

City of Alexandria, Virginia

MEMORANDUM

DATE: JANUARY 30, 2012

TO: THE HONORABLE MAYOR AND MEMBERS OF CITY COUNCIL

FROM: RASHAD M. YOUNG, CITY MANAGER *RMJ*

SUBJECT: PROPOSED ORDINANCE TO AMEND CITY PROCUREMENT PROVISIONS IN ORDER TO MAKE THE PROCUREMENT PROVISIONS COMPLY WITH THE CODE OF VIRGINIA AND MAKE CLERICAL CHANGES

ISSUE: Consideration of an ordinance to:

1. Amend and reordain the following Alexandria City Code sections to bring them into compliance with modifications made to the Code of Virginia by the General Assembly:
 - a. Section 3-3-35: Prequalification of Bidders;
 - b. Section 3-3-39: Bid Bonds on Construction Contracts;
 - c. Section 3-3-43: Withdrawal of Bid;
 - d. Section 3-3-52: Performance and Payment Bonds;
 - e. Section 3-3-54: Actions on Payment Bonds;
 - f. Section 3-3-62: Conditions for Use;
 - g. Section 3-3-63.2: Prequalification;
 - h. Section 3-3-69: Contracting for Professional Services by Competitive Negotiation;
 - i. Section 3-3-70: Design-Build and Construction Management Contracts;
 - j. Section 3-3-127 Kickbacks; and
 - k. Section 3-3-128: Purchase of Building Materials, etc. from Architect or Engineer Prohibited, and
2. Amend and reordain Alexandria City Code Sections 3-3-35, 3-3-39, 3-3-81, 3-3-121, and 3-3-122 to make clerical/clarification changes.

The discussion below summarizes these additions and changes to the sections listed above. Specific Code of Virginia references and detail changes can be found in Attachment 1.

RECOMMENDATION: That City Council pass the proposed ordinance (Attachment 2) on first reading on Tuesday, February 14, 2012, and schedule it for public hearing, second reading and final passage on Saturday, February 25, 2012.

DISCUSSION:

The General Assembly periodically makes changes to public procurement practices that require the City to make changes to the City Code to ensure City Code is consistent with the State Code.

While reviewing the City Code to make these changes, staff also found sections of the procurement code that needed clarification to be consistent between sections of the City Code.

General Assembly Changes to City Code

Changes the City must make as a result of General Assembly action fall into two broad categories:

1) Changes intended to facilitate the procurement process, including how bidders become qualified to do business with the City, the size of contracts subject to procurement, and how contracts are awarded for certain types of contracts. The contracting process is designed to obtain the best value for the City. Changes to facilitate the procurement process are generally intended to balance the cost of the service provided with the cost to obtain the services.

2) Clarifications related to ensuring a fair procurement process, including refining definitions for what is considered an improper inducement and disallowing certain purchases if the seller is involved in the transaction in some other way.

The City Code modifications required by changes to the Code of Virginia that are related to facilitating the procurement process include:

Section 3-3-35, which is being amended to exclude contracts issued for transportation-related construction projects from certain provisions of the contractor prequalification process,

Section 3-3-39, which is being amended to increase the minimum value of non-transportation-related contracts subject to bid bond requirements from \$100,000 to \$500,000 and to require the prequalification of bidders or offers for non-transportation-related projects valued between \$100,000 and \$500,000,

Section 3-3-43, which is being amended to modify the conditions under which a contractor may withdraw a bid, to extend the deadline for submitting a withdrawal request, and to update City procedures for handling and responding to bid withdrawal requests,

Section 3-3-52, which is being amended to require the prequalification of bidders for transportation-related construction contracts valued between \$100,000 and \$500,000 and to state that bid bonds submitted for transportation projects must be in a form and amount satisfactory to the Purchasing Agent,

Section 3-3-54, which is being amended to clarify how claims against a contractor's payment bond are made,

Section 3-3-62, which is being amended to remove the \$1.5 million maximum value on certain contracts procured through competitive negotiation and to allow for the use of competitive negotiation for certain construction contracts,

Section 3-3-63.2, which is being added to apply prequalification procedures to requests for proposals,

Section 3-3-69, which is being amended to facilitate the procurement process for certain architectural or professional engineering services related contracts, and

Section 3-3-70, which is being amended to address how the City interacts with the Commonwealth of Virginia Design-Build/Construction Management Review Board.

Changes from the General Assembly related to a fair bidding process include:

Section 3-3-127, which is being amended to remove the qualifier “of more than nominal value” from the list of inducements that contractors or subcontractors are forbidden from demanding in exchange for the award of a subcontract or order. This would prohibit any and all *quid pro quo* demands relating to City contracts, and

Section 3-3-128, which is being amended to clarify the criteria for forbidding building materials, supplies, or equipment from being sold by or purchased from certain persons who provide services related to the aforementioned items.

Clerical and Clarification Changes

These changes clarify purchasing related language of the Alexandria City Code to be consistent between relevant sections. They will not affect current procurement procedures, which are already applied as if any relevant changes are in effect. They include:

Section 3-3-35, which is being amended to clarify that bidders who have been debarred by any state or an agency of the federal government are excluded from prequalification,

Section 3-3-39, which is being amended to clarify that this section applies to both the invitation to bid and request for proposals processes,

Section 3-3-81, which is being amended to clarify the Purchasing Agent’s authority to dispose of surplus property and to clarify provisions requiring City agencies to submit surplus property reports to the Purchasing Agent,

Section 3-3-121, which is being amended to add a reference and make two sections consistent, and

Section 3-3-122, which is being amended to correct the grammar of subsection (f), the definition for transaction.

FISCAL IMPACT: There is no direct fiscal impact. There could be some indirect cost savings to program managers if the procurement process is easier to administer for some contracts.

ATTACHMENTS: Attachment I – Detailed Explanations of Changes
Attachment II – Proposed Ordinance

STAFF:

Laura Triggs, Acting Chief Financial Officer

Debbie Kidd, Acting Director of Finance

Eleanor Foddrell, Purchasing Agent

Christina Zechman Brown, Assistant City Attorney

DETAILED EXPLANATION OF CHANGES**General Assembly Changes to City Code**

Section 3-3-35 is being amended, in compliance with changes made to Code of Virginia §2.2-4317 (Prequalification generally; prequalification for construction) via Chapter 154 (2007), to clarify that the provisions of subsections (b) through (f), which relate to the procedures for prequalification of contractors, do not apply to contracts issued under Code of Virginia §33.1-12, which relates to transportation-related construction projects.

Section 3-3-39 is being amended, in compliance with changes made to Code of Virginia §2.2-4336 (Bid Bonds) via Chapter 789 (2011), to:

- Modify the bid bond requirement on bids or proposals for non-transportation-related projects **to** all contracts in excess of \$500,000 **from** all contracts in excess of \$100,000; and
- Add subsection (b) requiring the prequalification of bidders or offerors for non-transportation-related projects valued between \$100,000 and \$500,000.

Section 3-3-43 is being amended, in accordance with changes made to Code of Virginia §2.2-4330 (Withdrawal of bid due to error) via Chapter 717 (2011), to:

- Allow the withdrawal of a bid that contains both clerical **and** judgment mistakes if the bid would have been substantially lower than other bids **solely** due to the clerical mistake;
- Require bidders to give written notice of bid withdrawal, along with documentation supporting the withdrawal, within two business days of the conclusion of the bid opening procedures;
- Require the Purchasing Agent to give written notice to the bidder within five business days of the Purchasing Agent's decision concerning the bidder's request to withdraw his or her bid; and
- Require the Purchasing Agent to state in the written notice the reasons for denial of the bidder's request (if the request is denied), to award the contract to the bidder at the bid price, and to return all documents provided by the bidder with his or her withdrawal request.

Section 3-3-52 is being amended, in accordance with changes made to Code of Virginia §2.2-4337 (Performance and payment bonds) via Chapter 789 (2011) and Chapter 925 (2009), to:

- Amend subsection (a), paragraphs (1) and (2) to state that, for transportation projects authorized under Code of Virginia §33.1-12, which relates to transportation-related construction projects, the bond shall be in a form and amount satisfactory to the Purchasing Agent; and
- Require the prequalification of bidders for transportation-related construction contracts valued between \$100,000 and \$500,000, in accordance with Alexandria City Code Section 3-3-35.

Section 3-3-54 is being amended, in accordance with changes made to Code of Virginia §2.2-4341 (Actions on payment bonds; waiver of right to sue) via Chapter 544 (2011), to:

- Clarify that claimants making claims in accordance with subsection (a) must have a direct contractual relationship with the contractor; and
- Require that claimants under subsection (b) give written notice to the contractor within 90 days rather than 180 days.

Section 3-3-62 is being amended, in accordance with changes made to Code of Virginia §2.2-4303 (Methods of procurement) via Chapters 612 and 681 (2011), to:

- Remove the \$1.5 million maximum value on certain contracts procured through competitive negotiation; and
- Allow for the use of competitive negotiation for construction contracts on a fixed-price or not-to-exceed price design-build or construction management basis and otherwise bring the Alexandria City Code into compliance with Code of Virginia §2.2-4308 and §2.2-4303 and other applicable law governing design-build or construction management contracts for public bodies.

Section 3-3-69 is being amended, for clarification purposes and in accordance with changes made to Code of Virginia §2.2-4303 (Methods of procurement) via Chapter 612 (2011) and to Code of Virginia §2.2-4301 (Definitions) via Chapters 495 and 562 (2009), to:

- Allow the Purchasing Agent to establish purchasing procedures not requiring competitive negotiation for single or term contracts for professional services if the aggregate or sum of all phases is not expected to exceed \$50,000;
- Require that offerors be informed of any ranking criteria used in addition to the review of their professional competence;
- Clarify the language allowing discussions with offerors to include nonbinding estimates of price for services;
- Allow contracts for architectural or professional engineering services relating to construction contracts to be renewable for four rather than two one-year terms;
- Allow only certain types of multiphase professional services contracts to be negotiated and awarded on the basis of qualifications at a fair and reasonable price for the first phase only; and
- Require the Purchasing Agent to state the anticipated intended total scope of such multiphase professional services projects prior to issuing a contract based on the first phase only.

Section 3-3-70 is being amended, for clarification purposes and in accordance to changes made to Code of Virginia §2.2-4308 (Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept) via Chapters 594 and 681 (2011), to:

- Remove the provision requiring the City to obtain the approval of the Commonwealth of Virginia Design-Build/Construction Management Review Board prior to entering into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis;

- Remove Code of Virginia §2.2-4317 and add Alexandria City Code Section 3-3-35(f) in provisions allowing the denial of bidder prequalification;
- Establish further the information that must be contained in any request for proposals issued under this section;
- Modify the criteria for selection so that, in awarding the contract, the Purchasing Agent must also consider which offeror is best qualified rather than solely the qualifications of the proposals; and
- Remove the requirement that the City submit information to the review board for post-project evaluation.

Section 3-3-63.2 is being added, in accordance with changes made to Code of Virginia §2.2-4317 (Prequalification generally; prequalification for construction) via Chapter 154 (2007), to authorize the City to use the prequalification procedures set forth in Alexandria City Code Section 3-3-35.

Section 3-3-127 is being amended, for clarification with Code of Virginia §2.2-4372 (Kickbacks), to remove the term “of more than nominal value” from the list of inducements that contractors or subcontracts are forbidden from demanding in exchange for the award of a subcontract or order.

Section 3-3-128 is being amended, for clarification with Code of Virginia §2.2-4374 (Purchase of building materials, etc., from architect or engineer prohibited), to clarify the criteria for forbidding building materials, supplies or equipment from being sold by or purchased from certain persons who provide services related to the aforementioned items.

Clerical and Clarification Changes

These changes clarify the language of the Alexandria City Code. They will not affect current procurement procedures, which are already applied as if any relevant changes are in effect.

Section 3-3-35 is being amended to delete the phrase “; provided, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this chapter” from subsection (a) and add the phrase “, agency of another state or agency of the federal government” to subsection (f)(4), to clarify that bidders who have been debarred by any state or an agency of the federal government are excluded from prequalification.

Section 3-3-39 is being amended to modify the language of subsection (a) to clarify that its provisions apply to both the invitation to bid and request for proposals processes.

Section 3-3-81 is being amended, in accordance with changes made to Code of Virginia §15.2-951 (Acquisition, disposition and use of personal property by localities generally) to:

- Modify the language in subsection (a) to clarify the requirement of agencies to provide surplus property reports to the Purchasing Agent;
- Delete the language in subsection (b) to eliminate the specific authority of the Purchasing Agent to transfer surplus property to other City agencies since that authority will be included in the Purchasing Agent’s general authority to dispose of surplus property;

- Modify the language in subsection (c) to clarify that the Purchasing Agent has general authority, under the supervision of the City Manager, to sell, exchange, trade-in, or otherwise dispose of all surplus property, as provided by Alexandria City Code Section 3-3-13(c) and authorized by Code of Virginia §15.2-951;
- Modify the language in subsection (c) to require that the sale, with the intent to lease back, of certain property comply with Code of Virginia §15.2-951, as modified via Chapter 531 (2005);
- Delete the language in subsection (d), which will be included in the Purchasing Division's surplus property procedures;
- Add a new subsection (d) that clarifies that the Purchasing Agent's delegation authority includes the disposal of surplus property, as authorized by Section 2.03(g) of the Alexandria City Charter and Alexandria City Code Section 3-3-13(c); and
- Add a new subsection (e) that defines the term "surplus property."

Section 3-3-121 is being amended to agree with Code of Virginia §2.2-4367 and to clarify that the State and Local Governments Conflict of Interests Act can be found in Code of Virginia §2.2-3100, et seq. rather than §2.1-639.1, et seq.

Section 3-3-122 is being amended to correct the grammar of subsection (f), the definition for transaction.

Introduction and first reading: 2/14/12
Public hearing: 2/25/12
Second reading and enactment: 2/25/12

INFORMATION ON PROPOSED ORDINANCE

Title

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.

Summary

The proposed ordinance amends and adds the above listed Sections of the Code of the City of Alexandria, Virginia, 1981, as amended, in order to make the procurement provisions comply with the Code of Virginia and make clerical changes.

Sponsor

Eleanor Foddrell, Purchasing Agent

Staff

Laura Triggs, Acting Chief Financial Officer
Debbie Kidd, Acting Director of Finance
Eleanor Foddrell, Purchasing Agent
Christina Zechman Brown, Assistant City Attorney

1 Authority

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Virginia Code §§ 2.2-4301, -4303, -4308, -4317, -4330, -4336, -4337, -4341, -4343,
-4367, -4372, -4374, 15.2-951, City Charter 2.03(g)

6 Estimated Costs of Implementation

8 None

10 Attachments in Addition to Proposed Ordinance and its Attachments (if any)

12 None

ORDINANCE NO. _____

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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

1 deadline for submission shall be sufficiently in advance of the date set for the submission of bids
2 so as to allow the procedures set forth in this section to be accomplished.

3
4 (d) At least 30 days prior to the date established for submission of bids under the
5 procurement of the contract for which the prequalification applies, the city shall advise in writing
6 each prospective bidder which has submitted an application whether that prospective bidder has
7 been prequalified. In the event that a prospective bidder is denied prequalification, the written
8 notification to such prospective bidder shall state the reasons for denial of such prequalification
9 and the factual basis of such reasons.

10
11 (e) A decision by the purchasing agent denying prequalification under the provisions of
12 this section shall be final and conclusive unless the prospective bidder appeals the decision as
13 provided in section 3-3-101.

14
15 (f) The city may deny prequalification to any prospective bidder only if the purchasing
16 agent finds one of the following:

17
18 (1) The prospective bidder does not have sufficient financial ability to perform the
19 contract. If a bond is required to ensure performance of a contract, evidence that the prospective
20 bidder can acquire a surety bond from a corporation included on the United States Treasury list
21 of acceptable surety corporations in the amount and type required by the city shall be sufficient
22 to establish such financial ability.

23
24 (2) The prospective bidder does not have appropriate experience to perform the contract.

25
26 (3) The prospective bidder, or any officer, director or owner of the prospective bidder,
27 has had judgments entered against him within the past 10 years for breach of contract.

28
29 (4) The prospective bidder has been in substantial noncompliance with the terms and
30 conditions of one or more prior contracts with a public body without good cause. If the city has
31 not previously contracted with a prospective bidder, the city may deny prequalification if the
32 prospective bidder has been in substantial noncompliance with the terms and conditions of
33 comparable contracts with another public body without good cause. The city may not utilize this
34 provision to deny prequalification unless the facts underlying such substantial noncompliance
35 were documented in writing in the prior contract file and such information given to the
36 prospective bidder at that time, with the opportunity to respond.

37
38 (5) The prospective bidder or any officer, director, owner, project manager, procurement
39 manager or chief financial official of the prospective bidder has been convicted within the past
40 10 years of a crime related to construction or contracting.

41
42 (6) The prospective bidder or any officer, director or owner of the prospective bidder is
43 currently debarred pursuant to an established debarment procedure from bidding or contracting
44 by any public body, agency of another state or agency of the federal government.

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

3
4 (g) The provisions of subsections (b) through (f) shall not apply to prequalification for
5 contracts let under section 33.1-12 of the Code of Virginia, 1950, as amended.

6
7 (gh) Prequalification of a prospective bidder shall not constitute a conclusive
8 determination that the prospective bidder is responsible, and such prospective bidder may be
9 rejected as nonresponsible on the basis of subsequently discovered information.

10
11 (hi) Failure of a prospective bidder to prequalify with respect to a given procurement
12 shall not bar the prospective bidder from seeking prequalification as to future procurements or
13 from bidding on procurements which do not require prequalification.

14
15 Section 2. That Section 3-3-39 of The Code of the City of Alexandria, Virginia,
16 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

17
18 Sec. 3-3-39 Bid bonds on construction contracts.

19
20 (a) Except in cases of emergency, all bids or proposals for nontransportation-related
21 construction contracts in excess of \$~~1~~500,000 or transportation-related projects authorized under
22 section 33.1-12 of the Code of Virginia, 1950, as amended, that are in excess of \$250,000 and
23 partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a
24 surety company selected by the bidder or offeror which is legally authorized to do business in
25 Virginia, as a guarantee that if the contract is awarded to such bidder or offeror, the bidder or
26 offeror will enter into the contract for the work mentioned in the bid or proposal. The amount of
27 the bid bond shall not exceed five percent of the amount bid.

28
29 (b) For nontransportation-related contracts in excess of \$100,000 but less than \$500,000,
30 where the bid bond requirements are waived, prospective bidders or offerors shall be prequalified
31 for each individual project in accordance with section 3-3-35.

32
33 (bc) No forfeiture under a bid bond shall exceed the lesser of the difference between the
34 bid for proposal for which the bond was written and the next low bid or proposal or the face
35 amount of the bid bond.

36
37 (ed) Nothing in this section shall preclude the city from requiring bid bonds to
38 accompany bids or proposals for construction contracts anticipated to be less than \$~~1~~500,000 for
39 nontransportation-related projects or \$250,000 for transportation-related projects authorized
40 under section 33.1-12 of the Code of Virginia, 1950, as amended, and partially or wholly funded
41 by the Commonwealth.

42
43 Section 3. That Section 3-3-43 of The Code of the City of Alexandria, Virginia,
44 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

1 Sec. 3-3-43 Withdrawal of bid.

2
3 (a) A bidder for a public contract may withdraw his bid from consideration at any time
4 prior to the commencement of the bid opening procedure by notifying the purchasing agent in
5 writing of such withdrawal.

6
7 (b) A bidder for a public contract, may withdraw his bid from consideration subsequent
8 to the commencement of the bid opening procedure if the price bid was substantially lower than
9 the other bids due solely to a mistake therein; provided, (i) that the bid was submitted in good
10 faith, (ii) that the mistake was a clerical mistake as opposed to a mistake in judgment and was
11 actually due to an unintentional arithmetic error or an unintentional omission of a quantity of
12 work, labor or material made directly in the compilation of the bid, and (iii) that the unintentional
13 nature of the arithmetic error or omission is clearly shown to the satisfaction of the purchasing
14 agent by objective evidence drawn from original work papers, documents and materials used in
15 the preparation of the bid sought to be withdrawn.

16
17 (c) If a bid contains both clerical and judgment mistakes, a bidder may withdraw his bid
18 from consideration if the price bid would have been substantially lower than the other bids due
19 solely to the clerical mistake, that was an unintentional arithmetic error or an unintentional
20 omission of a quantity of work, labor or material made directly in the compilation of a bid that
21 shall be clearly shown by objective evidence drawn from inspection of original work papers,
22 documents and materials used in the preparation of the bid sought to be withdrawn.

23
24 (d) The bidder shall give notice in writing of his claim of right to withdraw within two
25 business days after the conclusion of the bid opening procedure and shall submit original work
26 papers, documents and materials with such notice. Bidder shall submit notice and documents to
27 the purchasing agent.

28
29 (ee) The procedure for bid withdrawal subsequent to commencement of the bid opening
30 procedure ~~must~~shall be stated in the advertisement for bids, and shall include the following
31 procedures:

32
33 ~~(1) The bids shall be opened one day following the time fixed by the city for the~~
34 ~~submission of bids. The bidder shall give notice in writing of his claim of right to withdraw his~~
35 ~~bid within two hours after the conclusion of the bid opening procedure.~~

36
37 ~~(2) The bidder shall submit to the purchasing agent by the close of business on the~~
38 ~~second business day after such notice of claim his original work papers, documents and materials~~
39 ~~used in the preparation of the bid.~~

40
41 ~~(3) Such notice of claim and work papers, documents and materials shall be delivered to~~
42 ~~the purchasing agent by the bidder in person or by registered mail.~~

43
44 ~~(4) A contract shall not be awarded by the city until the two hour period in subsection~~
45 ~~(1) has elapsed. If a notice of claim is received from the apparent low bidder within such two-~~
46 ~~hour period, a contract shall not be awarded until the purchasing agent has determined whether to~~

1 allow the withdrawal of the bid. This determination shall be made in writing within 10 days of
2 receipt of the notice of claim, and may be based only upon the original work papers, documents
3 and materials delivered as required herein.

4
5 (df) No bid may be withdrawn under this section when the result would be the awarding
6 of the contract on another bid of the same bidder or on a bid of another bidder in which the
7 ownership of the withdrawing bidder is more than five percent.

8
9 (eg) If a bid is permitted to be withdrawn under subsection (b) or (c), following a
10 determination by the purchasing agent, the lowest remaining bid shall be deemed to be the low
11 bid.

12
13 (fh) No bidder who withdraws a bid under subsection (a) or is permitted to withdraw a
14 bid under subsection (b) or (c) shall, for compensation, supply any material or labor to, or
15 perform any subcontract or other work for, the person or firm to whom the contract is awarded,
16 or shall otherwise benefit, directly or indirectly, from the performance of the project for which
17 the withdrawn bid was submitted.

18
19 (gi) If the purchasing agent denies the withdrawal of a bid under the provisions of
20 subsection (b) or (c), ~~he shall notify the bidder in writing stating the reasons for his decision and~~
21 ~~award the contract to such bidder at the bid price, provided such bidder is a responsible and~~
22 ~~responsive bidder. he shall notify the bidder within five business days of his decision regarding~~
23 ~~the bidder's request to withdraw his bid. If the purchasing agent denies the withdrawal of a bid~~
24 ~~under subsection (b) or (c), he shall state in such notice the reasons for his decision and award~~
25 ~~the contract to such bidder at the bid price, provided such bidder is a responsible and responsive~~
26 ~~bidder. At the same time that the notice is provided, the purchasing agent shall return all work~~
27 ~~papers and copies thereof that have been submitted by the bidder.~~

28
29 Section 4. That Section 3-3-52 of The Code of the City of Alexandria, Virginia,
30 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

31
32 Sec. 3-3-52 Performance and payment bonds.

33
34 (a) Upon the award of any (i) public construction contract exceeding \$450,000 to any
35 prime contractor; (ii) construction contract exceeding \$450,000 awarded to any prime
36 contractor requiring the performance of labor or the furnishing of materials for buildings,
37 structures or other improvements to real property owned or leased by a public body; (iii)
38 construction contract exceeding \$450,000 in which the performance of labor or the furnishing
39 of materials will be paid with public funds; or (iv) transportation-related projects exceeding
40 \$250,000 that are partially or wholly funded by the Commonwealth, such contractor shall furnish
41 to the city the following bonds:

42
43 (1) A performance bond in the sum of the contract amount conditioned upon the faithful
44 performance of the contract in strict conformity with the plans, specifications and conditions of
45 the contract. For transportation-related projects authorized under section 33.1-12 of the Code of

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

3
4 (2) A payment bond in the sum of the contract amount. Such bond shall be for the
5 protection of claimants who have and fulfill contracts to supply labor or materials to the prime
6 contractor to whom the contract was awarded or to any subcontractors in the prosecution of the
7 work provided for in such contract, and shall be conditioned upon the prompt payment for all
8 such material furnished or labor supplied or performed in the prosecution of the work. For
9 transportation-related projects authorized under section 33.1-12 of the Code of Virginia, 1950, as
10 amended, such bond shall be in a form and amount satisfactory to the purchasing agent. Labor
11 or materials shall include public utility services and reasonable rentals of equipment, but only for
12 periods when the equipment rented is actually used at the site.

13
14 (b) For transportation-related construction contracts in excess of \$100,000 but less than
15 \$500,000, where the bid bond requirements are waived, prospective bidders or offerors shall be
16 prequalified for each individual project in accordance with section 3-3-35.

17
18 ~~(bc)~~ Each of such bonds shall be executed by one or more surety companies selected by
19 the contractor which are legally authorized to do business in Virginia.

20
21 ~~(ed)~~ The bonds shall be made payable to the city.

22
23 ~~(de)~~ Each of the bonds shall be filed with the purchasing agent.

24
25 ~~(ef)~~ Nothing in this section shall preclude the purchasing agent from requiring payment
26 or performance bonds for construction contracts below \$1500,000 for nontransportation-related
27 projects or \$250,000 for transportation-related projects authorized under section 33.1-12 of the
28 Code of Virginia, 1950, as amended, and partially or wholly funded by the Commonwealth.

29
30 ~~(fg)~~ Nothing in this section shall preclude such contractor from requiring each
31 subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the
32 contract with such subcontractor conditioned upon the payment to all persons who have and
33 fulfill contracts which are directly with the subcontractor for performing labor and furnishing
34 materials in the prosecution of the work provided for in the subcontract.

35
36 Section 5. That Section 3-3-54 of The Code of the City of Alexandria, Virginia,
37 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

38
39 Sec. 3-3-54 Actions on payment bonds.

40
41 ~~(a) Subject to the provisions of subsection (b) hereof, a~~ Any claimant who has a direct
42 contractual relationship with the contractor and who has performed labor or furnished materials
43 in accordance with the contract for which a payment bond has been given, and who has not been
44 paid in full therefor before the expiration of 90 days after the day on which such claimant
45 performed the last of such labor or furnished the last of such materials for which he claims
46 payment, may bring an action on such payment bond to recover any amount due him for such

1 labor or material, and may prosecute such action to final judgment and have execution on the
2 judgment. The obligee named in the bond need not be named a party to such action.

3 (b) Any claimant who has a direct contractual relationship with any subcontractor from
4 whom the contractor has not required a subcontractor payment bond under section 3-3-52 but
5 who has no contractual relationship, express or implied, with such contractor, may bring an
6 action on the contractor's payment bond only if he has given written notice to such contractor
7 within ~~180~~90 days from the day on which the claimant performed the last of the labor or
8 furnished the last of the materials for which he claims payment, stating with substantial accuracy
9 the amount claimed and the name of the person for whom the work was performed or to whom
10 the material was furnished. Any claimant who has a direct contractual relationship with a
11 subcontractor from whom the contractor has required a subcontractor payment bond under
12 section 3-3-52 but who has no contractual relationship, express or implied, with such contractor,
13 may bring an action on the subcontractor's payment bond. Notice to the contractor shall be
14 served by registered or certified mail, postage prepaid, in an envelope addressed to such
15 contractor at any place where his office is regularly maintained for the transaction of business.
16 Claims for sums withheld as retainages with respect to labor performed or materials furnished
17 shall not be subject to the time limitations stated in this subsection.

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

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

24 Section 6. That Section 3-3-62 of The Code of the City of Alexandria, Virginia,
25 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

26
27 Sec. 3-3-62 Conditions for use.

28
29 (a) Upon a determination made in advance by the purchasing agent and set forth in
30 writing that competitive sealed bidding is either not practicable or not fiscally advantageous to
31 the public, goods, services or insurance may be procured by competitive negotiation. The
32 writing shall document the basis for this determination. Notwithstanding the foregoing, upon a
33 determination made in advance by the purchasing agent that the procurement of insurance by
34 competitive negotiation is either not practicable or not fiscally advantageous, insurance may be
35 procured through a licensed broker or agent selected through competitive negotiation. The basis
36 for this determination shall be documented in writing.

37
38 (b) Construction may be procured only by competitive sealed bidding, except that
39 competitive negotiation may be used in the following instances upon a determination made in
40 advance by the purchasing agent and set forth in writing that competitive sealed bidding is either
41 not practicable or not fiscally advantageous to the public, which writing shall document the basis
42 for this determination:
43

