

ORDINANCE NO. 2757

AN ORDINANCE to amend and reordain Chapter 3, Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended; which Chapter 3 relates to PURCHASES AND CONTRACTUAL SERVICES and which Title 3 relates to FINANCE, TAXATION AND PROCUREMENT.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That Chapter 3, Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be and the same hereby is amended and reordained to read as follows:

CHAPTER 3

Purchases and Contractual Services

ARTICLE A

General Provisions

Sec. 3-3-1. Purpose.

The purpose of this chapter is to provide for the fair and equitable treatment of all persons involved in public purchasing by the city, to maximize the purchasing value of public funds in procurement and to provide safeguards for maintaining a procurement system of quality and integrity.

Sec. 3-3-2. Application.

(a) This chapter applies to contracts for the procurement of goods, services, insurance and construction entered into by the city involving every expenditure for public purchasing irrespective of its source.

(b) When the procurement involves the expenditure of federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which are not reflected in this chapter. Nothing in this chapter shall prevent any using agency from complying with the terms and conditions of any grant, gift or bequest which are otherwise consistent with law.

Sec. 3-3-3. Judges of general district court, judge of juvenile and domestic relations court, etc., as using agencies; purchases of provisions, etc., needed by sheriff or for city jail.

The judges of the general district court, the judge of the juvenile and domestic relations court and the clerk of the circuit court, to the extent the city is required by state law to furnish them and pay for supplies, materials, equipment and contractual services, are hereby made using agencies under the

provisions of this chapter. Under the authority of the provisions of section 53.1-126, Code of Virginia, all foodstuffs, provisions, supplies, clothing and equipment needed by the sheriff in the feeding and caring for jail prisoners and for which the city is reimbursed in part by the state in proportion as the number of state prisoner days bears to the whole number of prisoner days shall be purchased by or through the city purchasing agent, and to that extent and to the extent that the city is required to furnish to the sheriff or the city jail supplies and equipment and pay the total price thereof, the sheriff is hereby made a using agency under the provisions of this chapter.

Sec. 3-3-4. Application of chapter to school board, Alexandria Library, etc.

The provisions of this chapter shall not apply to the city school board, to the Alexandria Library or to any institution to which the city may make a lawful grant-in-aid and over which it retains no control.

Sec. 3-3-5. Public improvement and public works contracts.

The city council reserves unto itself the authority to let all public improvement or public works contracts.

Sec. 3-3-6. Definitions.

(1) Brand name specification. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers.

(2) Brand name or equal specification. A specification limited to one (1) or more items by manufacturers' names or catalogue numbers to describe the standard of quality, performance and other salient characteristics needed to meet city requirements, and which provides for the submission of equivalent products.

(3) City council. The City Council of the City of Alexandria.

(4) City purchasing agent or agent. The purchasing agent of the City of Alexandria.

(5) Confidential information. Any information which is available to an employee only because of the employee's status as an employee of the city and is not a matter of public knowledge or available to the public on request.

(6) Construction. Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.

(7) Contract. All types of agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.

(8) Contract modification. Any written alteration in specifications, delivery point, rate of delivery, period of performance, price, quantity or other provision of any contract accomplished by mutual action of the parties to the contract.

(9) Contractor. Any person having a contract with the city or a using agency thereof.

(10) Cost analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid and costs to be reimbursed.

(11) Cost data. Factual information concerning the cost of labor, material, overhead and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.

(12) Cost reimbursement contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this chapter and a fee or profit, if any.

(13) Direct or indirect participation. Involvement through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing or in any other advisory capacity.

(14) Disadvantaged business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.

(15) Employee. An individual drawing a salary or wages from the city whether elected or not; any noncompensated individual performing personal services for the city or any department, agency, commission, council, board or any other entity established by law.

(16) Goods. All material, equipment, supplies, printing and automated data processing hardware and software.

(17) Informality. A minor defect or variation of a bid or proposal from the exact requirements of the invitation to bid, or the request for proposal, which does not affect the price,

quality, quantity or delivery schedule for the goods, services or construction being procured.

(18) Insurance. A contract whereby, for a stipulated consideration, one (1) party undertakes to compensate the other for loss on a specified subject by specified perils.

(19) Invitation for bids. All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any invitation for bids.

(20) Nominal value. So small, slight or the like, in comparison to what might properly be expected, as scarcely to be entitled to the name, but in no case to be more than \$10.00.

(21) Nonprofessional services. Any services not specifically identified as professional services in the following definition.

(22) Professional services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, medicine, optometry or professional engineering.

(23) Person. Any business, individual, union, committee, club, other organization or group of individuals.

(24) Price analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(25) Pricing data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offer or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(26) Qualified products list. An approved list of goods, services or construction items described by model or catalogue number, which prior to competitive solicitation, the city has determined will meet the applicable specification requirements.

(27) Request for proposals. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

(28) Responsible bidder or offeror. A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance and who has been pre-qualified, if required.

(29) Responsive bidder. A person who has submitted a bid which conforms in all material respects to the invitation to bid.

(30) Services. Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials or the rental of equipment, materials and supplies.

(31) Small business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominant in its field of operation.

(32) Specification. Any description of the physical or functional characteristics or of the nature of a good, service or construction item. It may include a description of any requirement for inspecting, testing or preparing a good, service or construction item for delivery.

(33) Using agency. Any department, agency, commission, bureau or other unit in the city government requiring goods, services, insurance or construction as provided for in this chapter.

ARTICLE B

Purchasing Division

Sec. 3-3-11. Establishment of purchasing division.

There is hereby established in the department of finance a purchasing division.

Sec. 3-3-12. Appointment of purchasing agent.

There is hereby created the position of purchasing agent, who shall be the city's principal public purchasing official and shall be in charge of the purchasing division. The purchasing agent shall be appointed by the city manager.

Sec. 3-3-13. Authority and duties of purchasing agent.

The purchasing agent shall be responsible for the procurement of goods, services, insurance and construction in accordance with this chapter as well as the management and disposal of supplies. In accordance with this chapter, and subject to the supervision of the city manager, the purchasing agent shall:

(a) Purchase or supervise the purchasing of all goods, services, insurance and construction needed by the city;

(b) Exercise direct supervision over the city's central stores and general supervision over all other inventories of goods belonging to the city;

(c) Sell, trade or otherwise dispose of surplus goods belonging to the city; and

(d) Establish and maintain programs for specifications development, contract administration and inspection and acceptance in cooperation with the public agencies using the goods, services and construction.

Sec. 3-3-14. Rules and regulations.

The city purchasing agent shall have authority and power to promulgate and establish, and from time to time amend and revise, all rules and regulations properly necessary to carry into effect the provisions of this chapter; provided, that before any rules and regulations, and any amendments or revisions thereof, shall become effective, the city manager shall approve the same.

Sec. 3-3-15. Delegation.

With the approval of the city manager, the purchasing agent may delegate authority to purchase certain supplies, services or construction items to other city officials, if such delegation is deemed necessary for the effective procurement of those items.

Sec. 3-3-16. Unauthorized purchases.

Except as herein provided no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the purview of this chapter other than by and through the purchasing division, and any purchase order or contract made contrary to the provisions hereof is not approved and the city shall not be bound thereby.

ARTICLE C

Cooperative Procurement

Sec. 3-3-21. Agreements with other public bodies.

The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one (1) or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Any public body which enters into a cooperative procurement agreement with the city shall comply with the policies and procedures established by this chapter.

Sec. 3-3-22. Assistance from state director of division of purchase and printing.

The city purchasing agent is hereby authorized, with the consent of the city manager and without observing the competitive provisions of this chapter, to seek the aid and cooperation of the state director of the division of purchase and printing in the purchasing of supplies, materials and equipment for the using agencies of the city to the end that cheaper prices may be obtained.

Sec. 3-3-23. Purchases from federal government.

The city purchasing agent may, with the consent of the city manager and without observing the competitive provisions of this chapter, purchase from the federal government or any of its agencies any surplus or other supplies, materials and equipment needed by the using agencies when these purchases will serve the best interest of the city.

ARTICLE D

Contract Formation and Methods of Source Selection

DIVISION 1

Competitive Sealed Bidding

Sec. 3-3-31. Competitive seal bidding required.

All public contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance or construction shall be awarded after competitive sealed bidding or competitive negotiation as provided in this chapter, unless otherwise authorized by law.

Sec. 3-3-32. Competitive bidding on state aid projects.

No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$100,000.00 or more, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding. The procedure for the advertising for bids and letting of the contract shall conform, mutatis mutandis, to this chapter. No person or firm shall be eligible to bid on any such contract nor to have the same awarded to him or it who has been engaged as architect or engineer for the same project.

Sec. 3-3-33. Public access to procurement information.

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the city shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time after the opening of all bids but prior to award, except in the event that the city decides not to accept any of the bids and to reopen the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protections of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary.

Sec. 3-3-34. Employment discrimination by contractor prohibited.

Every contract shall comply with the provisions of section 12-4-6 of this code.

Sec. 3-3-35. Prequalification of bidders.

(a) The purchasing agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the purchasing agent shall deem appropriate, including samples, financial reports and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter.

(b) The purchasing agent may refuse to prequalify any prospective contractor, provided that written reasons for refusing to prequalify are made a part of the record in each case. The decision of the purchasing agent shall be final.

(c) In considering any request for prequalification, the purchasing agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of

the invitation for bids. The purchasing agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose.

(d) Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as nonresponsible on the basis of subsequently discovered information.

(e) Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements or from bidding on procurements which do not require prequalification.

Sec. 3-3-36. Notice of invitation to bid.

(a) Notice inviting bids shall be published once in at least one (1) newspaper published in or having a general circulation in the city and at least 10 days preceding the last day set for the receipt of bids.

(b) The newspaper notice required herein shall include a general description of the articles to be purchased or sold, shall state where bid blanks and specifications may be secured and the time and place for opening bids.

(c) The purchasing agent shall also solicit sealed bids from all responsible prospective suppliers who have requested their names to be added to a "bidders' list" which the agent shall maintain by sending such other notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidders' list shall be limited to commodities that are similar in character and ordinarily handled by the trade group to which the invitations are sent.

(d) The agent may also advertise pending bids or sales by notice posted on the public bulletin board in the division of purchasing.

Sec. 3-3-37. Use of brand names.

Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer named; it conveys the general style, type, character and quality of the article desired, and any article which the city in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation and suitability for the purpose intended, shall be accepted.

Sec. 3-3-38. Comments on specifications.

For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids may be called by the purchasing agent and attended by a department representative and, if necessary, the city attorney.

Sec. 3-3-39. Bid bonds on construction contracts.

(a) Except in cases of emergency, all bids or proposals for construction contracts in excess of \$25,000.00 shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five (5) percent of the amount bid.

(b) No forfeiture under a bid bond shall exceed the lesser of (1) the difference between the bid for which the bond was written and the next low bid, or (2) the face amount of the bid bond.

Sec. 3-3-40. Bonds for other than construction contracts.

(a) At the discretion of the purchasing agent, bidders may be required to submit with their bid a bid bond, or a certified check, in an amount to be determined by the purchasing agent and specified in the invitation to bid, which shall be forfeited to the city as liquidated damages upon the bidder's failure to execute within 10 days a nonconstruction contract awarded to him or upon the bidder's failure to furnish any required performance or payment bonds in connection with a contract awarded to him.

(b) The purchasing agent may require successful bidders to furnish a performance bond and/or a payment bond at the expense of the successful bidder, in amounts to be determined by the purchasing agent and specified in the invitation to bid, to ensure the satisfactory completion of the work for which a contract or purchase order is awarded.

Sec. 3-3-41. Rejection of bids.

An invitation for bids, a request for proposals, or other solicitation may be cancelled, or any or all bids or proposals may be rejected in whole or in part when the purchasing agent determines that it is in the best interest of the city to do so. The reasons therefor shall be made a part of the record in the matter.

Sec. 3-3-42. Bid opening.

Bids shall be submitted sealed to the agent and shall be identified as bids on the envelope. Bids shall be opened publicly in the presence of one (1) or more witnesses at the time and place designated in the invitation for bids. The amount of each bid, and such other relevant information as the purchasing agent deems appropriate, together with the name of each bidder shall be recorded; the record and each bid shall be open to public inspection.

Sec. 3-3-43. Withdrawal of bid due to error.

(a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(b) The procedure for bid withdrawal must be stated in the advertisement for bids and the purchasing agent shall select one (1) of the following procedures:

(1) The bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure; or

(2) The bidder shall submit to the purchasing agent his original work papers, documents and materials used in the preparation of the bid within one (1) day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one (1) day following the time fixed by the city for the submission of bids. Thereafter, the bidder shall have two (2) hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the city until the two- (2) hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

(c) Procedures for the withdrawal of bids for other than construction contracts may be established by the purchasing agent.

(d) No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five (5) percent.

(e) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

(f) No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

(g) If the city denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision.

Sec. 3-3-44. Bid evaluation.

Evaluation of bids shall be based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life cycle costing, value analysis and any other criteria such as inspection, testing, quality, workmanship, delivery and suitability for a particular purpose, which are helpful in determining acceptability.

Sec. 3-3-45. Bid award.

(a) Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the invitation to bid, awards may be made to more than one (1) bidder.

(b) The contract shall be awarded with reasonable promptness by written notice to the lowest responsible bidder whose bid meets the requirements and criteria set forth in the invitation for bids. In the event all bids for a construction project exceed available funds as certified by the director of finance and the lowest responsive and responsible bid does not exceed such funds by more than three (3) percent, the purchasing agent is authorized, when time or economic considerations preclude resolicitation of work of a reduced scope, to negotiate an adjustment of the bid price with the lowest responsive and responsible bidder in order to bring the bid within the amount of available funds.

Sec. 3-3-46. Tie bids.

(a) In the case of a tie bid, preference shall be given to goods, services and construction produced in Virginia or provided

by Virginia persons, firms or corporations, if such a choice is available; otherwise, the tie shall be decided by lot, or as hereinafter provided.

(b) Whenever any bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder who is a resident of Virginia.

(c) If all bids received are for the same total amount or unit price, quality and service being equal, the contract shall be awarded to a local bidder.

(d) In the event that there is a tie bid, the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price. Any price quote made verbally shall be confirmed in writing.

(e) In the event that none of the foregoing provisions of this section resolve the tie, the purchasing agent may cancel the solicitation and rebid. Records shall be kept of any proceeding connected with tie bids.

Sec. 3-3-47. Multi-step sealed bidding.

When it is considered impractical to initially prepare a purchase description to support an award based on price, an invitation for bids may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

Sec. 3-3-48. Contract pricing arrangement.

(a) Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.

(b) Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier's administrative costs and retention stated in whole or part as a percentage of such claims shall not be prohibited by this section.

Sec. 3-3-49. Multi-term contracts.

(a) Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time

deemed to be in the best interest of the city provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be cancelled.

Sec. 3-3-50. Contract modification.

(a) A public contract may include provisions for modification of the contract during performance, but no fixed price contract may be increased by more than 25 percent of the amount of the contract or \$10,000.00, whichever is greater, without the advance written approval of the city council.

(b) Any contract award, change order or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the city, including profit or fee, shall be adjusted to exclude any significant sums by which the city finds that such price was increased because the contractor-furnished cost or pricing data was inaccurate, incomplete or not current as of the date agreed upon between the city and the contractor.

Sec. 3-3-51. Retainage on construction contracts.

(a) In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least 95 percent of the earned sum when payment is due, with not more than five (5) percent being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

(b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

Sec. 3-3-52. Performance and payment bonds.

(a) Upon the award of any public construction contract exceeding \$25,000.00 awarded to any prime contractor, such contractor shall furnish to the city the following bonds:

(1) A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

(2) A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. Labor or materials shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

(b) Each of such bonds shall be executed by one (1) or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

(c) The bonds shall be made payable to the city.

(d) Each of the bonds shall be filed with the purchasing agent.

(e) Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below \$25,000.00.

(f) Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.

Sec. 3-3-53. Action on performance bond.

No action against the surety on a performance bond shall be brought unless within one (1) year after (1) completion of the contract, including the expiration of all warranties and guarantees, or (2) discovery of the defect or breach of warranty, if the action be for such.

Sec. 3-3-54. Actions on payment bonds.

(a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of 90 days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and

have execution on the judgment. The obligee named in the bond need not be named a party to such action.

(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 3-3-52 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished shall not be subject to the time limitations stated in this subsection.

(c) Any action on a payment bond must be brought within one (1) year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

Sec. 3-3-55. Alternative forms of security.

(a) In lieu of a bid, payment or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

(b) If approved by the city attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the city equivalent to the corporate surety's bond.

DIVISION 2.

Competitive Negotiation

Sec. 3-3-61. Definition of competitive negotiation.

Competitive negotiation is a method of source selection which involves individual discussions between the city and the offeror

on the basis of responses to the city's request for proposals. The source selection method of competitive negotiation incorporates sections 3-3-33 to 3-3-35, 3-3-37 and 3-3-38, 3-3-41 and 3-3-48 to 3-3-50, in addition to the provisions of sections 3-3-62 to 3-3-68 of this chapter.

Sec. 3-3-62. Conditions for use.

Upon a determination by the purchasing agent in writing that competitive sealed bidding is either not practicable or not advantageous to the public, goods, services, insurance or construction may be procured by competitive negotiation. The writing shall document the basis for this determination.

Sec. 3-3-63. Request for proposals.

Request for proposals shall be in writing and indicate in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

Sec. 3-3-64. Public notice.

At least 10 days prior to the date set for receipt of proposals, public notice shall be given by publication in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors.

Sec. 3-3-65. Receipt of proposals.

No proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.

Sec. 3-3-66. Evaluation factors.

The request for proposals shall state the relative importance of price and other evaluation factors.

Sec. 3-3-67. Discussion with responsible offerors and revision of proposals.

As provided in the request for proposals, discussion may be conducted with responsible offerors who submit proposals determined to be reasonably susceptible of being selected for award for the purpose of clarification to assure full understanding of, and conformance to, the solicitation requirements. Offerors shall be accorded fair and equal treatment with respect to any opportunity for discussion and revision of proposals and such

revisions may be permitted after submissions and prior to award for the purpose of obtaining best and final offers. In conducting discussions, there shall be no disclosure of the identity of competing offerors or of any information derived from proposals submitted by competing offerors.

Sec. 3-3-68. Award.

Award shall be made to the responsible offeror whose proposal is determined in writing to be the most advantageous to the city taking into consideration price and the evaluation factors set forth in the request for proposals. No other factors or criteria shall be used in the evaluation. The contract file shall contain the basis on which the award is made.

Sec. 3-3-69. Contracting for professional services by competitive negotiation.

(a) Professional services may be procured by competitive negotiation.

(b) The purchasing agent shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project as well as alternative concepts. These discussions may encompass nonbinding estimates of total project costs, including where appropriate, design, construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined herein, on the basis of evaluation factors published in the request for proposals and all information developed in the selection process to this point, the purchasing agent shall select in the order of preference two (2) or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the city can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the purchasing agent determine in writing and in his sole discretion that only one (1) offeror is fully qualified, or that one (1) offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated

and awarded to that offeror. Once formally terminated, negotiations may not be reopened with that offeror.

(c) With respect to the procurement of legal services, the duties and responsibilities imposed upon the purchasing agent in subsection (b) above shall devolve upon the city attorney.

DIVISION 3

Miscellaneous Provisions

Sec. 3-3-71. Sole source procurement.

Upon a determination by the purchasing agent in writing that there is only one (1) source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the basis for this determination.

Sec. 3-3-72. Small purchases.

Any contract not exceeding \$10,000.00 may be made in accordance with small purchase procedures; provided, however, that contract requirements shall not be artificially divided so as to constitute a small purchase under this section. Insofar as it is practical, no less than three (3) businesses shall be solicited to submit quotations. Award shall be made to the business offering the lowest acceptable quotation. The name of the business submitting a quotation, and the date and amount of each quotation, shall be recorded and maintained as a public record.

Sec. 3-3-73. Emergency purchases.

(a) Emergency purchases for immediate delivery to meet emergencies arising from unforeseen causes, to prevent delays in work, contracts or transportation, or to prevent spoilage and for medical supplies, laboratory equipment and surgical instruments needed and to be used by the health department may be made directly by a using agency with the consent of the city purchasing agent.

(b) If an emergency occurs and the purchasing agent has consented to a direct purchase, the using agency shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The agency shall also, not later than the next regular city business day thereafter, submit to the purchasing agent a requisition, a tabulation of bids received, if any, a copy of the delivery record and a brief written explanation of the circumstances of the emergency.

(c) Anything in this chapter to the contrary notwithstanding improvements, repairs, services and purchases may be made or obtained without the necessity of complying therewith when, in the opinion of the city manager, an emergency has arisen which requires an expenditure to meet a pressing need for other than a regular or recurring requirement, in order to protect the public health, safety or welfare; provided, the city manager first approves the transaction in writing. The city manager shall within 30 days after approval notify the city council in writing of his action, which writing shall contain a statement of the emergency and the transaction.

Sec. 3-3-74. Miscellaneous sources.

The following transactions are hereby exempt from the provisions of this chapter:

(a) Purchases from the state penitentiary or state contracts from the state purchasing department warehouse.

(b) Legal services, expert witnesses and other services associated with actual or potential litigation or regulatory proceedings.

(c) Purchases for water, sewer, electric, telephone and other utility services and motor vehicle license plates.

(d) Purchases for special police work when the chief of police certifies to the purchasing agent that items are needed for undercover police operations.

Sec. 3-3-75. Discrimination prohibited.

In the solicitation or awarding of contracts, the city shall not discriminate because of race, religion, color, sex or national origin of the bidder or offeror.

ARTICLE E

Disposal of Surplus Property

Sec. 3-3-81. Procedure.

(a) All using agencies shall submit to the purchasing agent at such time and in such form as he shall prescribe, reports showing stocks of all supplies which are no longer used or which have become obsolete, worn out or unusable.

(b) The purchasing agent shall have the authority to transfer surplus stock to other using agencies.

(c) The purchasing agent, with the consent of the city manager, shall have the authority to sell all supplies which have become unsuitable for public use, or to exchange the same for or trade in the same on new supplies. All sales shall be made to the highest responsible bidder.

ARTICLE F

Debarment

Sec. 3-3-91. Authority to debar or suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the purchasing agent is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three (3) years. The purchasing agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period of more than three (3) months. The causes for debarment include:

(a) Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

(b) Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously and directly affects responsibility as a city contractor;

(c) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;

(d) Violation of contract provisions, as set forth below, of a character which is regarded by the purchasing agent to be so serious as to justify debarment action:

(1) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

(2) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one (1) or more contracts; provided, that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment; or

(e) Any other cause the purchasing agent determines to be so serious and compelling as to affect responsibility as a city contractor, including debarment by another governmental entity for any cause in this chapter, and for violation of the ethical standards set forth in this chapter.

Sec. 3-3-92. Decision to debar or suspend.

The purchasing agent shall issue a written decision to debar or suspend. The decision shall state the reasons for the action taken and inform the debarred or suspended person involved of his rights concerning judicial or administrative review.

Sec. 3-3-93. Notice of decision.

A copy of the decision required by section 3-3-92 of this chapter shall be mailed or otherwise furnished immediately to the debarred or suspended person.

Sec. 3-3-94. Finality of decision.

A decision under section 3-3-92 of this chapter shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision takes an appeal to the city manager.

ARTICLE G

Appeals and Remedies for Bid Protests

Sec. 3-3-101. Ineligibility of bidder, offeror or contractor.

(a) Any bidder, offeror or contractor refused permission to, or disqualified from participating in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within 30 days of receipt by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

(b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief shall be restoration of eligibility.

Sec. 3-3-102. Appeal of denial or withdrawal of bid.

(a) A decision denying withdrawal of bid under the provisions of section 3-3-43 shall be final and conclusive unless the bidder appeals the decision within 10 days after receipt of the decision by invoking the administrative procedures set forth in the

contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

(b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of section 3-3-43 prior to appealing shall deliver to the purchasing agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

(c) If, upon appeal, it is determined that the decision refusing withdrawal of the bid was arbitrary or capricious, the sole relief shall be withdrawal of the bid.

Sec. 3-3-103. Determination of nonresponsibility.

(a) Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days by invoking the administrative procedures set forth in the contract, if any, or in the alternative, by instituting legal action as provided in section 3-3-108 of this chapter.

(b) If, upon appeal, it is determined that the decision of the purchasing agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the purchasing agent was arbitrary or capricious, the relief shall be as set forth in section 3-3-104(b).

(c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under section 3-3-104 of this chapter.

(d) Nothing contained in this section shall be construed to require the city when procuring by competitive negotiation to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

Sec. 3-3-104. Protest of award or decision to award.

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the purchasing agent no later than 10 days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written

protest shall include the basis for the protest and the relief sought. The purchasing agent shall issue a decision in writing within 10 days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within 10 days of the written decision by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

(b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The awarding authority (city council or purchasing agent) shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the awarding authority (city council or purchasing agent) may declare the contract void upon a finding that this action is in the best interest of the public. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

(c) Where the awarding authority (city council or purchasing agent) determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of the ethics in public contracting article (article I of this chapter), the city council or the purchasing agent, as the case may be, may enjoin the award of the contract to a particular bidder.

Sec. 3-3-105. Effect of appeal upon contract.

Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this chapter shall not be affected by the fact that a protest or appeal has been filed.

Sec. 3-3-106. Stay of award during protest.

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract shall be taken unless there is a written determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

Sec. 3-3-107. Contractual disputes.

(a) Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment; however, written notice of the contractor's intention to file such claim shall have been given at the time of the occurrence or beginning of the work upon which the claim is based. Nothing herein shall preclude a contract from requiring submission of an invoice for final payment within a certain time after completion and acceptance of the work or acceptance of the goods. Pendency of claims shall not delay payment of amounts agreed due in the final payment.

(b) A procedure for consideration of contractual claims may be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the purchasing agent.

(c) A contractor may not invoke the administrative procedures set forth in the contract, if any, or institute legal action as provided in section 3-3-108 of this chapter, prior to receipt of the decision on the claim, unless the purchasing agent fails to render such decision within the time specified in the contract.

(d) The decision of the purchasing agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final decision on the claim by the purchasing agent by invoking the administrative procedures set forth in the contract, if any, or in the alternative by instituting legal action as provided in section 3-3-108 of this chapter.

Sec. 3-3-108. Legal actions.

(a) A bidder or offeror, actual or prospective, who is refused permission or disqualified from participating in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the Circuit Court of the City of Alexandria challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious.

(b) A bidder denied withdrawal of a bid under section 3-3-102 of this chapter may bring an action in the said circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the city was clearly erroneous.

(c) A bidder, offeror or contractor may bring an action in the said circuit court challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest

exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, statutes, regulations or the terms and conditions of the invitation to bid or request for proposals.

(d) If injunctive relief is granted, the court, upon request of the city shall require the posting of reasonable security to protect the city.

(e) A contractor may bring an action involving a contract dispute with the city in the said circuit court.

(f) A bidder, offeror or contractor need not utilize the administrative procedures authorized by section 3-3-107 of this chapter, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the city council agrees otherwise.

(g) Nothing herein shall be construed to prevent the city from instituting legal action against a contractor.

ARTICLE H

Assistance to Small and Disadvantaged Businesses

Sec. 3-3-111. Participation of small businesses and businesses owned by women and minorities.

The purchasing agent may establish programs consistent with all provisions of this chapter to facilitate the participation of small businesses and businesses owned by women and minorities in procurement transactions. Such programs shall be in writing and may include cooperation with the state office of minority business enterprise, the United States Small Business Administration and other public or private agencies.

ARTICLE I

Ethics in Public Contracting

Sec. 3-3-121. Purpose.

The provisions of this article supplement but do not supersede other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (section 2.1-348, et seq., Code of Virginia (1950), as amended), the Virginia Governmental Frauds Act (section 18.2-498.1, et seq., Code of Virginia (1950), as amended) and articles 2 and 3 of chapter 10, title 18.2, Code of Virginia (1950), as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

Sec. 3-3-122. Definitions.

The words defined in this section shall have the meanings set forth below throughout this article.

(a) Immediate family. A spouse, children, parents, brothers and sisters and any other person living in the same household as the employee.

(b) Official responsibility. Administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any claim resulting therefrom.

(c) Pecuniary interest arising from the procurement. A material financial interest as defined in the Virginia Conflict of Interests Act.

(d) Procurement transaction. All functions that pertain to the obtaining of any goods, services or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract and all phases of contract administration.

(e) Public employee. Any person employed by the City of Alexandria, including elected officials and appointed members of boards and commissions.

Sec. 3-3-123. Proscribed participation by public employees in procurement transactions.

No public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the city when the employee knows that:

(a) The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction; or

(b) The employee, the employee's partner or any member of the employee's immediate family holds a position with a bidder, offeror or contractor such as an officer, director, trustee, partner or the like, or is employed in a capacity involving personal and substantial participation in the procurement transaction, or owns or controls an interest of more than five (5) percent; or

(c) The employee, the employee's partner or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or

(d) The employee, the employee's partner or any member of the employee's immediate family is negotiating, or has an arrangement

concerning prospective employment with a bidder, offeror or contractor.

Sec. 3-3-124. Solicitation or acceptance of gifts.

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal or minimal value, present or promised, unless consideration of substantially equal or greater value is exchanged. The city may recover the value of anything conveyed in violation of this section.

Sec. 3-3-125. Disclosure of subsequent employment.

No public employee or former public employee having official responsibility for procurement transactions shall accept employment with any bidder, offeror or contractor with whom the employee or former employee dealt in an official capacity concerning procurement transactions for a period of one (1) year from the cessation of employment by the city unless the employee or former employee provides written notification to the city council prior to commencement of employment by that bidder, offeror or contractor.

Sec. 3-3-126. Gifts by bidders, offerors, contractors or subcontractors.

No bidder, offeror, contractor or subcontractor shall confer upon any public employee having official responsibility for a procurement transaction any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

Sec. 3-3-127. Kickbacks.

(a) No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

(b) No subcontractor or supplier shall make or offer to make kickbacks as described in this section.

(c) No person shall demand or receive any payment, loan, subscription, advance, deposit of money, services or anything of value in return for an agreement not to compete on a public contract.

(d) If a subcontractor or supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have been included in the price of the subcontract or order and ultimately borne by the city and will be recoverable from both the maker and the recipient. Recovery from one (1) offending party shall not preclude recovery from other offending parties.

Sec. 3-3-128. Purchase of building materials, etc., from architect or engineer prohibited.

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the city shall be sold by or purchased from any person employed as an independent contractor by the city to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association or corporation in which such architect or engineer has a pecuniary interest.

Sec. 3-3-129. Penalty for violation.

Willful violation of any provision of this article shall constitute a class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

Section 2. That the title of and an informal memorandum explaining this ordinance shall be published in a newspaper of general circulation published in the city not later than five days following its introduction together with a notice containing the time and place for a public hearing. The city clerk shall have the full text of this ordinance printed in sufficient numbers to supply copies to meet request. The city clerk shall note the date of introduction and first reading, the date of publication, the date of the public hearing, and the date of the second reading and final passage in the minutes of the meeting. This ordinance shall become effective the date of its final passage.

CHARLES E. BEATLEY, JR.
Mayor

Final Passage: January 22, 1983