

ORDINANCE NO. 4750

AN ORDINANCE to amend and reordain Section 3-3-35 (PREQUALIFICATION OF BIDDERS), Section 3-3-39 (BID BONDS ON CONSTRUCTION PROJECTS), Section 3-3-43 (WITHDRAWAL OF BID), Section 3-3-52 (PERFORMANCE AND PAYMENT BONDS), Section 3-3-54 (ACTION ON PAYMENT BONDS), all of Division 1 (COMPETITIVE SEALED BIDDING) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); to amend and reordain Section 3-3-62 (CONDITIONS FOR USE), to add and ordain Section 3-3-63.2 (PREQUALIFICATION OF PROPOSERS), to amend and reordain Section 3-3-69 (CONTRACTING FOR PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), Section 3-3-70 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), all of Division 2 (COMPETITIVE NEGOTIATION) of Article D (CONTRACT FORMATION AND METHODS OF SOURCE SELECTION); to amend and reordain Section 3-3-81 (PROCEDURE), of Article E (DISPOSAL OF SURPLUS PROPERTY); to amend and reordain Section 3-3-121 (PURPOSE), Section 3-3-122 (DEFINITIONS), Section 3-3-127 (KICKBACKS), Section 3-3-128 (PURCHASE OF BUILDING MATERIALS, ETC., FROM ARCHITECT OR ENGINEER PROHIBITED), of Article I (ETHICS IN PUBLIC CONTRACTING), all of Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES), of 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 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 construction or 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, agency of another state or agency of the federal government.

(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) The provisions of subsections (b) through (f) shall not apply to prequalification for contracts let under section 33.1-12 of the Code of Virginia, 1950, as amended.

(gh) 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.

(hi) 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 2. That Section 3-3-39 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. 3-3-39 Bid bonds on construction contracts.

(a) Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of ~~\$1~~500,000 or transportation-related projects authorized under section 33.1-12 of the Code of Virginia, 1950, as amended, that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder or offeror which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder or offeror, the bidder or offeror will enter into the contract for the work mentioned in the bid or proposal. The amount of the bid bond shall not exceed five percent of the amount bid.

(b) For nontransportation-related contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective bidders or offerors shall be prequalified for each individual project in accordance with section 3-3-35.

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

(ed) Nothing in this section shall preclude the city from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than ~~\$1~~500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under section 33.1-12 of the Code of Virginia, 1950, as amended, and partially or wholly funded by the Commonwealth.

Section 3. 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) If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid from consideration if the price bid would have been substantially lower than the other bids due solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid that shall 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.

(d) The bidder shall give notice in writing of his claim of right to withdraw within two business days after the conclusion of the bid opening procedure and shall submit original work papers, documents and materials with such notice. Bidder shall submit notice and documents to the purchasing agent.

~~(e)~~ The procedure for bid withdrawal subsequent to commencement of the bid opening procedure must~~shall~~ 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.~~

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

(~~h~~h) No bidder who withdraws a bid under subsection (a) or is permitted to withdraw a bid under subsection (b) or (c) 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~~i) ~~If the purchasing agent denies the withdrawal of a bid under the provisions of subsection (b) or (c), 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.~~ he shall notify the bidder within five business days of his decision regarding the bidder's request to withdraw his bid. If the purchasing agent denies the withdrawal of a bid under subsection (b) or (c), he shall state in such notice 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. At the same time that the notice is provided, the purchasing agent shall return all work papers and copies thereof that have been submitted by the bidder.

Section 4. That Section 3-3-52 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. 3-3-52 Performance and payment bonds.

(a) Upon the award of any (i) public construction contract exceeding \$1500,000 to any prime contractor; (ii) construction contract exceeding \$1500,000 awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by a public body; (iii) construction contract exceeding \$1500,000 in which the performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, 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. For transportation-related projects authorized under section 33.1-12 of the Code of

Virginia, 1950, as amended, such bond shall be in a form and amount satisfactory to the purchasing agent.

(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. For transportation-related projects authorized under section 33.1-12 of the Code of Virginia, 1950, as amended, such bond shall be in a form and amount satisfactory to the purchasing agent. 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) For transportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective bidders or offerors shall be prequalified for each individual project in accordance with section 3-3-35.

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

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

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

~~(ef)~~ Nothing in this section shall preclude the purchasing agent from requiring payment or performance bonds for construction contracts below \$~~4~~500,000 for nontransportation-related projects or \$250,000 for transportation-related projects authorized under section 33.1-12 of the Code of Virginia, 1950, as amended, and partially or wholly funded by the Commonwealth.

~~(fg)~~ 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.

Section 5. That Section 3-3-54 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. 3-3-54 Actions on payment bonds.

(a) ~~Subject to the provisions of subsection (b) hereof, a~~Any claimant who has a direct contractual relationship with the contractor and 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~~90 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 year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

(d) Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

Section 6. 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) for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is expected to equal or be less than \$1.5 million;~~

~~(2) on a fixed price design-build basis or construction management basis under section 2.2-4308 of the Code of Virginia, 1950, as amended, when the contract is not expected to cost more than \$1.5 million;~~

~~(3)~~(1) for the construction of highways, streets and alleys;

~~(4)~~(2) for the draining, dredging, excavation or grading of, or similar work upon, real property; or

(3) for construction contracts on a fixed price or not-to-exceed price design-build or construction management basis and otherwise in compliance with sections 2.2-4303 and 2.2-4308 of the Code of Virginia, 1950, as amended, and other applicable law governing design-build or construction management contracts for public bodies; or

~~(5)~~(4) as otherwise provided in section 3-3-70.

Section 7. That Section 3-3-63.2 of The Code of the City of Alexandria, Virginia, 1981, as amended, be, and the same hereby is, added by inserting new language as follows:

Sec. 3-3-63.2 Prequalification for proposers.

The provisions of section 3-3-35 shall apply to prequalification for public contracts awarded by competitive negotiation.

Section 8. 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. The purchasing agent may establish purchase procedures, if adopted in writing, not requiring competitive negotiation for single or term contracts for professional services if the aggregate or the sum of all phases is not expected to exceed \$50,000; however, such small purchase procedures shall provide for competition wherever practicable.

(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. In addition, offerors shall be informed of any ranking criteria that will be used by the purchasing agent in addition to the review of professional competence of the offeror. 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, but not limited to, where appropriate design, construction, ~~and~~ life cycle costs and nonbinding estimates of price for services. ~~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. Notwithstanding the foregoing, if the terms and conditions for multiple awards are included in the request for proposal, the city may award contracts to more than one offeror. 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) A contract for architectural or professional engineering services relating to construction projects may be negotiated by the purchasing agent, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the request for proposals, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this ~~paragraph~~ subsection (d), whichever occurs first. Such contract may be renewable for ~~two~~ four additional ~~term~~ one-year terms at the option of the city, as exercised by the purchasing agent. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in one contract term shall not exceed one million dollars; and (c) the project fee of any single project shall not exceed \$500,000. Any unused amounts from one contract term shall not be carried forward to a successive term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the request for proposals so states, and (2) the purchasing agent has established procedures for distributing multiple projects among the selected contractors during the contract term.

(e) Multiphase professional services contracts for environmental, location, design and inspection work regarding construction of infrastructure projects ~~satisfactory and advantageous to the city~~ may be negotiated and awarded based on qualifications at 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. Prior to the procurement of any such contract, the purchasing agent shall state the anticipated intended total

scope of the project and determine in writing that the nature of the work is such that the best interests of the city require awarding the contract.

Section 9. That Section 3-3-70 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. 3-3-70 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 either 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 2.2-2406 of the Code of Virginia (1950), as amended, or the Review Board has made a one-time determination that the city has the personnel, procedures, and expertise to enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis. Provided, however, that projects undertaken pursuant to subdivision D 2 of section 2.2-4303 of the Code of Virginia (1950), as amended, shall be exempt from approval of the review board.~~

(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 and the evaluation of such 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 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.

(2) 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 two ~~general~~ a newspapers of daily circulation in the city at least 10 days preceding the last day set for the receipt of

qualifications. In addition, qualifications may be solicited directly from potential offerors. 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, and containing or incorporating by reference the other applicable contractual terms and conditions, 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. The purchasing agent shall receive and consider comments concerning specifications or other provisions in the request for qualifications, prior to the time set for receipt of qualifications.

(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. An offeror may be denied prequalification only upon those grounds specified in section ~~2.2-4317 of the Code of Virginia (1950), as amended~~ 3-3-35(f). At least 30 days prior to the date established for the submission of proposals, 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 there-for.

(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 indicate in general terms that which is sought to be procured, specifying the factors that 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 that will be required of the contractor. 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. The purchasing agent shall receive and consider comments concerning specifications or other provisions in the request for proposals, prior to the time set for receipt of 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. A lump sum price or guaranteed maximum price shall be established for all requested construction 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. As a part of the evaluation process, the evaluation committee shall grant each of the offerors an equal opportunity for direct and private communication with the evaluation committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the evaluation committee shall exercise care to discuss the same owner information with all offerors. ~~In addition, the evaluation committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to section 2.2-4342 F of the Code of Virginia.~~ 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 shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal.

(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.

~~(ii) Following receipt of the recommendation of the evaluation committee, the purchasing agent shall select the offeror which, in the opinion of the purchasing agent, has made the best proposal, and shall award the contract to that offeror.~~ Following receipt of the recommendation of the evaluation committee, the purchasing agent shall award the contract to the fully qualified offeror who submits an acceptable proposal determined to be the best value in response to the Request for Proposal. Should the purchasing agent determine 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.

(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 applicable 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 10. 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~~ surplus property.

~~(b) The purchasing agent shall have the authority to transfer such surplus property to other using agencies. Except as provided in subsection (c), (e) The purchasing agent, with~~ under the consent and supervision 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, exchange, trade-in, or otherwise dispose of all surplus 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.~~

(c) Approval by city council, after notice and public hearing, is required if property in the following categories is sold with the intent to lease back the property and the value of the proposed sale exceeds \$2,000,000: school or transit bus fleet, vehicle fleet or road construction equipment. The public hearing shall be advertised once in a newspaper having general circulation in the city at least seven days prior to the date set for the hearing.

(d) With the approval of the city manager, the purchasing agent may delegate authority to dispose of surplus property.

(e) Surplus property as set forth herein means personal property owned by the city, including, but not limited to, materials, supplies, equipment, and recyclable items, which is obsolete, worn out, unusable, or no longer used.

Section 11. 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~~2.2-3100, 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 12. That 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.

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 personal interest as defined in the State and Local Government 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, including elected officials and appointed members of boards and commissions.

(f) Transaction: Any matter under consideration or considered by a public employee or on which official action is taken or contemplated.

Section 13. That Section 3-3-127 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. 3-3-127 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 offending party shall not preclude recovery from other offending parties.

Section 14. 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) 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 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.~~ 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 currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the city to furnish architectural or engineering services in which such person has a pecuniary interest.

Section 15. That this ordinance shall become effective upon the date and at the time of its final passage.

WILLIAM D. EUILLE
Mayor

Final Passage: February 25, 2012