



**TOWN OF LURAY  
VIRGINIA**

**GUIDELINES FOR SUBMISSION AND CONSIDERATION  
OF PROPOSALS**

**THE PUBLIC-PRIVATE EDUCATION FACILITIES AND  
INFRASTRUCTURE ACT**

ADOPTED – APRIL 8, 2019

## **1. Applicability**

- 1.1 The Luray Town Council (the "Town") has adopted these guidelines in accordance with the Public-Private Education Facilities and Infrastructure Act of 2002, Virginia Code §§ 56-575.1, *et seq.* (the "PPEA"), by resolution dated April 8, 2019.
- 1.2 All terms used in these guidelines are given the meaning ascribed to them by Virginia Code § 56-575.1.
- 1.3 These guidelines apply to all transactions in which the Town is the responsible public entity as defined by Virginia Code § 56-575.1.
- 1.4 Although these guidelines have been promulgated in accordance with the PPEA, the provisions of the PPEA shall be controlling in the event of any conflict between the two.

## **2. Overview**

- 2.1 The PPEA grants responsible public entities the authority to enter into public-private partnerships with private entities for the development of qualifying projects under criteria established by the PPEA. PPEA proposals are also subject to review by any affected local jurisdiction. Proposals for qualifying projects may either be solicited or unsolicited.
- 2.2 A PPEA procurement may be conducted for a qualifying project, which is defined as any of the following:
  - (a) 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;
  - (b) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
  - (c) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
  - (d) Utility and telecommunications and other communications infrastructure;
  - (e) A recreational facility;
  - (f) Technology infrastructure, including, but not limited to, telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services; or

- (g) Any improvements necessary or desirable to any unimproved locally- or state-owned real estate.
- 2.3 The rights and obligations of the Town and proposers are defined by the PPEA, these guidelines, solicitations issued by the Town, interim agreements, and comprehensive agreements.

### **3. General Provisions**

- 3.1 A proposal for a qualifying project may be either solicited by the Town or submitted on an unsolicited basis. In either case, the proposal must be clearly identified as a PPEA Proposal. For unsolicited proposals, one original and ten copies must be submitted along with any applicable fees to the Town Manager at 45 East Main Street, Luray, Virginia, 22835. Solicited proposals must be submitted in accordance with the instructions in the solicitation. The Town may request, in writing, clarification of any proposal.
- 3.2 Proposers will be required to follow 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. The Town may then select a detailed-phase proposal and enter into a comprehensive agreement for the project.
- 3.3 Representations, information and data supplied in, or in connection with, proposals play a critical role in the evaluation process and in the selection of a proposal by the Town. 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, the 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. The proposer shall immediately notify the Town in the event that material changes occur with respect to any representations, information or data provided for a proposal.
- 3.4 An affected jurisdiction is any county, city or town in which all or a portion of a qualifying project is located. A proposer submitting a proposal to the Town must provide any affected jurisdiction with a copy of the proposal. For solicited proposals, copies should be submitted to any affected jurisdiction to ensure receipt on or before the time proposals are due to the Town. In the case of unsolicited proposals, copies should be submitted to any affected jurisdiction to ensure receipt within five business days after receiving notice that the Town has decided to accept the proposal. Affected jurisdictions shall have 60 days from the receipt of the proposal to submit written comments to the Town indicating whether the proposal is compatible with the comprehensive plan, infrastructure development plan, and capital improvement budget or other budget of the affected jurisdiction. The Town may evaluate the proposal during the 60-day period for affected jurisdictions to submit comments. The

Town will consider all 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.

#### **4. Proposal Review Fees**

- 4.1 Unsolicited Proposals. The Town requires a review fee for unsolicited proposals or competing unsolicited proposals in the amount of \$5,000 or such greater amount as determined by the Town Manager based upon the complexity of the proposed project. Payment of the review fee must accompany the submission of the proposal to the Town. Review fees cover the costs of processing, reviewing, and evaluating proposals. Those costs include, but are not limited to, staff time, materials and supplies, meals and travel necessary for the review process, and outside personnel such as attorneys, consultants, and financial advisors to assist with processing, reviewing, or evaluating proposals.
- 4.2 Solicited Proposals. The solicitation shall specify the amount and payment terms of the review fee, if any, required for a solicited proposal.
- 4.3 Additional Fees. Proposers shall be responsible for any additional fees incurred by the Town in excess of the review fee. The Town Manager will notify the proposers of the amount of any such additional fees. The Town reserves the right to discontinue processing, reviewing, and evaluating a proposal pending payment of such additional fees by the proposer. Unless otherwise specified by the Town, additional fees for detailed-phase review will be based upon the costs that the Town Manager reasonably anticipates incurring.
- 4.4 If the total fees paid by proposers exceed the total costs incurred by the Town in processing, reviewing, and evaluating proposals, the Town will reimburse the proposers on a pro rata basis unless the Town Manager determines that the amount of such refund is outweighed by the associated administrative costs.

#### **5. Virginia Freedom of Information Act**

- 5.1 Proposals are subject to the Virginia Freedom of Information Act ("FOIA"). In accordance with Virginia Code § 2.2-3705.6.11, proposal documents are available to the public upon request except to the extent they contain (i) trade secrets of the private entity as defined in the Uniform Trade Secrets Act (Va. Code § 59.1-336, *et seq.*) or (ii) financial records of the private entity, including balance sheets and financial statements that are not generally available to the public through regulatory disclosure or otherwise. Pursuant to Virginia Code § 56-575.17, the Town must make the procurement records available upon request once the negotiation of all phases and aspects of the comprehensive agreement is complete.
- 5.2 A proposer wishing to invoke a FOIA exemption must submit a written request to the Town that (a) specifies the exemption being invoked; (b) clearly identifies the data or other materials for which protection is sought; and (c) states the reasons why the exemption applies. In addition, the proposer must clearly mark each page of the proposal for which

protection is sought as "Confidential." The Town will not protect any portion of a proposal from disclosure if the entire proposal has been improperly designated as exempt.

- 5.3 The Town Manager will take reasonable precautions to protect the confidentiality of exempt documents beyond what is reasonably necessary for the Town, other affected jurisdictions, staff, and outside consultants to carry out the procurement. However, nothing contained herein shall be construed as a waiver of sovereign immunity, consent to suit, or a contractual undertaking. Each proposer agrees as a condition of submitting a proposal that it will bring no cause of action, in contract or otherwise, against the Town for any failure to maintain confidentiality of information.
- 5.4 Nothing herein authorizes the withholding of (a) procurement records whose disclosure is required by Virginia Code § 56-575.17; (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 Town; (c) information concerning the terms and conditions of any financing arrangement that involves the use of public funds; or (d) information concerning the performance of any private entity developing or operating a qualifying project.
- 5.5 Once an interim agreement or comprehensive agreement has been entered into, the Town Council shall make all nonexempt procurement records available upon request, in accordance with Virginia Code § 56-575.17. Any exempt information incorporated into an interim agreement or comprehensive agreement shall become a public record subject to disclosure under FOIA.
- 5.6 Cost estimates relating to a proposed procurement transaction prepared by or for the Town shall not be made available for public inspection.
- 5.7 Any inspection of procurement records will be subject to reasonable restrictions to ensure the security and integrity of the records.

## **6. Solicited Bids and Proposals**

- 6.1 The Town may solicit bids or proposals from private entities for qualifying projects. Prior to soliciting any bids or proposals, the Town shall determine whether with competitive sealed bidding or competitive negotiation of other than professional services will be used to procure the qualifying project. Competitive sealed bidding must be used unless the Town determines that competitive negotiation is advantageous based upon (i) the probable scope, complexity, or priority of the project; (ii) 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 not otherwise be available. If competitive negotiation is chosen, the reasons for the determination shall be stated in writing.

- 6.2 The solicitation should specify the information and documents required for each proposal, describe any unique capabilities or qualifications that will be required, and list the factors that will be used in evaluating the proposals. The solicitation will be posted in the same manner as other Town notices, including the on the Town's website. The Town Manager may, in his or her discretion, publish the solicitation by further means to provide maximum opportunity for competing proposals. Pre-proposal conferences may be held as deemed appropriate by the Town Manager.
- 6.3 Conceptual proposals received in response to a solicitation by the Town shall be posted by the Town within 10 business days after receipt by either: (i) posting on the Town's website a summary of the proposals and the location where copies of the proposals are available for public inspection; or (ii) publication in *The Page News & Courier* of a summary of the proposals and the location where copies of the proposals are available for public inspection. At least one copy of each proposal shall be made available for public inspection subject to any FOIA exemptions properly designated by the proposer. The Town Manager may, in his or her discretion, post proposals by further means to provide maximum opportunity to the public inspection of the proposals.
- 6.4 The Town will receive written comments from the public on proposals during a public comment period of at least 30 days before entering into an interim agreement or comprehensive agreement. In addition, the Town Council shall hold a public hearing on proposals at least 30 days prior to entering into an interim or comprehensive agreement.

## **7. Unsolicited Proposals**

- 7.1 Upon receipt of an unsolicited proposal and payment of the review fee, the Town will determine whether to accept the unsolicited proposal for publication of notice and conceptual-phase consideration. If the Town determines not to accept the proposal and not to proceed, the proposal will be returned to the proposer along with all fees and accompanying documentation.
- 7.2 If the Town chooses to accept an unsolicited proposal for conceptual-phase consideration, the Town shall:
- (a) Determine which procurement method will be utilized based upon the criteria set forth above in Section 6.1.
  - (b) Within 10 business days of accepting an unsolicited proposal, issue a "Notice of Receipt of Unsolicited Proposal" stating that the Town (i) has received and accepted an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim agreement or a comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals. The notice shall include a brief summary of the proposal and state the location where a copy is available for public

inspection. The notice shall inform proposers how to obtain a copy of the Request for Competing Proposals for Unsolicited PPEA Proposal described below.

The Town Manager shall post the Notice of Receipt of Unsolicited Proposal in the same manner as other Town notices, including the on the Town's website for a period of at least 45 days. The Town Manager shall also publish the Notice at least once in one or more newspapers of general circulation with the first publication at least 45 days before competing proposals are due. The Town Manager may, in his or her discretion, publish the Notice by further means to provide maximum opportunity for competing proposals.

- (c) Issue a "Request for Competing Proposals for Unsolicited PPEA Proposal" containing:
  - (i) The instructions, terms and conditions applicable to the procurement;
  - (ii) A detailed summary of the project proposed in the unsolicited proposal;
  - (iii) The evaluation criteria to be used for the procurement;
  - (iv) Instructions for obtaining a copy of the unsolicited proposal; and
  - (v) Any other instructions and information deemed necessary by the Town Manager.

7.3 Competing Proposals. Competing unsolicited proposals shall be posted by the Town in the same manner required as solicited proposals set forth above in Section 6.3. At least one copy of each proposal shall be made available for public inspection subject to any FOIA exemptions properly designated by the proposer.

7.4 Initial Review at the Conceptual Stage. After reviewing the unsolicited proposal and any competing unsolicited proposals submitted during the notice period, the Town may decide (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals.

7.5 Receipt of Public Comments and Public Hearing. The Town will receive written comments from the public on unsolicited proposals during a public comment period of at least 30 days before entering into an interim agreement or comprehensive agreement. In addition, the Town Council shall hold a public hearing on proposals at least 30 days prior to entering into an interim or comprehensive agreement.

## **8. Proposal Preparation and Submission**

8.1 Proposal Content and Format at the Conceptual Stage. The conceptual proposal shall include the following information for the Town to render an informed assessment of the intended improvements associated with the project, team composition and experience, and the financial requirements:

- (a) Letter of Submittal. The Letter of Submittal shall be on the proposer's letterhead and identify the full legal name and address of the proposer (*i.e.*, the legal entity that will execute the comprehensive agreement with the Town). The Letter of Submittal shall be signed by an authorized representative of the proposer and identify the name, title, address, phone number, and e-mail address of the individual who will serve as the point of contact.
- (b) Executive Summary. Each conceptual proposal must include an executive summary prepared by the proposer with the expectation that it will be available for public disclosure.
- (c) Team Description. The conceptual proposal should following information with respect to the qualifying project:
  - (i) The full legal name of the development, design, and construction firms or individuals submitting the proposal.
  - (ii) The proposer's corporate entity type and the team members who will undertake financial responsibility for the project.
  - (iii) The organizational structure for the project team, the project management approach, and how each participant fits into the overall team.
  - (iv) The proposer's length of time in business and corporate background.
  - (v) The identity of any persons known to the proposer who would be obligated to disqualify themselves from participating in the qualifying project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (Va. Code § 2.2-3100, *et seq.*), and the basis on which disqualification would be required.
- (d) Qualifications and Experience. The conceptual proposal must include the following information with respect to the proposer:
  - (i) The experience of the entities making the proposal, focusing on experience with design and construction of master planned, urban, transit oriented, and mixed-use commercial real estate developments 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.
  - (ii) A narrative summarizing the experience of all of the key principals and project managers, including specific relevant projects and years of relevant experience.

- (iii) The experience that proposer and key principals and project managers have successfully working together on similar projects.
- (iv) A description of to five complex, master planned, mixed-use developments, preferably with total project costs over \$1 million, which proposer has completed or substantially completed. At least one of these projects should have been completed by each of the Development, A&E Team, and Construction teams. For each project, provide total project costs, gross square feet of development, year completed, and key principals who played a role in the project.
- (v) A letter from A-rated and Treasury-listed surety affirming that proposer has the capacity to provide performance and payment bonds in amounts commensurate with the cost of the qualifying project. In the event that an alternative to bonding is proposed, provide information on the alternative and explain how it protects the Town's interests versus payment and performance bonds.
- (vi) Written statements of interest directly from all proposed lenders (including equity providers).
- (vii) Proposer's current or most recent financial statements (audited financial statements to the extent available), and if proposer is a joint venture, limited liability company, partnership or entity formed specifically for this project, financial statements (audited if available) for the firm's principal venturers, members, partners, or stockholders that reflect appropriate financial resources and operating histories for the project.
- (viii) The following information related to financial risks for proposer:
  1. Bankruptcy Information. Provide a statement indicating whether the contracting and financially responsible entities, any controlling entities, any key principals or other proposed equity investors have declared bankruptcy during the past five years, and briefly describe the bankruptcies.
  2. Pending Litigation. Provide a statement indicating whether the contracting and financially responsible entities, any controlling entities, any key principals or other proposed equity investors are involved in any business-related litigation, liens or legal claims, and briefly describe such matters.
  3. Judgments. Provide a statement indicating whether the contracting and financially responsible entities, any controlling entities, any key principals or other proposed equity investors have had an adverse

business-related, court-sanctioned financial judgment during the past five years and briefly describe each instance.

- (e) Project Approach. Conceptual proposals must describe the proposer's planned project approach, including:
- (i) A project concept describing the general nature of all proposed uses and the approximate location and size (square footage) of all improvements. Conceptual design should address any development requirements described in the solicitation.
  - (ii) Any work proposer expects to be performed by the Town or any other public entity, including the timing and estimated cost.
  - (iii) Estimated delivery dates for the project or project phases to allow the Town to evaluate the potential for tax revenue collection.
  - (iv) Information relative to phased delivery, if any, of the project.
  - (v) Innovative ideas to improve the efficiency of the site, maximize revenue to the Town from the development, and offer a year-round community gathering space.
  - (vi) Proposer's plan for obtaining zoning, permits, and any other entitlements needed to prepare the site for development.
  - (vii) Proposer's strategy and plans for community information and involvement in the development process.
  - (viii) Any desired features proposer's team has included in its project concept as well as any tradeoffs the Town should consider related to desired features.
  - (ix) Conceptual site plan drawings and massing diagrams that portray the placement of each use in the building and on the site as well as relationships to surrounding properties, as relevant. Renderings and construction materials descriptions are not required at the conceptual stage but are not precluded from the proposal.
- (f) Financial Approach. The Town views the up-front land payments and generated tax revenue as the primary drivers of value. If the proposer has other ideas that may generate value for the Town outside these two primary sources, proposer should discuss how such measures would be utilized. At the conceptual stage, the Town expects proposer to outline a general approach to financing and understands that financing terms are not yet final.

- (g) A financing plan consisting of:
  - (i) Presumed financing structure with estimated percentages of debt, equity, and other sources of potential project funding.
  - (ii) Presumed sources of equity, including proposer's, and amounts to be syndicated from other investors, as well as estimated return requirements.
  - (iii) Presumed sources of construction and permanent debt and general ranges of terms including leverage ratios to cost and value, interest rate spreads over appropriate benchmarks, debt service coverage requirements, amortization periods, acceleration terms, etc.
  - (iv) A narrative of how the proposer will approach and mitigate project risks in order to ensure performance and timely delivery of the project.
  - (v) A description detailing the use of any public funds or subsidies.
  - (vi) A brief narrative describing any potential revenue generating opportunities for the Town beyond the initial or ongoing land payments and future tax revenue generated by the project.
  - (vii) A brief narrative of the impact (if any) on financing terms from both lenders and investors arising from the use of a long-term ground lease structure versus fee ownership.

8.2 Proposal Content and Format at the Detailed Stage. If the Town decides to proceed to the detailed phase of review with one or more proposals, the following information, along with an executive summary, should be provided by each proposer:

- (a) A topographical map (at appropriate scale) depicting the location of the proposed project.
- (b) A site plan indicating proposed location and configuration of the project on the proposed site.
- (c) Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the proposed project.
- (d) A detailed description of the proposed participation, use and financial involvement of the Town Council or other public entity. Include the proposed terms and conditions for the project.

- (e) 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.
- (f) 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.
- (g) A statement and strategy setting out the plans for securing all necessary property and/or easements. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the Town Council or affected jurisdiction to condemn.
- (h) 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.
- (i) 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 the Town Council's adopted service levels and standards.
- (j) 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.
- (k) 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 resolutions of official bodies, minutes of meetings, letters, or other official communications.
- (l) Demonstration of consistency with appropriate Town, 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.
- (m) Explanation of how the proposed project would impact the development plans of the Town and any affected jurisdictions.

- (n) 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.
- (o) Identification of any known conflicts of interest or other factors that may impact the Town Council'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 (Va. Code § 2.2-3100, *et seq.*).
- (p) Acknowledge conformance with the Ethics in Public Contracting Act (Va. Code §§ 2.2-4367, *et seq.*).
- (q) Any additional material and information specified in the solicitation or requested by the Town Manager.

8.3 Terms and Conditions of Proposal Submission. Each proposer agrees as follows as a condition of submitting a proposal, whether solicited or otherwise, to the Town:

- (a) Neither these guidelines, nor any request or solicitation, nor the Town's receipt or consideration of any proposal shall create any contractual obligation to any proposer. The Town makes no promise, express or implied, to enter into any contract or agreement with a proposer. The Town will be bound only by the terms of an interim and/or comprehensive agreement should the Town choose to enter into any such agreements.
- (b) The Town 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.
- (c) Proposers may be required to make an oral presentation describing their proposal in Luray, Virginia, at their own expense. The Town Manager may request the presence of proposers' representatives from their development, financial, architectural, engineering, and construction teams at these presentations. The Town Manager will schedule the time and location for any such presentations. By submitting its proposal, the offeror agrees to make its representatives reasonably available for such purposes.
- (d) The Town Manager may waive any informalities with respect to any proposal submitted.

- (e) The Town reserves the right to accept or reject any and all proposals received and to negotiate in any manner necessary to serve the best interests of the Town. Any procurement under these guidelines may result in multiple awards to multiple proposers.
- (f) The Town does not discriminate on the basis of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.

## **9. Proposal Evaluation and Selection Criteria**

- 9.1 Review Team. A team of individuals selected by the Town Manager shall evaluate the proposals and formulate recommendations to Town Council. Evaluations of proposals shall include, without limitation, analysis of each proposal's advantages, disadvantages, long-term costs, and short-term costs, using the evaluation criteria specified for the procurement.
- 9.2 Use of Outside Professionals. In accordance with Virginia Code § 56-575.1:3(1)(C)(1), the Town Manager shall engage the services of qualified professionals not employed by the Town, which may include an architect, professional engineer, certified public accountant, or other consultant, to provide an independent analysis regarding the specifics, advantages, disadvantages, and the long and short-term costs of a proposal unless Town Council determines that such analysis shall be performed by Town employees.
- 9.3 Evaluation Criteria. Evaluation criteria for proposals should be specified in the solicitation and may include, but are not limited to:
  - (a) The cost of the qualifying project;
  - (b) The general reputation, industry experience and financial capability of the proposer;
  - (c) The proposed design of the qualifying project;
  - (d) The eligibility of the facility for accelerated selection, review, and documentation timelines under the responsible public entity's guidelines;
  - (e) Local citizen and government comments;
  - (f) Benefits to the public;
  - (g) Proposer's compliance with a minority business enterprise participation plan or good faith effort to comply with the goals of such plan;
  - (h) Proposer's plans to employ local contractors and residents; and
  - (i) Other criteria deemed appropriate by the Town.
- 9.4 Qualifications and Experience. Factors considered by the Town to determine whether the proposer possesses the requisite qualifications and experience include:
  - (a) Experience, training, and preparation with similar projects;
  - (b) Demonstration of ability to perform work;

- (c) 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;
- (d) Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
- (e) Leadership structure;
- (f) Project manager's experience;
- (g) Management approach;
- (h) Project staffing plans, the skill levels of the proposed workforce, and the proposed safety plans for the project;
- (i) Financial condition;
- (j) Project ownership; and
- (k) Willingness to assume full responsibility for design and intent of project design, including but not limited to, willingness to use design-build method of project delivery.

9.5 Project Characteristics. Factors to be considered in evaluating the project characteristics include, but are not limited to:

- (a) Project definition;
- (b) Proposed project schedule;
- (c) Operation of the project;
- (d) Technical feasibility;
- (e) Conformity with applicable state, county, and local laws, regulations, and standards;
- (f) Environmental impacts;
- (g) Condemnation impacts;
- (h) State and local permits; and
- (i) Maintenance of the project.

9.6 Project Financing. The Town reserves the right to select its 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 may impact the Town's debt rating or financial position. All decisions regarding project financing are at the Town Council's sole discretion. Factors to be considered in determining whether the proposed project financing allows access to the necessary capital to finance the project at the lowest practical cost include, but are not limited to:

- (a) Cost and cost benefit to the Town;
- (b) Financing and the impact on the debt or debt burden of the Town;
- (c) Overall feasibility and reliability of financing; default implications; operator's past performance with similar plans and similar projects; degree to which operator has conducted due diligence investigation and analysis of proposed financial plan and results of any such inquiries or studies;

- (d) Estimated cost; including financing source, operating costs, etc.; and
- (e) Life-cycle cost analysis.

9.7 Project Benefits and Compatibility. Factors to be considered in determining project benefits and compatibility with the Town's comprehensive or development plans may include, but are not limited to:

- (a) Community benefits, including the economic impact the project will have on the Town in terms of amount of tax revenue to be generated for the Town, 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;
- (b) Community support or opposition, or both;
- (c) Public involvement strategy;
- (d) Compatibility with existing and planned facilities;
- (e) Compatibility with Town, region, and state economic development efforts;
- (f) Compatibility with the Town's land use, environmental and transportation plans; and
- (g) Participation of small and minority-owned business.

## **10. Comprehensive Agreement**

10.1 The selected proposer shall enter into a comprehensive agreement with the Town Council prior to developing a qualifying project. The comprehensive agreement shall define the rights and obligations of the Town and the selected proposer with regard to the project, including:

- (a) The delivery of maintenance, performance and payment bonds or letters of credit in connection with the development or operation of the qualifying project, in the forms and amounts satisfactory to the Town and in compliance with Virginia Code § 2.2-4337 for components of the qualifying project that include construction.
- (b) The Town's review and approval of plans and specifications for the qualifying project.
- (c) The rights of the Town to inspect the qualifying project to ensure compliance with the comprehensive agreement.
- (d) The maintenance of liability insurance or self-insurance, in form and amount satisfactory to the Town and 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.
- (e) The monitoring of the proposer's practices by the Town to ensure proper maintenance, safety, use and management of the qualifying project.

- (f) The terms under which the proposer will reimburse the Town for services provided.
  - (g) The policy and procedures that will govern the rights and responsibilities of the Town and the proposer in the event that the comprehensive agreement is terminated or there is a material default by the proposer, including without limitation, the conditions governing the Town's assumption of the proposer's duties and responsibilities and the Town's purchase or assumption of the proposer's property or other interests.
  - (h) The filing appropriate of financial statements on a periodic basis.
  - (i) The mechanism by which user fees, lease payments, or service payments, if any, may be established from time to time by the parties.
  - (j) Classifications according to reasonable categories for assessment of user fees may be made. Any user fees shall be the same for persons using the facility under like conditions and that will not materially discourage use of the qualifying project.
  - (k) The terms and conditions under which the Town will contribute financial resources, if any, for the qualifying project.
  - (l) If the proposer is a limited purpose or 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 operator's principal members, etc., or other similar arrangements that adequately assure performance.
  - (m) Any other provisions which are appropriate for the qualifying project and consistent with the PPEA.
- 10.2 After the Town has negotiated an interim or comprehensive agreement, but prior to entry into such agreement, the Town Manager shall post the proposed agreement on the Town's website. The Town Manager may, in his or her discretion, publish the agreement by additional means.
- 10.3 Every comprehensive agreement, interim agreement, and amendment thereof must be reviewed and approved by Town Council prior to execution.
- 10.4 In accordance with Virginia Code § 56-575.9(F), the Town Manager shall submit a copy of each comprehensive agreement to the Auditor of Public Accounts within 30 days of the agreement's execution.