

Loudoun County Public Schools
Guidelines for Implementation
of the
Public-Private Education Facilities and Infrastructure
Act of 2002, as amended

Loudoun County School Board
Approved September 27, 2005

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1. Applicability of Guidelines

- 1.1 The Loudoun County School Board ("School Board," "Loudoun County Public Schools," "Public Schools," or "LCPS") has adopted these guidelines to implement the Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code §§ 56-575.1, et seq. ("PPEA"), by School Board resolution dated September 27, 2005. These guidelines apply to all procurements under the PPEA where the School Board is the "responsible public entity" within the meaning of Virginia Code §56-575.1.
- 1.2 The School Superintendent and all officers and employees of the School Board shall follow the PPEA and these guidelines in any PPEA procurement in which they are involved.
- 1.3 The Superintendent may delegate his or her duties under these guidelines to members of staff.

2. Overview

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

first involving submission and evaluation of conceptual-phase proposals resulting in selection of certain proposers to submit detailed-phase proposals, and then submission and evaluation of detailed-phase proposals. If the purposes and requirements of the PPEA are met and the School Board so elects, in its discretion, it will then have the Superintendent or his or her designees negotiate with two or more proposers (unless the School Board, in its discretion, determines, in writing, that only one proposer is fully qualified or that one proposer is more highly qualified than the others) and select a detailed-phase proposal or proposals and enter into a "comprehensive agreement" for the project.

- 2.4 Individually-negotiated comprehensive agreements between private entities and the School Board, along with the PPEA and this policy, ultimately will define the respective rights and obligations of the parties for PPEA projects involving the School Board.
- 2.5 Although these guidelines provide guidance for application of the PPEA, the version of the PPEA that is in effect (up to the time of execution of a comprehensive agreement under a procurement as to that procurement) is controlling in the event of any conflict.

3. Eligible Projects

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

management information systems, and related information, equipment, goods and services.

- 3.2 These examples at 3.1.1 to 3.1.6 are merely provided here for convenience. The definition of "qualifying project" in effect in the PPEA as of the time of the procurement is concluded by a comprehensive agreement is controlling, and the version of the PPEA then in effect should be consulted to determine what is a "qualifying project."

4. General Provisions

4.1 Proposal Submission

- 4.1.1 While solicitation of proposals is more likely to achieve full and open competition, a proposal for a PPEA "qualifying project" may be either solicited by the School Board or submitted by a private entity on an unsolicited basis. The School Board's general policy is to strongly encourage that any unsolicited proposals should contain truly innovative ideas. In either case, the proposal shall be clearly identified as a "PPEA Proposal". To be considered, one original and twenty-five (25) copies of any unsolicited proposal must be submitted along with the applicable fee to Loudoun County School Board via the Office of the Superintendent at which time the Superintendent shall notify all School Board members of the receipt of the unsolicited proposal within three (3) business days. Solicited proposals shall be submitted in accordance with the instructions in the applicable solicitation.
- 4.1.2 Proposers will be required to follow a two-part proposal submission process consisting of a conceptual phase and a detailed phase, as described herein. For unsolicited proposals, the conceptual phase of the proposal shall contain the information specified by paragraph 7.1 of these guidelines, and the detailed phase of the proposal shall contain the information specified at paragraph 7.2 of these guidelines. For solicited proposals, the solicitation and subsequent instructions by the Superintendent will prescribe the information that proposals shall contain.
- 4.1.3 Proposals should be prepared simply and economically. Solicited proposals should contain all information requested by the solicitation or subsequent instructions by the Superintendent. Unsolicited proposals should contain information specified by these guidelines and also should include a comprehensive scope of work and, if applicable, a financial plan for the project, containing enough detail to allow an analysis by the School Board of the feasibility of the proposed project. Any facility, building, infrastructure, or improvement included in a proposal shall be identified specifically or conceptually. The Superintendent may request, in writing, clarification of any submission.

- 4.14 Representations, information and data supplied in, or in connection with, proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the School Board. Accordingly, as part of any proposal, the proposer shall certify that all material representations, information and data provided in support of, or in connection with, its proposal are true and correct. Such certification shall be made by authorized individuals who are principals of the proposer and who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the proposer shall immediately notify the School Board of the same.
- 4.1.5 The PPEA allows private entities to include innovative financing methods, including the imposition of user fees or service payments, in a proposal. However, unless indicated otherwise, in solicited procurements where public financing is available, the School Board's general policy is to use public financing as the less costly alternative. Proposals may include, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount.
- 4.2 Affected Jurisdictions

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

an affected jurisdiction. The School Board may begin or continue its evaluation of any such proposal during the 60-day period for affected jurisdictions to submit comments.

4.3 Proposal Review Fees

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

4.3.2 Such fees shall be imposed as follows:

4.3.2.1 Initial fee. Payment of an initial fee must accompany the submission of the proposal to the School Board in order for the School Board to proceed with its review. The initial fee shall be one and one-quarter percent (1.25%) of the reasonably anticipated total cost of the proposed qualifying project, but shall be no less than \$2,500 ; provided, however, that the Superintendent, in his or her discretion, may specify a different initial fee amount in a Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals prepared under paragraph 6.1.2 of these guidelines or no fee or a different fee in a solicitation issued under paragraph 5 of these guidelines.

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

phase proposals. The Superintendent will notify the proposers concerned of the amount of such additional fees. Proposers must promptly pay such additional fees before the School Board will continue to process, review, and evaluate the proposer's proposal. Unless otherwise specified by the Superintendent, additional fees for detailed-phase review will be one and one-quarter percent (1.25%) of the total cost of the proposed qualifying project, but will be no less than \$5,000. The Superintendent, in his or her discretion, may waive additional fees or require lower additional fees.

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

4.4 Virginia Freedom of Information Act

4.4.1 Generally, proposal documents submitted by private entities are subject to the Virginia Freedom of Information Act ("VFOIA"). In accordance with § 2.2-3705 A 56 of VFOIA, such documents are releasable if requested, except to the extent that they relate to (a) confidential proprietary information submitted to the School Board under a promise of confidentiality or (b) memoranda, working papers or other records related to proposals if making public such records would adversely affect the financial interest of the School Board or the private entity or the bargaining position of either party. Once a comprehensive agreement has been entered into and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the School Board shall make the procurement records available upon request, in accordance with Virginia Code §§ 2.2-4342 and 56.575.16.5. However, proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets provided by a private entity as evidence of its qualifications and properly designated under this Section 4.4 as "Confidential-Not Releasable under VFOIA" are not considered procurement records.

4.4.2 If requesting that the School Board not disclose information, the proposer must (i) invoke an exclusion when the data or materials are submitted to the School Board or before such submission, (ii) identify the data and materials for which protection from disclosure is sought, and (iii) state why the exclusion from disclosure is necessary. In addition, the proposer must clearly mark each page of its proposal that it contends not to be discloseable under the VFOIA with the legend "Confidential – Not

Releasable under VFOIA." The School Board may only protect confidential proprietary information and will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between the proprietary and non-proprietary information contained therein.

- 4.4.3 Except as reasonably necessary for the School Board, staff, and consultants to review proposals, the School Board promises to maintain the confidentiality of confidential proprietary information that is provided to it by a private entity pursuant to a proposal for a procurement under these procedures if the private entity follows all the steps required by paragraph 4.4. of this policy to designate the information as confidential proprietary information excluded from disclosure under VFOIA, and if the information is, in fact, information that is properly exempt from release under VFOIA. The Superintendent shall take reasonable precautions to protect the confidentiality of such information from any disclosure beyond whatever disclosure is reasonably necessary for the School Board, staff, and consultants having a need to know the information to carry out the procurement. Despite the School Board's sincere intent to honor this promise of confidentiality, nothing contained herein shall constitute a waiver of sovereign immunity, a consent to suit, or a contractual undertaking, and it is a condition of submitting proposals that no cause of action, in contract or otherwise, shall arise against the School Board or County Government for any failure to maintain confidentiality of information.
- 4.4.4 Any information in a proposal that becomes incorporated into a Comprehensive Agreement or Interim Agreement with the proposer submitting it, such as by becoming an exhibit, shall become a public record releasable under VFOIA upon execution of the agreement and its approval by the School Board and County Government.

4.5 Use of Public Funds

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

4.6 Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the School Board or any of its officers, employees, or agents to comply with any other applicable law; provided, however that the applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in paragraph 10 of this policy.

5. Solicited Bids/Proposals

- 5.1 The Superintendent may invite bids or proposals from private entities to develop or operate qualifying projects. The Superintendent may use a two-part process consisting of an initial conceptual phase and a detailed phase. The Superintendent will set forth in the solicitation the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA and this policy.
- 5.2 Prior to inviting any bids or proposals, the School Board shall determine pursuant to paragraph 10 of this policy whether to use procedures consistent with competitive sealed bidding or competitive negotiation of other than professional services, and if using competitive negotiation, indicate the justification, consistent with the PPEA and paragraph 10 of this policy, for proceeding in that manner, and the evaluation criteria to be used to evaluate proposals.
- 5.3 The solicitation will specify, but not necessarily be limited to, information and documents that must accompany each proposal and the factors that will be used in evaluating the submitted proposals. The solicitation will be posted in such public areas as are normally used for posting of the School Board's notices, including the School Board'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. Pre-proposal conferences may be held as deemed appropriate by the Superintendent.

6. Unsolicited Proposals

While solicitation of proposals is more likely to achieve full and open competition, the PPEA permits the School Board to receive and evaluate unsolicited proposals from private entities to develop or operate a qualifying project. The School Board's general policy is to strongly encourage that any unsolicited proposals should contain truly innovative ideas.

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

To ensure the School Board receives the best value for any qualifying project, the School Board will seek and encourage competing unsolicited proposals when it receives an unsolicited proposal.

6.1 Decision to Accept and Consider Unsolicited Proposal; Notice

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

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

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

6.1.2.2 Determine what if any conditions that the School Board will authorize the Superintendent to place upon the proposer and any competing proposers beyond those contained in these guidelines for going forward with the unsolicited proposal and for receiving competing unsolicited proposals;

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

a. The Notice of the Receipt of Unsolicited Proposal shall state that the School Board (i) has received and accepted an

unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate a comprehensive agreement or interim agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with these guidelines and the PPEA. The notice shall indicate that conditions have been imposed upon offerors for proceeding to the initial conceptual phase and inform them how to obtain the Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals containing the conditions and evaluation criteria for the procurement.

- b. The Superintendent shall post the Notice of Receipt of Unsolicited Proposal in a public area regularly used by the Board for posting of public notices and on the School Board's web site for a period of not less than 45 days. The Superintendent shall also publish the same notice at least once in one or more newspapers or periodicals of general circulation in the Loudoun County, Virginia, to notify any persons that may be interested in submitting competing unsolicited proposals, with the first such publication to occur at least 45 days before competing proposals are due. In addition, the notice shall be advertised in *Virginia Business Opportunities* and posted on the Commonwealth's electronic procurement website at least 45 days before competing proposals are due. Competing proposals may be submitted to the Superintendent during the period specified in the notice following the publication required above.
- c. The Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals shall contain the following information and shall be provided to prospective competing offers and members of the public on request:
 - (i) The instructions, terms and conditions applicable to the procurement;
 - (ii) A summary of the project proposed in the unsolicited proposal.
 - (iii) The evaluation criteria to be used for the procurement;
 - (iv) Instructions for obtaining any portions of the unsolicited proposal that are releasable; and

(v) such other instructions and information as the Superintendent deems reasonable and desirable.

- d. Copies of unsolicited proposals are available to the public, upon request, pursuant to the Virginia Freedom of Information Act ("VFOIA"), except as exempted from release under the PPEA and VFOIA.

6.2 Initial Review at the Conceptual Stage

6.2.1 Only proposals complying with the requirements of the PPEA that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format will be considered by the School Board for further review at the conceptual stage. Content and format requirements for proposals at the conceptual stage are found at Section 7.1.

6.2.2 After reviewing the original proposal and any competing unsolicited proposals submitted during the notice period, the School Board may determine:

6.2.2.1 Not to proceed further with any proposal,

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

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

6.2.2.4 To proceed to the detailed phase with multiple proposals.

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

7. Proposal Preparation and Submission

7.1 Proposal Content and Format for Submissions at the Conceptual Stage

The Superintendent may generally require that proposals at the conceptual stage contain information in the following areas: (1) qualifications and experience, (2) project characteristics, (3) project financing, but only if public financing is unavailable or potentially less advantageous, (4) project benefit and compatibility, and (5) any additional information as the Superintendent may reasonably request. Conceptual-phase proposals should include an executive summary of the proposal at the beginning of

the proposal. An unsolicited proposal shall include an executive summary not designated as "Confidential-Not Releasable under VFOIA" that describes the proposed qualifying project sufficiently so that potential competitors can reasonably formulate meaningful competing proposals from a review of the summary and publicly-available information. Unless otherwise indicated in the solicitation or Receipt of Unsolicited PPEA Proposal and Solicitation of Competing Proposals, as applicable, conceptual-phase proposals should contain the information indicated below in the format indicated below:

7.1.1 Qualifications and Experience

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

7.1.1.2 Describe the experience of the entities making the proposal, the key principals and project managers involved in the proposed project including experience with projects of comparable size and complexity, including prior experience bringing similar projects to completion on budget and in compliance with design, land use, service and other standards. Describe past safety performance and current safety capabilities. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims relating to such projects. Describe the length of time in business, business experience, public sector experience, and other engagements. Include the identity of any firms that will provide design, construction and completion guarantees and warranties, and a description of such guarantees and warranties.

7.1.1.3 For each firm or major subcontractor that will be utilized in the project, provide a statement listing the firm's prior projects and clients for the past 3 years and contact information for same (name, address, telephone number, e-mail address). If a firm has worked on more than ten (10) projects during this period, it may limit its prior project list to ten (10), but shall first include all projects similar in scope and size to the proposed project and,

second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents, which are in its possession evaluating the firm's performance during the preceding three years in terms of cost, quality, schedule maintenance, claims, change orders, lawsuits, safety and other matters relevant to the successful project development, operation, and completion.

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

7.1.1.5 Provide the current or most recent financial statements of the firm (audited financial statements to the extent available), and if the firm is a joint venture, limited liability company, partnership or entity formed specifically for this project, provide financial statements (audited if available) for the firm's principal venturers, members, partners, or stockholders that show that the firm or its constituents have appropriate financial resources and operating histories for the project.

7.1.1.6 Identify any persons known to the proposer who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Va. Code § 2.2-3100, et seq.).

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

7.1.1.8 For each firm or major subcontractor that will perform construction and/or design activities, provide an accurately completed Commonwealth of Virginia Department of General Services (DGS) Form 30-168.

7.1.1.9 Describe efforts to facilitate participation of small businesses and businesses owned by women and minorities and the success of those efforts for the project.

7.1.2 Project Characteristics

7.1.2.1 Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that

type and intent of the project, the location, and the communities that may be affected are clearly identified.

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

7.1.3 Project Financing

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

7.1.4 Project Benefit and Compatibility

- 7.1.4.1 Identify community benefits, including the economic impact the project will have on the local community in terms of amount of tax revenue to be generated for the County or other affected jurisdiction, the number of jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
- 7.1.4.2 Identify any anticipated public support or opposition, as well as any anticipated government support or opposition (including that in any affected jurisdiction), for the project.
- 7.1.4.3 Explain the strategy and plans, including the anticipated timeline that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- 7.1.4.4 Describe any anticipated significant benefits to the community and the Public Schools, including anticipated benefits to the economic, social, environmental, transportation, Comprehensive Plan, etc., condition of the Public Schools and whether the project is critical to attracting or maintaining competitive industries and businesses to the County or other affected jurisdiction.
- 7.1.4.5 Describe the project's 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.
- 7.1.5 Any Additional Information As the Superintendent May Reasonably Request

7.2 Proposal Content and Format for Submissions at the Detailed Stage

If the School Board decides to proceed to the detailed phase of review with one or more proposals, the following information, along with an Executive Summary of the proposal at its beginning, should be provided by the private entity unless waived by the Superintendent:

- 7.2.1 A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.

- 7.2.2 Conceptual site plan indicating proposed location and configuration of the project on the proposed site;
- 7.2.3 Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project;
- 7.2.4 Detailed description of the proposed participation, use and financial involvement of the School Board. Include the proposed terms and conditions for the project,
- 7.2.5 A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the proposer to accommodate such crossings.
- 7.2.6 Information relating to the current plans for development of facilities that are similar to the qualifying project being proposed by the private entity in any affected jurisdiction;
- 7.2.7 A statement and strategy setting out the method by which the private entity proposes to secure all necessary property interests required for the qualifying project, including without limitation, any 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 School Board or affected jurisdiction to condemn.
- 7.2.8 A detailed listing of all firms, along with their relevant experience and abilities, that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties along with a record of any prior defaults for performance.
- 7.2.9 A total life-cycle cost, including maintenance, specifying methodology and assumptions of the project or projects including major building systems (e.g., electrical, mechanical, etc.), and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses using School Board adopted service levels and standards.
- 7.2.10 A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes, and usage of the projects over the useful life of the projects.

- 7.2.11 Identification of any known government support or opposition, or general public support or opposition for the project or financing thereof. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
- 7.2.12 Demonstration of consistency with appropriate County and/or affected jurisdiction comprehensive plans (including related environmental, land use and facility standards ordinances, where applicable), infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
- 7.2.13 Explanation of how the proposed project would impact the County's or affected jurisdictions' development plans.
- 7.2.14 Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to, schedule, cash management, quality, worker safety, change orders, and legal compliance.
- 7.2.15 Identification of any known conflicts of interest or other factors that may impact the School 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 (Va. Code § 2.2-3100, et seq.).
- 7.2.16 Acknowledge conformance with Sections 2.2-4367 through 2.2-4377 of the Code of Virginia, the Ethics in Public Contracting Act.
- 7.2.17 Additional material and information as the School Board may reasonably request.

8. Proposal Evaluation and Evaluation Criteria

8.1 Manner of Evaluation and Use of Outside Professionals

Unless the School Board directs a different manner of evaluation in writing, evaluations of proposals shall be by such persons or group or committee of persons as the Superintendent may designate, subject to such review as the School Board or Superintendent may direct. Evaluations of proposals shall include, without limitation, analysis of the proposals' specifics, advantages, disadvantages, long-term costs, and short-term costs, using the evaluation criteria specified for the procurement. The Superintendent shall engage the services of qualified professionals not

employed by Loudoun County Public Schools, which may include an architect, professional engineer, or certified public accountant, to provide an independent analysis as part of the evaluation. Notwithstanding the preceding sentence, if the School Board determines that such analysis of proposals will be performed by Loudoun County Public Schools' staff, the Superintendent need not engage such an outside professional.

8.2 Evaluation Criteria

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

8.2.1 Qualifications and Experience

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

8.2.1.2 Experience, training, and preparation with similar projects;

8.2.1.3 Demonstration of ability to perform work;

8.2.1.4 Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control, lack of excessive claims, change orders, and litigation, and project safety;

8.2.1.5 Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;

8.2.1.6 Leadership structure;

- 8.2.1.7 Project manager's experience;
- 8.2.1.8 Management approach;
- 8.2.1.9 Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
- 8.2.1.10 Financial condition;
- 8.2.1.11 Project ownership; and
- 8.2.1.12 Efforts to facilitate participation of small businesses and businesses owned by women and minorities in the project.

8.2.2 Project Characteristics

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

- 8.2.2.1 Project definition;
- 8.2.2.2 Proposed project schedule;
- 8.2.2.3 Operation of the project;
- 8.2.2.4 Technology; technical feasibility;
- 8.2.2.5 Conformity to State, County or affected jurisdiction laws, regulations, and standards;
- 8.2.2.6 Environmental impacts;
- 8.2.2.7 Condemnation impacts;
- 8.2.2.8 State and local permits; and
- 8.2.2.9 Maintenance of the project.

8.2.3 Project Financing

The School Board and County reserve the right to select their own finance team, source and financing vehicle in the event any project is financed through the issuance of obligations that are deemed to be tax-supported debt, or if financing such project may impact debt rating or

financial position. The decision as to whether to use the financing plan contained in any proposal (whether solicited or unsolicited) is at the School Board's sole discretion.

Factors to be considered in determining whether the proposed project financing allows access to the necessary capital, at the lowest practical cost given the project, to finance the project include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.2.3.1 Cost and cost benefit to the Public Schools;
- 8.2.3.2 Financing and the impact on the debt or debt burden of the County;
- 8.2.3.3 Financial plan including overall feasibility and reliability of plan; default implications; proposer's past performance with similar plans and similar projects; degree to which proposer has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies.
- 8.2.3.4 Estimated cost; including financing source, operating costs, etc., and
- 8.2.3.5 Life-cycle cost analysis.
- 8.2.4 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 include, along with the specified information required under 7.1 and 7.2 above, the following:

- 8.2.4.1 Community benefits; including the economic impact the project will have on the County in terms of amount of tax revenue to be generated for the County, the number jobs generated for area residents and level of pay and fringe benefits of such jobs, and the number and value of subcontracts generated for area subcontractors.
- 8.2.4.2 Community support or opposition, or both;
- 8.2.4.3 Public involvement strategy;
- 8.2.4.4 Compatibility with existing and planned facilities;
- 8.2.4.5 Compatibility with County, regional, and state economic development efforts;

8.2.4.6 Compatibility with County's and affected jurisdiction's land use, environmental and transportation plans; and

8.2.4.7 Participation of small and minority-owned business.

9. Comprehensive Agreements And Interm Agreements

9.1 Except as provided in 9.3, prior to developing or operating the qualifying project, the private entity whose proposal is selected shall enter into a comprehensive agreement with the School Board. The School Board will only enter into a comprehensive agreement if it determines that the qualifying project to be done pursuant to the comprehensive agreement serves the public purpose of the PPEA under the criteria of Va. Code § 56-575.4C. Further, as a condition for entry into any comprehensive agreement, the School Board must first obtain approval of such entry from the County Board of Supervisors. Each comprehensive agreement shall define the rights and obligations of the School Board and the private entity whose proposal is selected with regard to the project.

9.2 The terms of the comprehensive agreement shall be tailored to address the specifics of the project and shall include, if applicable, but not be limited to:

9.2.1 The delivery of maintenance, performance and payment bonds or letters of credit in connection with the development or operation of the qualifying project, including, without limitation, bonds or letters of credit that comply with Virginia Code §2.2-4337 for components of the qualifying project that include construction;

9.2.2 The review and approval of plans and specifications for the qualifying project by the School Board;

9.2.3 The rights of the School Board to inspect the qualifying project to ensure compliance with the comprehensive agreement;

9.2.4 The maintenance of a policy or policies of liability insurance or self-insurance reasonably sufficient to insure coverage of the project and the tort liability to the public and employees and to enable the continued operation of the qualifying project;

9.2.5 The monitoring of the practices of the private entity by the School Board to ensure proper maintenance, safety, use and management of the qualifying project;

9.2.6 The terms under which the private entity will reimburse the School Board for services provided;

- 9.2.7 The policy and procedures that will govern the rights and responsibilities of the School Board and the private entity in the event that the 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 School Board and the transfer or purchase of property or other interests of the private entity by the School Board;
- 9.2.8 The terms under which the private entity will file appropriate financial statements on a periodic basis.
- 9.2.9 The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time upon agreement of the parties. Any payments or fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project;
- 9.2.9.1 A copy of any service contract shall be filed with the School Board and County.
- 9.2.9.2 A schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request.
- 9.2.9.3 Classifications according to reasonable categories for assessment of user fees may be made.
- 9.2.10 The terms and conditions under which the School Board will contribute financial resources, if any, for the qualifying project;
- 9.2.11 If the private entity is a "shell" entity, such as a limited liability company, limited partnership, or corporation, that lacks its own substantial resources and operating history and that will depend on its members, partners, shareholders or others for resources to perform, then guarantees of performance by such private entity's principal members, etc., or other similar arrangements that adequately assure performance.
- 9.2.12 The procedures at paragraph 12 of this policy; and
- 9.2.13 Other requirements of the PPEA or provisions that the School Board determines serve the public purpose of the PPEA.

- 9.3 In exceptional circumstances, the School Board may enter into an “Interim Agreement” within the meaning of the PPEA prior to or in connection with the negotiation of a comprehensive agreement for a qualifying project when doing so clearly is in the School Board’s best interests. As a matter of policy, the School Board does not favor entry into “Interim Agreements” with proposers because this technique tends to reduce competition and competitive negotiations. In particular, entry into an “Interim Agreement” with a proposer without first reaching an agreement as to the material terms of a comprehensive agreement, particularly as to Guaranteed Maximum Price, scope of work, and quality work, generally would tend to eliminate most of the School Board’s ability to obtain the best value through competitive negotiations with two or more proposers. Accordingly, use of “Interim Agreements” is strongly disfavored by the School Board, and their use must be fully justified. Further, as a condition for entry into any interim agreement, the School Board must first obtain approval of such entry from the County Board of Supervisors.
- 9.4 Any comprehensive agreement, any interim agreement, and any amendments thereto shall first be approved by the School Board and County and executed in writing by persons having the authority to do so. For a mixed project involving both public schools and other facilities, the School Board and Board of Supervisors, may in their discretion, both enter into the same comprehensive agreement or interim agreement with the private entity for the entire mixed project, with their respective responsibilities delineated in the agreement.
- 9.5 Any material violation of paragraph 4.1.4 of these guidelines by a proposer shall give the School Board the right to terminate the comprehensive agreement with that proposer, withhold payment or other consideration due, and seek any other remedy available at law or in equity.

10. Adoption of Certain Portions of the Virginia Public Procurement Act and Use of Competitive Negotiation and Competitive Sealed Bidding Procedures.

- 10.1 The provisions of the Virginia Public Procurement Act, Va. Code § 2.2-4300, et seq., shall not apply to procurements by the School Board under the PPEA except as follows:
- 10.1.1 The definitions of "competitive sealed bidding" and "competitive negotiation" of other than professional services in Va. Code § 2.2-4301 are hereby adopted.
- 10.1.2 The provisions of Va. Code §2.2-4310 shall apply to all PPEA procurements.

- 10.1.3 The provisions from the Ethics in Public Contracting Act, Va. Code § 2.2-4367 through 2.2-4377, shall apply to all PPEA procurements.
- 10.1.4 The provisions of Va. Code §2.2-4343 are adopted as additional authority for parts of this policy.
- 10.1.5 The provisions of Virginia Code §2.2-4337 apply to bonds or letters of credit for any components of a qualifying project involving construction.
- 10.2. Before accepting any unsolicited proposal or before issuing any solicitation for proposals, the School Board will determine whether it will proceed to evaluate proposals using either:
 - 10.2.1 "Competitive sealed bidding", as defined in Va. Code § 2.2-4301.
 - 10.2.2 "Competitive negotiation" of other than professional services as defined in Va. Code § 2.2-4301.
- 10.3 The School Board may proceed using competitive negotiation procedures described in 10.2.2 above only if it first makes a written determination pursuant to Virginia Code § 56-575.16.2 that doing so is likely to be advantageous to the Public Schools and the public based upon either (i) the probable scope, complexity or priority of the project, or (ii) the risk sharing, including guaranteed cost or completion guarantees, added value, or debt or equity investments proposed, or (iii) the increase in funding, dedicated revenue source or other economic benefit that would otherwise not be available.

11. Terms and Conditions on Proposal Submission

- 11.1. The following terms and conditions apply to submission of any proposals to the School Board pursuant to the PPEA, whether unsolicited, competing unsolicited, or solicited, and by submitting any proposal to the School Board, the private entity submitting the proposal agrees to them.
 - 11.1.1. Neither these guidelines, nor any request or solicitation, nor the School Board's receipt or consideration of any proposal shall create any contract, express or implied, any contractual obligation by the School Board to any proposer, or any other obligation by the School Board to any proposer. The School Board makes no promise, express or implied, regarding whether it will enter into a comprehensive agreement with any proposer or regarding the manner in which it will consider proposals. The School Board will only be bound by the terms of any comprehensive agreement(s) or interim agreements into which it enters should it choose to enter into any such agreements.

- 11.1.2. The School 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.
- 11.1.3. Proposers may be required to make an oral presentation or oral presentations of their proposal in Loudoun at their own expense. The Superintendent may request the presence of proposers' representatives from their development, financial, architectural engineering and construction teams at these presentations. The Superintendent will schedule the time and location for these presentations. By submitting its proposal, the proposer agrees to make these representatives reasonably available in Loudoun.
- 11.1.4. The School Board reserves the right of the Superintendent to waive any informality with respect to any proposal submitted.
- 11.1.5. The School 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 School Board. Any procurement under these guidelines may result in multiple awards to multiple offerors.
- 11.1.6. The School Board reserves the right to reject any and all proposals without explanation.
- 11.2 The provisions of this paragraph 11 of these guidelines shall apply automatically to all PPEA procurements by the School Board.
- 11.3 The School Board will not discriminate against an offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

12. Disputes, Claims, and Other Matters Arising Under or Relating to any Comprehensive Agreement or Interim Agreement

- 12.1 The following provisions apply to any disputes, claims or other matters arising under or relating to any comprehensive agreement or interim agreement entered into pursuant to the PPEA by the School Board on the one hand ("Owner"), and any private entity ("Contractor"), on the other hand. Disputes, claims and other matters in question between the parties arising under or relating to any comprehensive agreement or any interim agreement shall only be resolved as follows:
 - 12.1.1 The Contractor shall give Owner written notice of any claim for any additional compensation, damages, delay or other relief within ten (10)

days of the beginning of the occurrence of the event leading to the claim being made and shall submit the actual claim and any supporting data within thirty (30) days after the occurrence giving rise to the claim ends. The written notice shall be a document addressed to the Owner that clearly states Contractor's intention to make a claim and the occurrence involved and shall be transmitted in a manner to ensure prompt receipt by Owner. The claim must be certified under oath as true and correct by a principal of Contractor. The "occurrence" means the condition encountered in the field giving rise to the claim and not a later dispute about payment for that condition. Claims of time impacts will be resolved as they occur, and no claims of cumulative impacts or deferral of claimed time impacts will be allowed. Complete satisfaction of this subparagraph 12.1 is an absolute prerequisite for Contractor to pursue a claim, dispute, or other matter arising under or relating to the agreement. Failure by Contractor to satisfy this paragraph 12.1 shall constitute a waiver by Operator of the claim, dispute, or other matter for which such failure occurs.

- 12.1.2 The parties shall first endeavor to resolve any disputes, claims or other matters in question between them through direct negotiations, and if such direct negotiations fail, by non-binding mediation conducted pursuant to the Rules of the American Arbitration Association, with the site of the mediation being Loudoun County, Virginia. Should the dispute, claim or other matter in question remain unresolved for the shorter of (i) following negotiation and mediation, or (ii) more than 90 days after mediation is requested by a party, either party may proceed in accordance with 12.1.3 below. However, nothing in this paragraph 12.1.2 excuses Contractor from compliance with all the provisions of 12.1.
- 12.1.3 If the procedures of 12.1.2 have been followed, but, more than 90 days have passed since a party has invoked mediation, and the dispute, claim or other matter in question remains unresolved, then either party may institute a lawsuit or chancery action, as appropriate, in the Circuit Court of Loudoun County, Virginia, or if the subject or amount in controversy is within its jurisdiction, the General District Court of Loudoun County, Virginia, and may thereafter pursue all available appeals in Virginia state courts, to the extent they have jurisdiction.
- 12.1.4 Nothing in paragraphs 12.1.2 and 12.1.3 shall prevent a party from seeking temporary injunctive or other temporary equitable relief in the Circuit Court of the Loudoun County if circumstances so warrant.
- 12.1.5 In the event of any dispute, claim, or other matter in question arising, Contractor shall continue its performance diligently during its pendency as if no dispute, claim or other matter in question had arisen. During the pendency of any claim, dispute or other matter in connection with the

payments of moneys, Contractor shall be entitled to receive payments for non-disputed items, subject to any right of set-off by Owner.

- 12.1.6 These procedures and the provisions of the comprehensive agreement supercede any right at common law by Contractor for a claim of material breach or for rescission of the agreement.
- 12.1.7 These procedures shall be deemed automatically incorporated by reference into any agreement entered into by the School Board pursuant to the PPEA.
- 12.1.8 For purposes of these procedures, "Owner" means the School Board, and "Contractor" means the private entity or entities entering into the agreement with the School Board, as well as Contractor's successors, assigns, sureties or others claiming through Contractor.
- 12.2 The Superintendent may further supplement paragraph 12 of this policy with the terms and conditions of any agreements.

13. Protests of PPEA Procurements

The following are the exclusive procedures for contesting or challenging (protesting) (a) the terms or conditions of any solicitation of proposals by the School Board pursuant to the PPEA, (b) nonselection of a PPEA proposal for further consideration, and (c) the selection of any PPEA proposal for entry into a comprehensive agreement or interim agreement or the entry into a comprehensive agreement or interim agreement under the PPEA:

- 13.1 Any protest to any term or condition of a solicitation or any term or condition imposed by the Superintendent must be made in writing and delivered to the Superintendent so it is received by the Superintendent before proposals are due. Otherwise, any such protest shall be deemed to be waived.
- 13.2 A protest of a School Board decision not to select a PPEA proposal for further consideration may only be made by the entity who submitted the proposal at issue. A protest of a School Board decision to select a PPEA proposal for entry into an agreement or to enter into an agreement may only be made by an entity who submitted a proposal for the procurement at issue and who was reasonably likely to have its proposal accepted but for the School Board's decision. Protests shall only be granted if (1) the protester has complied fully with this paragraph 13 and there has been a violation of law, these guidelines, or mandatory terms of the solicitation that clearly prejudiced the protestor in a material way, or (2) a statute requires voiding of the decision.

- 13.3 Any entity desiring to protest a School Board decision not to select a PPEA proposal for further consideration, to select a PPEA proposal for entry into an agreement, or to enter into an agreement shall submit the protest in writing and deliver it so that it is received by the Superintendent not later than 5 business days after announcement of the decision. Otherwise any such protest shall be deemed to be waived.
- 13.4 The Superintendent shall issue a written decision on a protest within 10 days of its receipt by the Superintendent.
- 13.5 If the protest is denied, the protester may only appeal the denial or otherwise contest or challenge the procurement by then filing suit in the Circuit Court for Loudoun County, Virginia, and serving the School Board with such suit within 10 days of such denial. Otherwise, the protester's right to appeal the denial or to otherwise contest or challenge the procurement shall be deemed to be waived.
- 13.6 The exclusive relief allowed if a protest is granted is to void the decision being protested. Under no circumstances will any monetary relief be allowed.
- 13.7 Strictly following these procedures shall be a mandatory prerequisite for any challenge of any nature to a decision by the School Board relating to terms and conditions of a PPEA solicitation or terms and conditions imposed by the Superintendent, nonselection of a PPEA proposal for further consideration, selection of a PPEA proposal, or entry into an agreement. A failure to follow all these procedures strictly shall constitute a waiver of any right to challenge judicially a School Board decision (a) as to terms or conditions in a PPEA solicitation or imposed by the Superintendent, (b) not to select a PPEA proposal for further consideration, (c) to select a PPEA proposal, or (d) to enter into an agreement.

14. Participation of Small and Minority-Owned Business

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

15. Timelines for Selecting Proposals and Negotiating Agreements and Accelerated Timelines for Priority Qualifying Facilities

- 15.1 Normal expected timelines for selecting proposals and negotiating an interim agreement or comprehensive agreement are set out at Appendices A and B hereto. Appendix A sets out the normal expected timeline for a PPEA procurement initiated by an unsolicited proposal. Appendix B sets out the normal expected timeline for a PPEA procurement solicited by the School Board.
- 15.2 For projects deemed a priority by the School Board or the Superintendent, the portion of timelines related to selection, review, and documentation may be accelerated.
- 15.3 The Superintendent should generally adhere to these timelines in PPEA procurements, but the Superintendent may deviate from them when it is in the School Board's interests to do so.

16. Proposers' Agreement to Terms and Conditions of This Policy

The Superintendent shall require as a condition of accepting any proposal for consideration that its proposer agree to be bound by all the terms and conditions of this policy. Proposers shall submit with any proposal the certification that is set out at Appendix C hereto.

APPENDIX A
Projected Procurement Timeline for LCPS PPEA
Procurement Initiated By Unsolicited Proposal

| Activity Number | Date | Activity | Guidelines Reference |
|------------------------|-------------|--|-----------------------------|
| 1 | D | Receipt of Unsolicited Proposal | 6.1.1 |
| 2 | D+45 | Decide whether to accept Unsolicited Proposal, whether to use competitive negotiation, and what conditions to impose | 6.1.2.1 and 6.1.2.2 |
| 3 | D+75 | Prepare Notice of Unsolicited Proposal, Receipt of Unsolicited Proposal, and Post and Publish | 6.1.2.3 |
| 4. | D+135 | Receive Competing Conceptual-Phase Proposals | 6.2 |
| 5 | D+195 | Evaluate Conceptual-Phase Proposals, decide whether to proceed. If proceeding, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals | 6.2.2 |
| 6 | D+225 | Receive Detailed-Phase Proposals | |
| 7.6. | D+270 | Evaluate Detailed-Phase Proposals, conduct interviews, and select proposers for negotiation of Agreement | |
| 8.7 | D+315 | Negotiate Interim Agreement or Comprehensive Agreement | |
| 9 | D+350 | Obtain Approvals by School Board and Board of Supervisors | |

APPENDIX B

Projected Procurement Timeline for LCPS PPEA Procurement Solicited By Request for Proposals (“RFP”)

| Activity Number | Date | Activity | Guidelines Reference |
|------------------------|-------------|--|-----------------------------|
| 1 | D | Initiate procurement under PPEA. Decide whether to use competitive negotiation and issue RFP. | 5.1 & 5.2 |
| 2 | D+45 | Receive Conceptual-Phase Proposals | |
| 3 | D+105 | Evaluate Conceptual-Phase Proposals and decide whether to proceed. If proceeding under PPEA, select proposers to invite to submit, and invite submission of Detailed-Phase Proposals | |
| 4. | D+135 | Receive Detailed-Phase Proposals | |
| 5 | D+180 | Evaluate Detailed-Phase Proposals, conduct interviews, and select proposers for negotiation of Agreement | |
| 6 | D+225 | Negotiate Interim Agreement or Comprehensive Agreement | |
| 7 | D+270 | Obtain Approvals by School Board and Board of Supervisors | |

Note: Considerable planning before Step 1 is required to determine the School Board’s needs for a project and to state them in an RFP.

APPENDIX C

Proposer's Certification

Proposer's Name: _____

Proposer's Address

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

Proposer's or Proposer's Contractor's Virginia Class A General Contractor's License Number _____

Proposer's or Proposer's Architects and Engineers Virginia Registration Numbers: _____

After first being placed under oath, I hereby certify that I have authority to submit this proposal on behalf of the proposer whose name appears above, that I am a principal of the proposer, that the proposer hereby agrees to all of the terms and conditions in the Loudoun County Public Schools Guidelines for Implementation of the Public-Private Education Facilities and Infrastructure Act of 2002, as amended, that neither the proposer nor any member of its team or their principals is currently suspended or debarred from public contracting by any federal, state or local government entity, that I have taken reasonable steps to ascertain the accuracy of all the information contained in this proposal and this certification, and that the information in this proposal and certification is accurate to the best of my knowledge or information and belief.

Signature

Printed/Typed Name

Title (Principal of Proposer)

Commonwealth of Virginia :
: to wit
County/City of _____ :

On _____, 2005, _____, (same name as above) appeared before me, and after satisfying me of his/her identity and after being placed under oath, swore to the truthfulness of the above statement.

Notary Public

My commission expires: _____

(If applicable) the proposer acknowledges receipt of the following agenda:

| | | | |
|---------------|-------|--------|-------|
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |
| Addendum No.: | _____ | Dated: | _____ |