

Appendix A of the Arlington County Purchasing Resolution

**Public-Private Transportation Act of 1995,
as Amended**

Arlington County

Guidelines

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I. INTRODUCTION

The Public-Private Transportation Act of 1995, Va. Code Ann. §§ 56-556, et seq. (the “PPTA”) as amended, grants responsible public entities the authority to create public-private partnerships for the development of transportation facilities for public use (“qualifying transportation facilities”) if the public entity determines that it serves the public purposes of the PPTA.

The PPTA defines “responsible public entity” to include local governments that have the power to develop and/or operate the qualifying transportation facility. Arlington County (“County”) is a local government with the authority to develop and/or operate qualifying transportation facilities in Arlington County, and therefore is a “responsible public entity” as that term is used in the PPTA. The PPTA provides that a responsible public entity shall not proceed to consider any proposal by a public entity or approval of a qualifying transportation facility until the responsible public entity has adopted and made publicly available guidelines that are sufficient to establish the process for acceptance and review of proposals. Accordingly, these Guidelines are established by the Arlington County Board.

The PPTA authorizes public-private partnerships to develop "qualifying transportation facilities," The term "qualifying transportation facility" is defined in the PPTA as follows:

"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.

The PPTA further defines a "transportation facility" as follows:

"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, a commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a transportation facility. "

When the term “County” is used in these guidelines, decisions to be made by the County are at the direction of the County Manager, or designee, unless otherwise specified herein.

II. GENERAL PROVISIONS

A. Proposal Submission

1. Pursuant to Section 56-560 of the PPTA, a proposal to provide a qualifying transportation facility to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). Offerors must follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial

phase of the proposal should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables. In either case, any such proposal shall be clearly identified as a "PPTA Proposal."

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPTA.
3. Any Unsolicited Proposal shall be submitted to the County by delivering one (1) original and six (6) complete copies and one electronic copy on CD, together with the required initial review fee as provided below in § IV(C), to the Arlington County Purchasing Agent, 2100 Clarendon Blvd., Suite 511, Arlington, VA 22201. The proposal shall be in the format as set forth in Section V.A. of these Guidelines. The County reserves the right to request additional copies from the private entity. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the County Manager or designee to review and evaluate all unsolicited proposals. The County may also employ outside advisors and consultants to assist in the review of proposals.
4. The County may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.
5. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the qualifying transportation facility and the benefits to be derived from the project by Arlington County. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means.
6. Private entities may propose innovative financing methods, including the imposition of user fees or service payments under the provision of the PPTA. Financing arrangement may include the issuance of debt, equity, or other securities or obligations. A private entity may enter into sale and lease back transactions and secure any financing with a pledge of security interest

in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

B. Reservation of Rights

In connection with any proposal, the County shall have all rights available to it by law in administering these procedures, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Private entities shall have no recourse against the County for such rejection. A private entity will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate the Interim Agreement or Comprehensive Agreement negotiations.
4. Negotiate with a private entity without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any request for proposals ("RFP") or invitation to bids ("ITB").
7. Revise, supplement or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by a private entity hereunder, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
10. Request revisions to Conceptual or Detailed Proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Submit a proposal for review by outside consultants or advisors selected by

the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.

13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

Under no circumstances shall the County be liable for, or reimburse, the costs incurred by private entities, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these procedures, the proposer must submit the question in writing to the County Purchasing Agent and the County will respond in writing as it determines appropriate.

C. Affected Local Jurisdictions

1. The term “affected local jurisdiction” includes any county, city or town in which all or a portion of a qualifying transportation facility is located.
2. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County as the responsible public entity for a qualifying transportation facility must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting delivery of the request or proposal. Any such other affected local jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying transportation facility is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.
3. In addition, in the case where the qualifying transportation facility is a highway or bridge, a copy of the proposal should be delivered to the

Commonwealth Transportation Board on the same day it delivers the proposal to the County. The Board will be asked to provide written comments to the County within sixty (60) days or receipt of such proposal.

D. Virginia Freedom of Information Act

All proposals submitted to the County become the property of the County and are subject to the Virginia Freedom of Information Act ("FOIA") (§ 2.2-3700 et seq.). Proposers are advised to familiarize themselves with FOIA to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA.

In accordance with § 2.2-3705.6(11) of the FOIA, proposals and records voluntarily submitted to the County under the PPTA are subject to disclosure except to the extent that they relate to (i) confidential proprietary records submitted to the County under a promise of confidentiality, or (ii) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of the County or private entity or the bargaining position of either party.

Subsection 56-560(G) of the PPTA requires the County to take appropriate action to protect confidential proprietary information submitted by a private entity. In order for confidential proprietary information to be excluded from disclosure under FOIA, the private entity must (i) invoke the exclusion when the data or materials for which protection from disclosure is sought are submitted to the County, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why exclusion from disclosure is necessary. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between proprietary and non-proprietary information contained herein.

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

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 County shall make the procurement records available upon request in accordance with § 2.2-4342 of the Code of Virginia. Procurement records shall not be interpreted to include (1) proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications; and (2) certain confidential and proprietary information, and related records may remain confidential if the financial interest of the County or the private entity would be adversely affected.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the County must comply with such order.

E. Use of Public Funds

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

F. Applicability of Other Laws

Nothing in the PPTA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPTA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPTA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPTA, private entities shall comply with all applicable federal, state, and local laws.

While procedures incorporated in these guidelines are consistent with those of Virginia Code §§2.2-4301, under §56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§2.2-4300 et seq.).

III. SOLICITED PROPOSALS

The procedures applicable to any particular Solicited Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPTA and any other applicable law. All such solicitations shall be by issuance of a written Request for Proposal ("RFP") within the meaning of that term as used in the Arlington County Purchasing Resolution. The County may use a two-part proposal process consisting of an initial conceptual stage (part 1) and a detailed stage (part 2). In such case, the County shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPTA.

The RFP must specify any information and documents required by the County and the factors that will be used in evaluating proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

Any proposal submitted pursuant to the PPTA that is not received in response to an RFP shall be an Unsolicited Proposal under these guidelines, including but not limited to (i) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPTA and provided for below in § IV(A)(2) and (ii) proposals received in response to publicity by the County concerning particular needs when the

County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPTA that address those needs.

The County may also issue a Request for Information (RFI) inviting private entities to express a potential interest in developing and/or operating one or more qualifying transportation facilities. The issuance of a RFI does not require the County to issue a Solicited Proposal for the same project. The County will not accept unsolicited proposals for a project that is the subject of some, or all of a RFI, until the County makes a determination to accept unsolicited proposals. No fees shall be charged for the processing, reviewing, or evaluating an expression of interest.

IV. UNSOLICITED PROPOSALS

The County may receive unsolicited proposals at any time pursuant to these Guidelines. Additionally, the County may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPTA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited proposals shall be submitted to the County Purchasing Agent.

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the County's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the County will give public notice of the Unsolicited Proposal. In step three the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. However, the County may discontinue its evaluation of any proposal at any time. The County shall engage the services of qualified consultants, which may include an architect, engineer, certified public accountant, or other consultant(s) not otherwise employed by the County, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying transportation facility unless the County determines that such analysis of a request by the County for approval of a qualifying transportation facility shall be performed by an employee of the County.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. The County may only accept an Unsolicited Proposal if the proposal meets the format required, the review fee is submitted, and the proposed qualifying transportation facility serves the public purpose of the PPTA. A qualifying transportation facility serves the public purpose if there

is a need for the transportation facility the private entity proposes, if the proposed transportation facility is reasonable and will address the needs of the regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency, if the estimated cost of the transportation facility is reasonable in relation to similar facilities, and if the private entity's plans will result in the timely development and/or operation or more efficient operation. The County Manager shall reject any proposal not meeting the above requirements and return the review fee to the private entity.

3. If the County chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall give public notice of the proposal in accordance with the PPTA and shall specify a period of time not less than forty-five (45) days during which it will receive competing Unsolicited Proposals. During the 45-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal. The County shall provide for more than 45 days in situations where the County deems that scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.

The notice shall state that the County (i) has received an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with Arlington County's adopted PPTA procedures. The notice will summarize the proposed qualifying transportation facility project or projects, and identify their proposed location(s). Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and §56-560G of the PPTA.

Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer the balance due, if any, of the required project proposal review fee.

The County recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such case, the County reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal, and to proceed accordingly under these procedures.

Because of the consequences to a proposer for failing to submit within the designated period a proposal which the County could later deem a competing proposal, prospective proposers are strongly urged to monitor the County notices of proposals received, and to be prepared to submit within such designated period if they perceive that a proposal they are considering or are

preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the County a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The County will endeavor, no later than twenty-one (21) days thereafter, to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the County elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the County will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

If state or federal funds are anticipated in any proposal, the County may also notify the appropriate state or federal agencies and will require that the proposer provide additional copies of the proposal to be given to those agencies.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County on its website within ten (10) working days after acceptance of such proposals.
2. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Proposal Review Fees

1. No fee will be charged to process, review or evaluate any solicited proposal submitted under the PPTA.
2. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating any proposal or competing unsolicited proposal. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants,

including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.

3. For unsolicited proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:
 - a. **Initial fee.** Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPTA, it shall not do so until the entire, non-refundable proposal fee has been paid in full.
 - b. **Additional fees.** Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.
 - c. **Reimbursement of excess fees paid.** In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded.

D. Initial Review at the Conceptual Stage

1. Only proposals complying with the requirements of the PPTA and these Guidelines that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed by:
 - a. procurement through competitive sealed bidding, as defined in Virginia Code § 2.2-4301; or
 - b. procedures for other than professional services by competitive negotiation as defined under Virginia Code § 2.2-4301. The County may only use competitive negotiation upon a written determination that doing so would likely be advantageous to the County and the public based upon either (1) the scope, complexity, or priority of need; (2) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (3) an increase in funding, dedicated revenue or economic benefit from the project that would not otherwise be available.
3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (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. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

V. PROPOSAL PREPARATION AND SUBMISSION

A. Format for Submissions at the Conceptual Stage (Part 1)

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request subsequent to receipt of the unsolicited proposal:

One (1) original (marked "ORIGINAL" and six (6) copies, and one electronic copy on CD of the proposal must be submitted. Each copy shall be bound in a single volume where practical, except that information for which a claim of confidential or proprietary information is made should be submitted in a separately bound document or volume for convenience of review by the County. Any such volume containing confidential or proprietary information shall be clearly marked on its cover. The proposal should contain a table of contents, which cross references the requirements

by category. Each proposal shall be structured so that it contains individual tabs/sections detailing proposed services. Proposals should be prepared as simply as possible, with straightforward, concise descriptions of the proposer's capabilities to satisfy the requirements of the proposed offering. Offerors shall submit their proposals with the required information in the order listed below.

Proposal submitted shall meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors and shall be submitted in a format outlined herein. Whenever possible, proposals submitted shall comply with the following guidelines:

- The proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than 10 point font for each response item;
- All copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of pages (proposals with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided;
- Numbered tabs and dividers are required for each of the sections listed and in the order below:

- I. INTRODUCTION OF ENTITY/FIRM
- II. PROJECT CHARACTERISTICS
- III. PROJECT BENEFIT AND COMPATIBILITY
- IV. QUALIFICATIONS AND EXPERIENCE
- V. PROJECT FINANCING
- VI. REFERENCES
- VII. CONFLICT OF INTEREST STATEMENT

- I. INTRODUCTION OF ENTITY (FIRM)
 - a. Legal Name of Entity
 - b. Address
 - c. Tax ID Number (EIN)
 - d. Type of Business Entity (i.e. Corporation, General Partnership, Limited Partnership, Unincorporated Association, Limited Liability Company, Sole Proprietorship). Identification number issued to the entity by the SCC.
 - e. Indication whether or not the Firm or any of its principals are currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision.
 - f. Minority/DBE Status.

- g. Contact Person, and contact information (i.e. telephone number, e-mail address)

II. PROJECT CHARACTERISTICS

- a. Provide a description of the project, including the conceptual design and all proposed interconnections with other transportation facilities. 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. Include a description of any components, planned initially or for the future, that are expected to generate revenue for the project or the proposer.
- b. Identify and fully describe any work to be performed by the County or any other public entity.
- c. Identify the plans to secure all necessary property, including the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County to acquire.
- d. 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.
- e. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- f. Identify the projected positive social, economic and environmental impacts of the project.
- g. Identify the proposed schedule for the work on the project, including the estimated time for completion.

- h. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- i. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- j. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- k. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- l. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- m. List any other assumptions relied on for the project to be successful.
- n. List any contingencies that must occur for the project to be successful.

III. PROJECT BENEFIT AND COMPATIBILITY

- a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- b. Describe the compatibility with the existing and planned transportation system.
- c. Describe how the project will enhance a community-wide transportation system.
- d. Describe how the project addresses the needs of local, regional, and state transportation plans.

- e. Identify how the project will achieve performance, safety, mobility, or transportation demand management.
- f. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- g. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- h. Describe the compatibility of the project with local, regional, and state economic development efforts.
- i.. Explain the compatibility with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

IV. QUALIFICATION AND EXPERIENCE

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the proposer's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual stage. Identified team members, including major subcontractors (over \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the County.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's

prior projects and clients for the past three (3) years with contact information for such clients (names/addresses/ telephone numbers/email). If a firm has worked on more than ten (10) projects during this period, it may limit prior project list to 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 in its possession evaluating the firm's performance during the preceding three (3) years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.

- d. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
- f. Identify any persons known to the private entity 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 (§ 2.2-3100 et seq.) of Title 2.2.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- i. Provide information on the level of commitment by the firm to using small, women-owned, or minority businesses in developing and implementing the project.
- j. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.

- k. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- l. A completed qualification statement in a form acceptable to the County that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm or major subcontractors, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three (3) years, except as indicated, any of the following conduct:
 - 1. bankruptcy filings
 - 2. liquidated damages
 - 3. fines, assessments, or penalties
 - 4. judgments or awards in contract disputes
 - 5. contract defaults, contract terminations
 - 6. license revocations, suspensions, other disciplinary actions
 - 7. prior debarments or suspensions by a governmental entity
 - 8. denials of prequalification, findings of non-responsibility
 - 9. maximum five years safety performance data
 - 10. "Experience Modification Rating" and issuing insurance company
 - 11. "Recordable Incidence Rates" "Lost Time Incidence Rates"
 - 12. OSHA 200 Summary and OSHA 300A Forms
 - 13. OSHA violations, dates, and disposition
 - 14. violations of any federal, state or local criminal or civil law by the firm or its principals
 - 15. criminal indictments or investigations of the firm or its principals
 - 16. legal claims filed by or against firm

V. PROJECT FINANCING

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.

- c. 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. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify all anticipated risk factors and methods for dealing with these factors. Describe the methods and remedies associated with any financial default.
- e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
- f. Identify any proposed user fees.
- g. Provide financial information which indices the private entity's financial stability and ability to finance the project.
- h. Include a description and analysis (cost/benefit, tax, etc.) to demonstrate the project's financial feasibility.
- i. Identify the amounts and the terms and conditions for any revenue sources.
- j. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- k. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

VI. REFERENCES

Provide the address, telephone number, and the name of a specific contact person for an entity, or entities, for which the firm or consortium of firms, or primary members of the consortium, have completed a similar project or projects. These references should include:

- Name and address of project owner/sponsor
- Name, telephone number, fax number, and email address of the

- owner's project manager
- A summary of the project including budget and final cost
- Project schedule (proposed and actual)

VII. CONFLICT OF INTEREST STATEMENT

Firms must submit an executed copy of the County's approved Conflict of Interest Statement which is available online at www.arlingtonva.us/purchasing.

B. Format for Submissions at the Detailed Stage (Part 2)

If the County decides to proceed to the detailed phase (part 2) of review with one or more proposals, then proposers will be required to provide additional detailed information as a follow-up to the initial submission. The following are illustrative examples of the additional information which may be required by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A conceptual site plan indicated proposed location and configuration of the project on the proposed site;
3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project if they differ from the County's Standard Form contract for this type of project.
5. A list of public utility facilities, if any, that will be crossed by or run parallel to the qualifying transportation facility and a statement of the plans of the private entity to accommodate such crossings.
6. A statement and strategy setting out the plans for securing all necessary property. 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 private entity intends to request the County to acquire.
7. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
8. A total life-cycle cost specifying methodology and assumptions of the project or projects 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.

9. 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 project over the useful life of the project..
10. Identification and discussion of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
12. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
13. 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.
14. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity 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 (§ 2.2-3100 et seq.) of Title 2.2.
15. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.
16. Additional material and information as the County may request.

VI. PROPOSAL EVALUATION AND SELECTION CRITERIA

Some or all of the following matters may be considered in the evaluation and selection of PPTA proposals. However, the County retains the right at all times to reject any proposal at any time for any reason whatsoever.

A. Project Characteristics

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Property impacts;
8. Utility impacts;
9. State and local permits; and
10. Maintenance of the project.
11. Ongoing Operations.

B. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits, such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for the greater Washington DC area, and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for the greater Washington DC area residents generated by the

project, and the number and value of subcontracts generated for the greater Washington DC area subcontractors.

2. Compatibility with existing transportation system and enhancement of community transportation system;
3. Community support or opposition, or both;
4. Public involvement strategy;
5. Compatibility with existing and planned facilities; and
6. Compatibility with local, regional, and state economic development efforts.
7. Compatibility with the County's land use plan, transportation plan, and capital improvement plan.

C. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience, training and preparation with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Organizational chart, including project staffing plans, the skill levels of the proposed task leaders, workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition including the ability to obtain required sureties and insurance coverages; and

10. Project ownership.

D. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies
4. Estimated cost;
5. Life-cycle cost analysis; and
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment;
7. Such other items as the County deems appropriate.

The County may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPTA proposals include, but are not limited to the following:

1. The proposed cost of the qualifying transportation facility;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design, operation, and feasibility of the of the qualifying transportation facility;
4. The eligibility of the facility for accelerated selection, review, and documentation;

5. Local citizen and government comments;
6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;
8. The private entity's plan to employ local contractors and residents;
9. The safety record of the private entity;
10. The ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficient; and
11. Other criteria that the County deems appropriate.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For unsolicited proposals, an estimated timeline will be developed and distributed within sixty (60) days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority, such as qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility.

VII. INTERIM AND COMPREHENSIVE AGREEMENTS

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. Any interim or comprehensive agreement executed pursuant to the PPTA requires prior approval by the County Board. Any changes in the

terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the County may enter into an interim agreement with the private entity proposing the development or operation of the qualifying transportation facility. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;
2. Establish the process and timing of the negotiation of the comprehensive agreement; and
3. Contain any other provisions related to any aspect of the development or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to developing or operating any qualifying transportation facility, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPTA. Any such comprehensive agreement and any amendment thereto, must be approved by the County Board before it is entered into on behalf of the County.

As provided by the PPTA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any development or operation of the qualifying transportation project, in the forms and amounts satisfactory to the County;

2. Review and approval of plans and specifications for the qualifying transportation project by the County;
3. The right of the County to inspect the qualifying transportation project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. Maintenance of a policy or policies of liability insurance or self-insurance, each in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;
5. Monitoring of the practices of the private entity by the County to ensure proper maintenance;
6. Reimbursement to be paid to the County for services provided by the County;
7. Filing by the private entity of appropriate financial statements on a periodic basis;
8. Policies and guidelines governing the rights and responsibilities of the County 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 County and the transfer or purchase of property or other interests of the private entity by the County;
9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying transportation facility.
Classifications according to reasonable categories for assessment of user fees may be made;
10. Requiring a copy of any service contract to be filed with the County and providing that 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;
11. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee;

12. The date of termination of the private entity's authority and duties and dedication to the County;
13. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying transportation facility; and
14. Any other terms and conditions the County determines serve the public purpose of the PPTA; and
15. Any other provisions required by applicable law.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals 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 prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting Requirements

In addition to the posting requirements of Section IV, the County shall hold a public hearing on the proposals during the proposal review process, but not later than thirty (30) days prior to entering into an interim or comprehensive agreement.

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the County, the County shall publicly post the proposed agreement.
2. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§2.2-3700 et seq.).
 - a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would

adversely affect the financial interest or bargaining position of the County.

- b. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

VIII. INDEPENDENT AUDIT

If the construction costs of the proposed qualifying transportation facility exceed \$50 million and prior to entering into an agreement with the private entity, the County must comply with Section 56-560(E) of the Code and engage one or more consultants of its choosing with the expertise required to determine the accuracy and validity in their audit of such things as traffic, ridership, and the ability to capture the ridership assumed in the proposal, and revenue and cost estimates provided as part of the Proposer's proposal. The County also must review all the public costs and other liabilities which may require the expenditure of public funds. Such liabilities include improvements to other transportation facilities required as a result of the proposal, the Proposer's failure to reimburse the County for services rendered, and other risks to which the County may be exposed should the Proposer default on the interim agreement, the comprehensive agreement or bonds issued as part of the financing for the project. The Proposer shall reimburse the County for the costs for the independent audit and the results of the audit must be disclosed in accordance with FOIA.

IX. GOVERNING PROVISIONS

In the event of any conflict between these guidelines and procedures and the PPTA, the terms of the PPTA shall control.

**ARLINGTON COUNTY BOARD
RESOLUTION**

**Adopting the PPTA Guidelines and Providing Direction to the County Manager
Concerning the PPTA Guidelines**

WHEREAS, the County Manager has recommended for adoption Arlington County Guidelines for Use of the Public-Private Transportation Act of 1995, as amended (“Guidelines”) providing the County with an additional procurement and project delivery tool as it implements that capital improvement program; and

WHEREAS, maintaining the County’s triple AAA bond rating is of utmost importance; and

WHEREAS, the Guidelines provide that the County Manager may consider unsolicited proposals for qualifying transportation facilities from private entities for rejection or acceptance, and further provide that if an unsolicited proposal is accepted then the County Manager shall give public notice that competing proposals will also be accepted, and the Guidelines further provide that the County Manager will determine whether to seek detailed proposals from those private entities submitting unsolicited and competing proposals, and further provide that the County Manager will determine whether to recommend that the County Board enter into an Interim or Comprehensive Agreement with a private entity for a transportation project, and the Guidelines further provide that a public hearing shall be held at least 30 days prior to entering into an Interim or Comprehensive Agreement.

NOW, THEREFORE, BE IT RESOLVED, that the County Board hereby adopts the Guidelines effective April 1, 2013; and

BE IT FURTHER RESOLVED, that the County Board provides the following direction to the County Manager for the purposes of implementing the PPTA Guidelines:

- 1) The County Manager shall notify the County Board before deciding to accept an unsolicited proposal and advertise for competing proposals. The County Manager shall use best efforts to promote adequate outreach and robust competition. The County strives to have more than one proposal to consider for complex or very costly projects;
- 2) The County Manager shall ensure that, once they are accepted, conceptual proposals are posted on the County website in accordance with the Guidelines;
- 3) The County Manager shall consult with the County Board prior to requesting detailed proposals from private entities who submit unsolicited proposals or competing proposals;

4) After review of the detailed proposals, the County Manager shall either 1) report to the County Board that no contract is recommended for award, or 2) shall make a recommendation to the County Board to award an Interim or Comprehensive Agreement to a private entity for development or operation of a qualifying transportation facility. A recommendation to award an agreement will be accompanied by a proposed public review process designed to inform the public about the proposed agreement and meet the requirements of the public review process contained in the Guidelines; and

5) A copy of this Resolution shall be maintained with Guidelines.