

ORDINANCE NO. 4004

AN ORDINANCE (1) to amend and reordain subsection (a) of Section 3-3-2 (APPLICATION) and Section 3-3-6 (DEFINITIONS), of Article A (GENERAL PROVISIONS); (2) to amend and reordain Section 3-3-21 (AGREEMENTS WITH OTHER PUBLIC BODIES OR INSTITUTIONS) and Section 3-3-24 (PURCHASES UNDER CONTRACTS COMPETITIVELY ENTERED BY OTHER PUBLIC BODIES), of Article C (COOPERATIVE PROCUREMENT); (3) to amend and reordain Section 3-3-32 (COMPETITIVE BIDDING ON STATE AID PROJECTS), Section 3-3-35 (PREQUALIFICATION OF BIDDERS), Section 3-3-41 (REJECTION OF BIDS), Section 3-3-42 (BID OPENING), Section 3-3-43 (WITHDRAWAL OF BID), Section 3-3-51 (RETAINAGE ON CONSTRUCTION CONTRACTS) and subsection (b) of Section 3-3-55 (ALTERNATIVE FORMS OF SECURITY), and to enact new Section 3-3-56 (PROMPT PAYMENT TO CITY CONTRACTORS), of Division 1 (COMPETITIVE SEALED BIDDING), to amend and reordain Section 3-3-62 (CONDITIONS FOR USE), Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), and to enact new Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), of Division 2 (COMPETITIVE NEGOTIATION), and to amend and reordain Section 3-3-71 (SOLE SOURCE PROCUREMENT), Section 3-3-72 (SMALL PURCHASES) and subsection (b) of Section 3-3-73 (MISCELLANEOUS SOURCES), and to enact new Section 3-3-76 (PURCHASE AT PUBLIC AUCTION) and new Section 3-3-77 (INCENTIVE CONTRACTING), of Division 3 (MISCELLANEOUS PROVISIONS), all of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); (4) to amend and reordain Section 3-3-81 (PROCEDURE) of Article E (DISPOSAL OF SURPLUS PROPERTY); (5) to amend and reordain subsection (a) of Section 3-3-101 (INELIGIBILITY OF BIDDER, OFFEROR OR CONTRACTOR), Section 3-3-103 (DETERMINATION OF NONRESPONSIBILITY), subsection (a) of Section 3-3-104 (PROTEST OF AWARD OR DECISION TO AWARD), Section 3-3-106 (STAY OF AWARD DURING PROTEST) and subsection (a) of Section 3-3-108 (LEGAL ACTIONS), of Article G (APPEALS AND REMEDIES FOR BID PROTESTS); (6) to amend and reordain Section 3-3-121 (PURPOSE), subsection (c) of Section 3-3-122 (DEFINITIONS) and Section 3-3-128 (PURCHASE OF BUILDING MATERIALS, ETC., FROM ARCHITECT OR ENGINEER PROHIBITED), and to enact new Section 3-3-131 (PARTICIPATION IN BID PREPARATION; LIMITATION ON SUBMITTING BID FOR SAME PROCUREMENT), new Section 3-3-132 (CERTIFICATION OF COMPLIANCE REQUIRED; PENALTY FOR FALSE STATEMENTS) and new Section 3-3-133 (MISREPRESENTATIONS PROHIBITED), of Article I (ETHICS IN PUBLIC CONTRACTING), all of Chapter 3 (PROCUREMENT), Title 3 (FINANCE, TAXATION AND PROCUREMENT) of The Code of the City of Alexandria, Virginia, 1981, as amended.

THE CITY COUNCIL OF ALEXANDRIA HEREBY ORDAINS:

Section 1. That subsection (a) of Section 3-3-2 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:

Sec. 3-3-2Application.

(a) This chapter and the policies set forth in this chapter apply to contracts for the procurement of goods, services, insurance and construction entered into by the city whether the city provides monetary or nonmonetary consideration for the goods, services, insurance or construction procured.

Section 2. That Section 3-3-6 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:

Sec. 3-3-6Definitions.

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

(2) Brand name or equal specification: A specification limited to one 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) Construction management contract: A contract in which a party is retained by the city to coordinate and administer contracts for the provision of construction services by others, and which also provides for such party to furnish construction services to the city.

(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 valuation 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) Design-build contract: A contract in which the contractor agrees to both design and build a structure, roadway or other item specified in the contract.

(14) Direct or indirect participation: Involvement through decision, approval, disapproval, recommendation, or 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.

(15) 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.

(16) 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.

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

(18) Informality: A minor defect or variation of a bid or proposal from the exact requirements of the invitation for bids, or the request for proposals, which does not affect the

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

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

(20) 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.

(21) Multiphase professional services contract: A contract for the provision of professional services in multiple phases where the total scope of work in the second or a subsequent phase of the contract cannot be specified without the results of the first or other phase of the contract.

(22) 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.

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

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

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

(26) Price analysis: The evaluation of pricing 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.

(27) 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.

(28) Public body: Any legislative, executive or judicial body, agency, office, department, authority, commission, committee, institution, board, political subdivision or other entity created by law to exercise some sovereign power or to perform some governmental duty.

(29) Public contract: Any contract between the city and a nongovernmental source that is enforceable in a court of law.

(30) 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.

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

(32) 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 prequalified, if required.

(33) Responsive bidder or offeror: A person who has submitted a bid or proposal which conforms in all material respects to the invitation for bids or request for proposals.

(34) 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.

(35) 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.

(36) 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.

(37) Using agency: Any department, agency, commission, office, bureau or other unit in the city government requiring goods, services, insurance or construction.

Section 3. That Section 3-3-21 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:

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

The city may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies or private not-for-profit health or educational institutions, for the purpose of combining requirements to increase efficiency or reduce

administrative expenses. Any public body or other entity which enters into a cooperative procurement agreement with the city shall comply with the policies and procedures established by this chapter.

Section 4. That Section 3-3-24 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:

Sec. 3-3-24 Purchases under contracts competitively entered by other public bodies.

Notwithstanding any other provision of this chapter to the contrary, the city may make purchases of goods and services from nongovernmental vendors under contracts that the vendors have entered, pursuant to a competitive procurement process, with one or more other public bodies, whether or not those contracts expressly provide for purchases by other public bodies. Prior to any city purchase under a contract entered by another public body, the purchasing agent shall find that the process pursuant to which the contract was entered generally complied with the policies and procedures established by this chapter.

Section 5. That Section 3-3-32 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:

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 not less than \$30,000, in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of the construction, addition or improvement shall be let except after competitive sealed bidding or competitive negotiation as provided under subsection (b) of section 3-3-62. The procedure for the advertising for bids or the submission of proposals and the letting of the contract shall conform, mutatis mutandis, to this chapter. No person or firm shall be eligible to bid on or submit a proposal for any such contract, or to have the same awarded to him or it, who or which has been engaged as architect or engineer for the same project under a separate contract.

Section 6. That Section 3-3-35 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:

Sec. 3-3-35 Prequalification of bidders.

(a) The purchasing agent is authorized to prequalify prospective bidders prior to the issuance of any invitation for bids, whether for goods, services, insurance or construction, as

provided in this section; provided, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter.

(b) For purposes of prequalification, the purchasing agent shall prepare an application form that sets forth the criteria, based on the standards set forth in subsection (f), upon which the qualifications of prospective bidders will be evaluated. The application form shall request of prospective bidders only such information as is appropriate for an objective evaluation of all prospective bidders pursuant to such criteria. Such application form shall allow the prospective bidder seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the prospective bidder pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of section 3-3-33.

(c) In all instances in which the city requires prequalification of prospective bidders, advance notice shall be given of the deadline for submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids so as to allow the procedures set forth in this section to be accomplished.

(d) At least 30 days prior to the date established for submission of bids under the procurement of the contract for which the prequalification applies, the city shall advise in writing each prospective bidder which has submitted an application whether that prospective bidder has been prequalified. In the event that a prospective bidder is denied prequalification, the written notification to such prospective bidder shall state the reasons for denial of such prequalification and the factual basis of such reasons.

(e) A decision by the purchasing agent denying prequalification under the provisions of this section shall be final and conclusive unless the prospective bidder appeals the decision as provided in section 3-3-101.

(f) The city may deny prequalification to any prospective bidder only if the purchasing agent finds one of the following:

(1) The prospective bidder does not have sufficient financial ability to perform the contract. If a bond is required to ensure performance of a contract, evidence that the prospective bidder can acquire a surety bond from a corporation included on the United States Treasury list of acceptable surety corporations in the amount and type required by the city shall be sufficient to establish such financial ability.

(2) The prospective bidder does not have appropriate experience to perform the contract.

(3) The prospective bidder, or any officer, director or owner of the prospective bidder, has had judgments entered against him within the past 10 years for breach of contract.

(4) The prospective bidder has been in substantial noncompliance with the terms and conditions of one or more prior contracts with a public body without good cause. If the city has not previously contracted with a prospective bidder, the city may deny prequalification if the prospective bidder has been in substantial noncompliance with the terms and conditions of comparable contracts with another public body without good cause. The city may not utilize this provision to deny prequalification unless the facts underlying such substantial noncompliance were documented in writing in the prior contract file and such information given to the prospective bidder at that time, with the opportunity to respond.

(5) The prospective bidder or any officer, director, owner, project manager, procurement manager or chief financial official of the prospective bidder has been convicted within the past 10 years of a crime related to contracting.

(6) The prospective bidder or any officer, director or owner of the prospective bidder is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body.

(7) The prospective bidder failed to provide to the city in a timely manner any information requested by the city relevant to subsections (1) through (6) of this subsection.

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

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

Section 7. That Section 3-3-41 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:

Sec. 3-3-41            Rejection of bids.

(a) An invitation for bids, a request for proposals or another solicitation may be canceled, 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. The purchasing agent shall not

cancel or reject an invitation for bids, a request for proposals or another solicitation solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror.

- (b) The purchasing agent may waive informalities in bids.

Section 8. That Section 3-3-42 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:

Sec. 3-3-42 Bid opening.

Bids shall be submitted sealed to the purchasing agent and shall be identified as bids on the envelope. Bids shall be opened publicly 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. Except as provided in section 3-3-33(c) and (d), bid records shall be open to public inspection only after the award of the contract.

Section 9. That Section 3-3-43 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:

Sec. 3-3-43 Withdrawal of bid.

(a) A bidder for a public contract may withdraw his bid from consideration at any time prior to the commencement of the bid opening procedure by notifying the purchasing agent in writing of such withdrawal.

(b) A bidder for a public contract, may withdraw his bid from consideration subsequent to the commencement of the bid opening procedure if the price bid was substantially lower than the other bids due solely to a mistake therein; provided, (i) that the bid was submitted in good faith, (ii) that the mistake was a clerical mistake as opposed to a mistake in judgment 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 the bid, and (iii) that the unintentional nature of the arithmetic error or omission is clearly shown to the satisfaction of the purchasing agent by objective evidence drawn from original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

(c) The procedure for bid withdrawal subsequent to commencement of the bid opening procedure must be stated in the advertisement for bids and shall include the following procedures:

(1) The bids shall be opened one day following the time fixed by the city for the submission of bids. The bidder shall give notice in writing of his claim of right to withdraw his bid within two hours after the conclusion of the bid opening procedure.

(2) The bidder shall submit to the purchasing agent by the close of business on the second business day after such notice of claim his original work papers, documents and materials used in the preparation of the bid.

(3) Such notice of claim and work papers, documents and materials shall be delivered to the purchasing agent by the bidder in person or by registered mail.

(4) A contract shall not be awarded by the city until the two-hour period in subsection (1) has elapsed. If a notice of claim is received from the apparent low bidder within such two-hour period, a contract shall not be awarded until the purchasing agent has determined whether to allow the withdrawal of the bid. This determination shall be made in writing within 10 days of receipt of the notice of claim, and may be based only upon the original work papers, documents and materials delivered as required herein.

(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 on a bid of another bidder in which the ownership of the withdrawing bidder is more than five percent.

(e) If a bid is permitted to be withdrawn under subsection (b), following a determination by the purchasing agent, the lowest remaining bid shall be deemed to be the low bid.

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

(g) If the purchasing agent denies the withdrawal of a bid under the provisions of subsection (b), he shall notify the bidder in writing stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder.

Section 10. That Section 3-3-51 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:

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 each payment is due, with not more than five percent being retained from each payment to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

(b) Contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots and miscellaneous drainage structures, for demolition, clearing, grading, excavating, paving and pile driving, and for installation of water, gas and sewer lines, and pumping stations, where portions of the contract price are to be retained, shall include in the invitation for bids an option for the contractor to use an escrow account procedure for utilization of the retainage funds. In the event the contractor elects to use the escrow account procedure, the contractor shall submit an escrow agreement form, executed by the appropriate parties, within 15 calendar days after notification of award. If the escrow agreement form is not submitted within the 15-day period, the contractor shall forfeit its rights to use of the escrow account procedure. The escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The escrow agreement and all regulations promulgated by the city shall be substantially the same as those used by the Virginia Department of Transportation.

(c) Any public contract which includes payment of interest on retained funds shall contain a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.

(d) Any subcontract for a public project which provides for similar progress payments shall be subject to the provisions of this section.

Section 11. That subsection (b) of Section 3-3-55 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:

(b) If approved by the city attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid, payment or performance 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.

Section 12. That Chapter 3 of Title 3 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended by adding new section 3-3-56 to read as follows:

Sec. 3-3-56 Prompt payment to city contractors.

(a) Every using agency that acquires goods or services pursuant to a public contract, or conducts any other type of contractual business, with a contractor shall promptly pay for the completed delivered goods or services by the required payment date, which shall be either (i) the date on which payment is due under the terms of the contract, or (ii) if such date is not established by the contract, the date which is 45 days after goods or services are received or the invoice is rendered, whichever is later.

(b) Notwithstanding anything to the contrary contained in this section, payment shall be deemed to have been made when offset proceedings have been instituted, as authorized under the Virginia Debt Collection Act (section 2.1-726 et seq., Code of Virginia (1950), as amended).

(c) Within 30 days after receipt of the invoice or the goods or services, whichever is later, the using agency shall notify the contractor of any defect or impropriety which would prevent payment by the required payment date.

(d) Unless otherwise provided in the contract, every using agency that fails to pay by the required payment date shall pay any finance charges assessed by the contractor which do not exceed one percent per month.

(e) In those cases where payment is made by mail, the date of postmark shall be deemed to be the date payment is made for purposes of this section.

Section 13. That Section 3-3-62 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:

Sec. 3-3-62 Conditions for use.

(a) Upon a determination made in advance by the purchasing agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination. Notwithstanding the foregoing, upon a determination made in advance by the purchasing agent that the procurement of insurance by competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed broker or agent selected through competitive negotiation. The basis for this determination shall be documented in writing.

(b) Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the purchasing agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

(1) The alteration, repair, renovation or demolition of buildings when the contract is expected to equal or be less than \$500,000;

(2) The construction of highways, streets and alleys; or

(3) The draining, dredging, excavation or grading of, or similar work upon, real property.

Section 14. That Section 3-3-69 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:

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

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

(b) The purchasing agent shall engage in individual discussions with two or more 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 and to explore alternative concepts of performance of the contract. The request for proposals shall not seek estimates of person hours or costs for services. However, 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 the price for services may also be discussed. Proprietary information from competitive offerors shall not be disclosed to the public or to competitors. At the conclusion of the discussions and 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 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 shall be conducted with the offeror ranked second, and so on until such a contract can be negotiated

at a fair and reasonable price. If, at the conclusion of the discussions, the purchasing agent determines in writing and in his sole discretion that only one offeror is fully qualified or that one 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 any 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.

(d) Multiphase professional services contracts satisfactory and advantageous to the city may be negotiated and awarded based on a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases.

Section 15. That Chapter 3 of Title 3 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is amended by adding new section 3-3-70 to read as follows:

Sec. 3-3-70 Design-build and construction management contracts.

(a) While the competitive sealed bid process remains the preferred method of construction procurement for the city, the city may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided the city complies with the requirements of this section and has obtained the approval of the Commonwealth of Virginia Design-Build/Construction Management Review Board (the Review Board) pursuant to section 11-41.2:5 of the Code of Virginia (1950), as amended.

(b) Prior to making a determination as to the use of design-build or construction management for a specific construction project, the city shall employ or contract with a licensed architect or engineer with professional competence appropriate to the project to advise the city regarding the use of design-build or construction management for that project and to assist in the preparation of the request for qualifications and the request for proposals.

(c) The following procedures shall be followed in the selection and evaluation of offerors and award of design-build and construction management contracts:

(1) Prior to the issuance of a request for qualifications, the purchasing agent shall:

(i) determine that a design-build or construction management contract is more advantageous for the construction project than a competitive sealed bid construction contract,

that there is benefit to the city in using a design-build or construction management contract, and that competitive sealed bidding is not practical or fiscally advantageous. The basis for this determination shall be documented in writing; and

(ii) obtain approval by the Review Board of the use of a design-build or construction management contract for the construction project.

(2) Upon approval by the Review Board of the use of a design-build or construction management contract, the purchasing agent shall appoint an evaluation committee of not less than three members, one of whom shall be the architect or professional engineer employed by or under contract with the city pursuant to subsection (b).

(3) Prequalification of potential offerors.

(i) The purchasing agent shall issue a notice of request for qualifications from potential offerors by posting on a public bulletin board and advertising in a newspaper of general circulation in the city at least 10 days preceding the last day set for the receipt of qualifications. The request for qualifications shall indicate in general terms that which is sought to be procured, specifying the criteria which will be used in evaluating the potential offerors' qualifications, including any unique capabilities or qualifications which will be required of offerors. The request for qualifications shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria.

(ii) The evaluation committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two offerors deemed fully qualified and best suited on the basis of the criteria contained in the request for qualifications. Within 30 days of the date established for the submission of qualifications, the purchasing agent shall advise in writing each potential offeror whether that offeror has been selected. In the event that a potential offeror is not selected, the written notification to such potential offeror shall state the reasons therefor.

(4) Request for proposals.

(i) The purchasing agent shall issue a request for proposals to the selected offerors at least 10 days prior to the date set for receipt of proposals. The request for proposals shall include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC) and electrical systems, and special telecommunications. The request for proposals may also define such other requirements as the purchasing agent deems appropriate for the construction project. In the case of a

construction management contract, the request for proposals shall also define the pre-design, design phase, bid phase and/or construction phase services to be performed by the construction manager. The request for proposals shall specify the evaluation criteria to be used by the evaluation committee to evaluate proposals.

(ii) Each selected offeror shall submit a cost proposal and a technical proposal. Cost proposals shall be sealed separately from technical proposals and, in the case of a construction management contract, shall include the offeror's lump sum price for all requested pre-construction phase services. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the purchasing agent and kept sealed until evaluation of all technical proposals is completed.

(iii) The evaluation committee shall evaluate each technical proposal based on the criteria set forth in the request for proposals. Based upon its review of each offeror's technical proposal, the evaluation committee shall determine whether any changes to the request for proposals should be made to correct errors or omissions or to clarify ambiguities in the request for proposals, or to incorporate project improvements or additional details identified by the committee during its review. Any such changes shall be set out in an addendum to the request for proposals. Each offeror shall be provided an opportunity to amend or supplement its technical proposal to address the changes.

(iv) Based on final technical proposals, the evaluation committee shall conduct negotiations with the offerors. After negotiations have been conducted, offerors may submit sealed additive and/or deductive modifications to their cost proposals.

(v) Following receipt of the cost proposal modifications, the evaluation committee shall publicly open, read aloud and tabulate the cost proposals including any modifications submitted by an offeror.

(5) Final selection of design-builder.

(i) Following opening of cost proposals, the evaluation committee shall make its recommendation to the purchasing agent based upon its evaluation and negotiations.

(ii) Following receipt of the recommendation of the evaluation committee, the purchasing agent, unless otherwise specified in the request for proposals, shall award the design-build contract to the offeror which has submitted an acceptable technical proposal at the lowest cost.

(6) Final selection of construction manager.

(i) Following the opening of cost proposals, the evaluation committee shall make its recommendation to the purchasing agent based on its evaluation and negotiations. In making its recommendation, price shall be considered, but need not be the sole determining factor. Notwithstanding the foregoing, if prior to receipt of the recommendation from the evaluation committee, the purchasing agent determines in writing that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other offerors under consideration, a contract may be negotiated and awarded to that offeror.

(ii) Following receipt of the recommendation of the evaluation committee, the purchasing agent shall select the offeror which, in his opinion, has made the best proposal, and shall award the contract to that offeror.

(iii) For any guaranteed maximum price construction management contract, the contract shall provide that not more than 10 percent of the construction work (measured by the cost of the work) shall be performed by the construction manager with its own forces, that the remaining 90 percent of the construction work shall be performed by subcontractors of the construction manager, and that the construction manager shall procure such work by competitive sealed bidding or competitive negotiation.

(7) Trade secrets or proprietary information provided by an offeror in response to a request for qualifications or a request for proposals shall not be disclosed to the public or to competitors, provided the offeror has invoked protection pursuant to section 3-3-33.

(8) The city shall submit information for post-project evaluation when requested by the Review Board.

(d) Subject to the approval of the city manager, the purchasing agent may promulgate such additional procedures, not inconsistent with the provisions of this section or the rules and regulations of the Review Board, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as he deems necessary and appropriate to effect the selection and evaluation of offerors and the award of design-build and construction management contracts.

Section 16. That Section 3-3-71 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:

Sec. 3-3-71 Sole source procurement.

Upon a determination by the purchasing agent in writing that there is only one 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. In such event, the purchasing agent shall issue a written notice stating that only one source was determined to be practicably available and identifying that which is being procured and the contractor selected. Such notice shall be posted in a designated public area on the date of decision to award the contract or the date of announcement of such award, whichever occurs first.

Section 17. That Section 3-3-72 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:

Sec. 3-3-72            Small purchases.

Any contract not exceeding \$30,000 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 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.

Section 18. That subsection (b) of Section 3-3-74 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:

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

Section 19. That Chapter 3 of Title 3 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended by adding new sections 3-3-76 and 3-3-77 to read as follows:

Sec. 3-3-76            Purchase at public auction.

Upon a written determination documented and made in advance by the purchasing agent that the purchase of goods from a public auction sale is in the best interests of the city, such items may be purchased at public auction.

Sec. 3-3-77            Incentive contracting.

The purchasing agent may adopt procedures, subject to approval by the city manager, which provide for use of incentive contracting. Such procedures may provide for the contractor to share in any cost savings realized by the city when project costs are reduced by

the contractor, without affecting project quality, during the contract. The fee, if any, charged by a project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

Section 20. That Section 3-3-81 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:

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 and other property which are no longer used, have become obsolete, worn out or unusable, or are otherwise surplus.

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

(c) The purchasing agent, with the consent of the city manager, shall have the authority to sell all surplus property, or to exchange the same for or trade in the same on new property. Except as provided in subsection (d), all sales of such surplus property shall be made to the highest responsible bidder.

(d) Upon a written determination by the purchasing agent that it is in the best interests of the city, surplus property may be sold to another public body at a fair and reasonable negotiated price without seeking competitive bids.

Section 21. That subsection (a) of Section 3-3-101 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:

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

(a) Any bidder, offeror or contractor declared ineligible to participate 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.

Section 22. That Section 3-3-103 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:

Sec. 3-3-103 Determination of nonresponsibility.

(a) If the purchasing agent preliminarily determines that a bidder responding to an invitation for bids who, despite being the apparent low bidder, is not a responsible bidder for a particular contract, the purchasing agent shall proceed as follows:

(1) Prior to the issuance of a written determination of nonresponsibility, the purchasing agent shall (i) notify the apparent low bidder in writing of the preliminary determination, (ii) disclose the factual support for the preliminary determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents which relate to the preliminary determination, if so requested by the bidder within five business days after receipt of the notice.

(2) Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the preliminary determination. The purchasing agent shall issue a final determination of responsibility based on all information in his possession, including any rebuttal information, within five business days of the date the purchasing agent receives the rebuttal information. At the same time, the purchasing agent shall send the bidder written notice of his final determination, certified mail, return receipt requested.

(3) Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 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.

(4) The provisions of this subsection shall not apply to procurements involving the prequalification of bidders and the rights of any potential bidders under such prequalification to appeal a decision that such bidders are not responsible.

(b) If, upon appeal, it is determined that the decision of the purchasing agent was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, 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 or not in accordance with the Constitution of Virginia, applicable state law or regulation, 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.

(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.

Section 23. That subsection (a) of Section 3-3-104 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:

(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. Nothing in this section shall be construed to permit a bidder or offeror to challenge the validity of the terms or conditions of the invitation for bids or request for proposals.

Section 24. That Section 3-3-106 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:

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 under section 3-3-104, 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.

Section 25. That subsection (a) of Section 3-3-108 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:

Sec. 3-3-108 Legal actions.

(a) A bidder or offeror, actual or prospective, who is determined to be ineligible to participate in bidding or to respond to a request for proposals, 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 or not in accordance with the Constitution of Virginia, applicable state law or regulation, or, in the case of the denial of

prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in section 3-3-35(f) of this chapter. The provisions of section 3-3-104(b) shall apply to any decision of the circuit court.

Section 26. That Section 3-3-121 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:

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 State and Local Government Conflict of Interests Act (section 2.1-639.1, 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 (section 18.2-438, et seq.) and 3 (section 18.2-446, et seq.) 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 State and Local Government Conflict of Interests Act.

Section 27. That subsection (c) of Section 3-3-122 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:

Sec. 3-3-122 Definitions.

(c) Pecuniary interest arising from the procurement: A personal interest as defined in the State and Local Government Conflict of Interests Act.

Section 28. That Section 3-3-128 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:

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

(a) 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 arising from the procurement.

(b) 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 who has

provided or is providing design services to the independent contractor employed by the city to furnish architectural or engineering services for such building or structure, if such person (i) has specified a sole source for such materials, supplies or equipment, and (ii) has a pecuniary interest arising from the procurement in such architect or engineer.

Section 29. That Chapter 3 of Title 3 of The Code of the City of Alexandria, 1981, as amended, be, and the same hereby is, amended by adding new sections 3-3-131, 3-3-132, and 3-3-133, to read as follows:

Sec. 3-3-131 Participation in bid preparation; limitation on submitting bid for same procurement.

No person who, for compensation, prepares an invitation for bids or request for proposals for or on behalf of the city shall submit a bid or proposal for that procurement or any portion thereof or disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, the purchasing agent may permit such person to submit a bid or proposal for that procurement or any portion thereof if the purchasing agent determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the city.

Sec. 3-3-132 Certification of compliance required; penalty for false statements.

The city manager may require employees having official responsibility for procurement transactions to annually submit a written certification that they complied with the provisions of this article. Any employee who knowingly makes a false statement on such a certification shall be punished as provided in section 3-3-129.

Sec. 3-3-133 Misrepresentations prohibited.

No employee, in the exercise of official duties in a procurement transaction, shall knowingly falsify, conceal, or misrepresent a material fact, knowingly make any false, fictitious or fraudulent statements or representations, or make or use any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry.

Section 30. That this ordinance shall become effective upon the date and at the time of its final passage.

KERRY J. DONLEY  
Mayor

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