the private entity to cover the costs of processing, reviewing

and evaluating any proposal submitted under the PPEA, including a fee to cover the costs of outside attorneys, engineers, consultants and financial advisors. Any fee charged for such review of a proposal should be reasonable in comparison to the level of expertise deemed necessary by the Board and required to review the proposal and will not be greater than the direct costs associated with evaluating the proposed qualifying project. "Direct costs" may include, but are not limited to, (i) the cost of staff time required to process, evaluate, review and respond to the proposal and (ii) the costs to hire attorneys, engineers, consultants and financial advisors. The Board may require an initial processing fee with an additional fee to be charged should the project proceed beyond the initial review.

The Board will refund any portion of fees paid in excess of its direct costs associated with evaluating the proposal.

D. Freedom of Information Act

1. General applicability of disclosure provisions.

Proposal documents submitted by proposers are generally subject to the Virginia Freedom of Information Act ("FOIA") except that Section 2.2-3705.6(11) exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the Board may elect to release some or all of documents except to the extent the documents are:

a. Trade secrets of the proposer as defined in the Uniform Trade Secrets Act (Section 59.1-336 et. seq.);

b. Financial records of the proposer 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 proposer, 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 Board or proposer would be adversely affected.

2. Protection from mandatory disclosure for certain documents submitted by a proposer.

Before a document of a proposer may be withheld from disclosure, the proposer must make a written request to the Board at the time the documents are submitted designating³ 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 D.1.

Upon the receipt of a written request for protection of documents, the Board 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 Board or proposer in accordance with Section D.1. The Board shall make a written determination of the nature and scope of the protection to be afforded by the Board under this subdivision. If the written determination provides less protection than requested by the proposer, the proposer should be accorded an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be accorded protection from release although what may be protected must be limited to the categories of records identified in Section D.1.

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

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

3. Protection from mandatory disclosure for certain documents produced by the Board.

The Board may withhold from disclosure memoranda, staff evaluations, or other records prepared by the Board, its staff, outside advisors or consultants exclusively for the evaluation and negotiation of proposals where (i) if such records were made public prior to or after the execution of an interim or a comprehensive agreement, the financial interest or bargaining

³ "Designating" denotes the process of identifying trade secrets and other proprietary records for which protection is sought.

position of the Board would be adversely affected, and (ii) the basis for the determination required in clause (i) is documented in writing by the Board.

Cost estimates relating to a proposed procurement transaction prepared by or for the Board shall not be open to public inspection.

4. The Board may not withhold from public access:

a. procurement records other than those subject to the written determination of the Board;

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 Board and the proposer;

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

d. information concerning the performance of any proposer 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 Board must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects and shall be in compliance with the Board's fiscal policies.

F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the Board to comply with all other applicable law not in conflict with the

PPEA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPEA.

III. Solicited Proposals

The Board may invite bids or proposals from private entities to develop or operate qualifying projects. The Board may use a two-part process consisting of a conceptual phase and a detailed phase. The Board 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 Board may establish suggested timelines for selecting proposals for the review and selection of solicited proposals.

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 Board's notices. The solicitation will also contain or incorporate by reference other applicable terms and conditions, including any unique capabilities or qualifications that will be required of the private entities submitting proposals. Pre-proposal conferences may be held as deemed appropriate by the Board.

IV. Unsolicited Proposals

The PPEA permits the Board to receive, evaluate and select for negotiating unsolicited proposals from private entities to develop or operate a qualifying project or to design or equip projects so constructed, improved, renovated, expanded, maintained or operated.

The Board 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. The Board may establish suggested timelines for selecting proposals for the review and selection of unsolicited proposals.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The Board reserves the right to reject any and all

proposals at any time. However, the Board will not discriminate against any individual or entity making a proposal because of race, religion, color, sex, national origin, age, disability or any other basis prohibited by state law relating to discrimination in employment.

2. By submitting any proposal to the Board, whether unsolicited, competing unsolicited or solicited, the private entity submitting the proposal agrees to the following terms and conditions:

a. Neither these guidelines, nor any request or solicitation, nor the Board's receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by the Board to any proposer, or any other obligation by the Board to any proposer. The Board makes no promise, express or implied, regarding whether it will enter into an interim or comprehensive agreement with any proposer or regarding the manner in which it will consider proposals. The Board will only be bound by the terms of any interim or comprehensive agreement(s) into which it enters should it choose to enter into any such agreements.

b. The Board will not be responsible for any expenses incurred by a proposer in preparing and submitting a proposal or in engaging in oral presentations, discussions or negotiations with the Board.

c. Proposers may be required to make an oral presentation or oral presentations of their proposal in Bedford County at their own expense. The Board may request the presence of proposers' representatives from their development, financial, architectural, engineering and construction teams at these presentations. The Board will schedule the time and location for these presentations. By submitting its proposal, the proposer agrees to make these representatives reasonably available in Bedford County.

d. The Board reserves the right to waive any informalities with respect to any proposal submitted.

e. The Board reserves the right to accept or reject any and all proposals received, in whole or in part, and to negotiate separately in any manner necessary to serve the best interests of the Board. Any procurement under these guidelines may result in multiple awards to multiple proposers.

f. The Board reserves the right to reject any and all proposals without explanation.

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

4. If the Board chooses to accept an unsolicited proposal for publication and conceptual-phase consideration, it shall post a notice in a public area regularly used by the Board for posting of public notices for a period of not less than 45 days. The Board shall also publish the same notice in one or more newspapers or periodicals of general circulation in the area and in *Virginia Business Opportunities* to notify any parties that may be interested in submitting competing unsolicited proposals. Interested parties shall have 45 days from the date the notice is first published to submit competing unsolicited proposals. The notice shall state that the Board (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 guidelines adopted by the Board and the PPEA. The notice also shall summarize the proposed qualifying project or projects and identify their proposed locations.

B. Initial Review at the Conceptual Stage

1. The Board will only accept for review proposals that are (i) properly formatted, as specified at Paragraphs VI. A and B below, (ii) submitted with an original and ten (10) copies, and (iii) accompanied by a debitable review fee deposit in the form of a cashier's or certified check, made payable to Bedford County Public Schools, in the amount required by Paragraph IX of these guidelines, unless the Board waives such fee. The Board shall have the authority to set specific fees which may differ from the amounts shown in Paragraph IX. The project's preliminary estimated value for determining the review fee under

Paragraph IX will be based upon the total estimated cost of the project as required by Paragraph VI.A.3.a below.

2. The Board 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 Board that are consistent with procurement of other than professional services through "competitive negotiation" as the term is defined in § 2.2-4301 of the Code of Virginia. The Board may proceed using competitive negotiation procedures in accordance with Code §56-575.16(2), only if it makes a written determination that doing so is likely to be advantageous to the Board and the public based upon either (i) the probable scope, complexity or priority of the project (ii) the risk sharing, including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity or (iii) an increase in funding, dedicated revenue source or other economic benefit that would otherwise not be available.

c. The Board adopts for its procedures under the PPEA (i) for competitive sealed bidding, the existing Invitation For Bid ("IFB") procedures in Bedford County Public Schools Policy and (ii) for competitive negotiation, the existing Request for Proposal ("RFP") procedures for competitive negotiation for other than professional services in the Bedford County School Board Policy.

d. The requirements of the Virginia Public Procurement Act do not apply to procurements done under the PPEA and these guidelines, except (i) the IFB and RFP procedures adopted at Paragraph IV.A.1 above apply as appropriate and (ii) the provisions of Virginia Code §2.2-4310 apply to all PPEA procurements, regardless of whether IFB or RFP procedures are used.

3. The Board shall engage the services of qualified professionals, which may include an architect, professional engineer, or certified public accountant, not otherwise employed by the Board, to provide independent analysis regarding the specifics, advantages, disadvantages and the long- and short-term costs of any request by a proposer for approval of a qualifying project unless the Board determines that such

analysis of a request by a proposer for approval of a qualifying project shall be performed by employees of the Board.

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

(i) not to proceed further with any proposal;

(ii) to proceed to the detailed phase of review with the original proposal;

(iii) to proceed to the detailed phase with a competing proposal;

(iv) to proceed to the detailed phase with multiple proposals; or

(v) to request modifications or amendments to any proposals.

The Board at all times retains the right to reject any proposal at any time for any reason whatsoever.

5. The Board shall attempt to complete the Conceptual and Detailed Stage reviews within three months from the date the Board begins such reviews of all proposals, respectively, provided that the Board may extend these periods in its sole discretion.

V. Posting Requirements

A. Conceptual proposals, whether solicited or unsolicited, shall be posted by the Board within 10 working days after acceptance of such proposals in the following manner: posting shall be on the Board's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the Board.

B. Nothing shall be construed to prohibit the posting of the conceptual proposals by additional means deemed appropriate

by the Board so as to provide maximum notice to the public of the opportunity to inspect the proposals.

C. 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 proposer excluded from disclosure under the provisions of subdivision 11 of Section 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Board and the proposer. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

VI. Proposal Preparation and Submission

A. Format for Submissions at the Conceptual Stage

The Board will require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, (4) project benefit and compatibility and (5) any additional information as the Board may reasonably request to comply with the requirements of the PPEA, although the Board may waive submission of any combination of these areas. Suggestions for formatting information to be included in proposals at this stage include the items listed below, as well as any additional information or documents the Board may request:

1. Qualifications and Experience

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

b. Describe the experience of the firm or consortium of firms making the proposal, the key principals and project managers involved in the proposed project, including experience with projects of comparable size and complexity, 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, especially with respect to educational facilities, and other engagements of the firm or consortium of firms. Include the identity of any firms that will

provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.

c. For each firm or major subcontractor that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past 3 years and contact information for those clients, including names, addresses and telephone numbers. If a firm has worked on more than 10 projects during this period, it may limit its prior project list to 10 but shall include all projects similar in scope and size to the proposed project and shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents which are in its possession evaluating the firm's performances during the preceding three years in terms of cost, quality, schedule maintenance, safety and other matters relevant to the successful project developments, operation and completion.

d. Provide the names, prior experience, addresses, telephone numbers and e-mail addresses of persons within the firm or consortium of firms who will be directly involved in the project or who may be contacted for further information.

e. Provide a current or most recently audited financial statement of the firm or firms and, if a joint enterprise, each partner, stockholder or member with an equity interest of twenty percent or greater.

f. 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 (Virginia Code §2.2-3100 et seq.).

g. Identify the proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.

h. For each firm or major subcontractor that will perform construction and/or design activities, provide the following information:

(1) A sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

(2) A statement that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm including, but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a disclosure for the past three years of any of the following conduct by the firm or its principal shareholders:

- (A) bankruptcy filings;
- (B) liquidated damages;
- (C) fines, assessments or penalties;
- (D) judgments or awards in contract disputes;
- (E) contract defaults or terminations;
- (F) license revocations, suspension, disciplinary actions;
- (G) prior debarments or suspensions by a governmental entity;
- (H) denials of prequalification, findings on non-responsibility;
- (I) safety past performance data, including fatality incidents, "Experience Modification Rating", "Total Recordable Injury Rate" and "Total Lost Workday Incidence Rate";
- (J) violations of any federal, state or local criminal or civil law;
- (K) criminal indictments or investigations; and
- (L) legal claims filed by or against the firm.

2. Project Characteristics

a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that the 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 Board or any other public entity.

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, environmental and transportation impacts of the project measured against the Board's comprehensive land use plan and applicable ordinances and design standards. Specify the strategies or actions to mitigate known impacts of the project.

e. Identify the projected positive social, economic, environmental and transportation impacts of the project measured against the Board's comprehensive land use plan and applicable ordinances and design standards.

f. Identify the proposed schedule for the work on the project, including sufficient time for the Board's review, and the estimated time for completion.

g. Propose allocation of risk and liability 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 Board's use of the project.

i. Provide information relative to phased openings of the proposed project.

j. Identify contingency plans for meeting public needs in the event that all or some of the project is not completed according to the projected schedule.

k. Describe any architectural, building, engineering or other applicable standards that the proposed project will meet.

3. Project Financing

a. Provide a preliminary estimate and estimating methodology of the total cost of the work and include a breakdown 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 based upon the Board's adopted operational standards.

c. Include a list and discussion of assumptions underlying all major elements of the plan.

d. Identify the proposed risk factors and methods for dealing with these factors. Describe methods and remedies associated with any financial default.

e. Identify any local, state or federal resources that the proposer contemplates requesting for the project along with an anticipated schedule of resource requirements and identification of any dedicated revenue source or proposed debt or equity investment on behalf of the private entity. Describe the total commitment, if any, expected from governmental sources and the timing of any anticipated commitment, both one-time and on-going.

f. Identify the need, if any, for the Board 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 Board may require the use of credit enhancements.

g. 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?

h. Outline the financial penalties, if any, that would result should the Board 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.

i. Provide a breakout of the fees to any underwriting firm(s) and the type of obligation the firm(s) are using with a financing component. Be specific as to tax-exempt, taxable, floating rate, fixed rate, etc.

4. Project Benefit and Compatibility

a. Identify who will benefit from the project, how they will benefit and how the project will benefit the Board and the overall community.

b. 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.

c. 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.

d. Describe any anticipated significant benefits to the community and the Board, including anticipated benefits to the economic, social, environmental, transportation, etc., condition of the Board and whether the project is critical to attracting or maintaining competitive industries and businesses to the area.

e. Describe the project's compatibility with the Board'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.

5. Any Additional Information As the Board May Reasonably Request

B. Format for Submissions at the Detailed Stage

If the Board 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 Board:

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. 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;

4. A statement and strategy setting out the plans for securing all necessary property interests and/or easements required for the qualifying project.

5. A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.

6. 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; 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 Board adopted service levels and standards.

7. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, the methodology and circumstances for changes and usage of the projects over the useful life of the projects.

8. 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.

9. Demonstration of consistency with appropriate Board and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget or indication of the steps required for acceptance into such plans.

10. Explanation of how the proposed project would impact the Board's or affected jurisdiction's development plans.

11. Identification of any known conflicts of interest or other factors that may impact the Board'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 (Virginia Code §2.2-3100 et seq.).

12. Description of an ongoing performance evaluation system or database to track key performance criteria including, but not limited to, schedule, cash management, quality, worker safety, change orders and legal compliance.

13. Proposed site plan(s) and comprehensive floor plan(s) of the facility(ies). For the K-12 portion of the proposed facility, list the capacity (number of student stations, core facility capacities, etc.), amenities unique to the K-12 facility and K-12 facilities proposed which will be shared with other non-K-12 users. Specify the level of quality of the facility proposed by identifying features and systems to be included in the facility, type of construction (as defined in Chapter 6 of the BOCA Building Code/1999), types of materials to be used for structural elements as well as interior and exterior finishes and mechanical, electrical, plumbing and communications and data systems proposed. Provide a description of mechanical/electrical systems efficiencies and energy conservation efficiency of the overall building envelope. Provide a description of how the facility, both building and site, will provide accessibility as required by the Americans with Disabilities Act. Include a list of extended warranties to be furnished with the project. On the floor plan(s), provide typical dimensions for proposed classrooms, common areas and hallways. Provide the following estimates using a methodology

consistent with that used by the Virginia Department of Education: building construction cost per square foot and per student station and number of square feet per student. Provide a detailed description of how the proposed K-12 portion of the facility will meet Virginia Department of Education standards and requirements.

14. Proposed terms and responsibilities for providing facility (site and building) maintenance (custodial and physical plant upkeep), building automation system, fire alarm, closed circuit television and intrusion detection system monitoring service and response, security staff, insurance coverages (lessor, leesee, patron, etc.), utilities (telephone, water, sewer, electric, CATV, gas, lessor, lessee, patron share, submetering, etc.), waste management, periodic renovation (proposed schedule and impact on lessee) and lessee proposed modifications, K-12 food service, vending services, building subletting, etc. Provide proposed lists of furnishings and equipment to be provided by the private entity, any lessee and the Board respectively.

15. Additional material and information as the Board may request.

VII. Proposal Evaluation and Selection Criteria

Proposals tendered to the Board pursuant to the PPEA shall be delivered to the Superintendent, Bedford County Public Schools, Post Office Box 748, Bedford, Virginia 24523, sealed in envelopes or packages bearing the proposer's name, address and title of proposal clearly written on the outside. The cover page must include the name of the person authorized to act on behalf of the proposer, along with telephone number, facsimile number and an email address, if available. The Superintendent may reject proposals not meeting the requirements specified above. However, the Superintendent may waive minor informalities.

Some or all of the following matters, along with the specified information required under VI.A and VI.B above, may be considered in the evaluation and selection of PPEA proposals. The Board retains the right at all times to reject any proposal at any time for any reason whatever.

A. Qualifications and Experience

Factors to be considered in either phase of the Board's review to determine whether the proposer possesses the requisite qualifications and experience may include, along with the specified information required under VI.A and VI.B above, 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;
7. Project ownership;
8. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
9. Demonstrated conformance with applicable laws, codes, standards, regulations, policies and agreements on past projects; and
10. Project staffing plans, the skill levels of the proposed workforce, apprenticeship and other training programs offered for the project and the proposed safety plans for the project.

B. Project Characteristics

Factors to be considered in determining the project characteristics may include, along with the specified information required under VI.A and VI.B above, the following:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;

4. Technology, technical feasibility;
5. Conformity to State, Board or affected jurisdiction laws, regulations and policies;
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 include, along with the specified information required under VI.A and VI.B above, the following:

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

D. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the Board's, affected jurisdiction's or regional comprehensive or development plans may include, along with the specified information required under VI.A and VI.B above, 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 Board, regional and state economic development efforts; and
6. Compatibility with Board's and affected jurisdiction's land use and transportation plans; and
7. Involvement of local contractors, subcontractors, materialmen and workforce in the project.

E. Other Factors

Other factors that may be considered by the Board 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 proposer;
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 non-financial;
7. The proposer's plans to employ local contractors and residents;
8. The recommendation of a committee of representatives of members of the Board and the appropriating body which may be established to provide advisory oversight for the project; and
9. Other criteria that the Board deems appropriate.

VIII. Interim and Comprehensive Agreements

A. Negotiation of Agreement and Included Terms.

Prior to or in connection with the negotiation of the comprehensive agreement, the Board may enter into an interim agreement with the private entity proposing the development or operation of the qualifying project. Such interim agreement may (i) permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying project including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey and ascertaining the availability of financing for the proposed facility or facilities; (ii) establish the process and timing of the negotiation of the interim or comprehensive agreement; and (iii) contain any other provisions related to any aspect of the development or operation of a qualifying project that the parties may deem appropriate.

Prior to developing or operating the qualifying project, the selected proposer shall enter into an interim or comprehensive agreement with the Board. Each interim or comprehensive agreement shall define the rights and obligations of the Board and the selected proposer with regard to the project.

A school board may enter into an interim or comprehensive agreement under the PPEA only with the approval of its local appropriating body.

The terms of the interim or comprehensive agreement shall be tailored to address the specifics of the project and shall include but not be limited to:

1. The delivery of maintenance, performance and payment bonds or letters of credit in connection with the development or operation of the qualifying project;

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

3. The rights of the Board to inspect the qualifying project to ensure compliance with the interim or comprehensive agreement;

4. The maintenance of a policy or policies of public liability insurance (copies of which shall be filed with the responsible public entity accompanied by proofs of coverage) 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 private entity by the Board to ensure proper maintenance, safety, use and management of the qualifying project;

6. The terms under which the private entity will reimburse the Board for services provided;

7. The policy and guidelines that will govern the rights and responsibilities of the Board and the private entity in the event that the interim or comprehensive agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by the Board and the transfer or purchase of property or other interests of the private entity by the Board;

8. The terms under which the private entity will file appropriate financial statements on a periodic basis; and

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 Board.

b. A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.

c. Classifications according to reasonable categories for assessment of user fees may be made.

10. The terms and conditions under which the Board will contribute financial resources, if any, for the qualifying project; and

11. Other requirements of the PPEA or provisions that the Board determines serve the public purpose of the PPEA.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals plays a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the Board. Accordingly, as part of the interim or comprehensive agreement, the prospective private entity and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct.

The interim or comprehensive agreement and any amendments thereto shall be approved and entered into in writing by the Board. If it elects to enter into an interim or comprehensive agreement, the Board shall attempt to do so within three months from the date the Board completes the Detailed Stage review, provided that the Board may extend such period in its sole discretion. In all cases, the Board may elect to create an accelerated selection, review and documentation timeline for proposals involving a qualifying facility that the Board deems a priority.

B. Notice and Posting Requirements

1. In addition to the posting requirements of Section V, 30 days prior to entering into an interim or comprehensive agreement, the Board shall hold a public hearing on the proposals. After the public hearing, no additional posting shall be required.

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 Board, the Board shall post the proposed agreement in the following manner: posting shall be on the Board's website or by publication, in a newspaper of general circulation in the area in which the contract is to be performed, of a summary of the proposals and the location where copies of the proposals are available for public inspection. Posting may also be on the Department of General Service's web-based electronic procurement program commonly known as "eVA," in the discretion of the Board. 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 proposer excluded from disclosure under the provisions of subdivision 11 of Section 2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the Board and the proposer.

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

a. Such procurement records shall include documents protected from disclosure during the negotiation phase on the basis that the release of such documents would have adversely affected the financial interest or bargaining position of the Board in accordance with Section II.D.2.

b. Such procurement records shall not include (i) trade secrets of the proposer as defined in the Uniform Trade Secrets Act (Section 59.1-336 et. seq.) or (ii) financial records, including balance sheets or financial statements of the proposer that are not generally available to the public through regulatory disclosure or otherwise.

c. To the extent access to procurement records are compelled or protected by a court order, then the Board must comply with such order.

IX. REVIEW FEES

Proposers shall pay the School Board review fees to offset the cost of processing and reviewing unsolicited proposals and unsolicited competing proposals. Proposals solicited by the School Board that are not in response to an unsolicited proposal will not be subject to proposal review fees unless so indicated in the solicitation. The Superintendent may determine in his or her discretion whether to require proposers to pay review fees for solicited proposals, and if so, the amount of such fees.

Fees shall be submitted with the proposals for each corresponding phase in the form of a cashier's or certified check made payable to Bedford County Public Schools.

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:

| <u>Review Stage</u> | <u>Fee</u> | <u>Minimum</u> | <u>Maximum</u> |
|---------------------|------------|----------------|----------------|
| Conceptual | 1/2 of 1% | \$500.00 | \$25,000.00 |
| Detail | 1/2 of 1% | \$500.00 | \$50,000.00 |

Conceptual Stage: the time from which a proposal is first received until when conceptual proposals have been evaluated and either the School Board has decided not to proceed further under the PPEA or the School Board has requested a proposer or proposers to submit detailed proposals.

Detail Stage: the time from when the School Board requests submission of detailed proposals until the School Board either decides not to proceed further under the PPEA or has executed an interim or comprehensive agreement with a proposer or proposers for the project.