

EXHIBIT NO. 1

10
2-25-12 ~~11~~
~~2-14-12~~

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;

ATTACHMENT I

- 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.

1 Introduction and first reading: 2/14/12
2 Public hearing: 2/25/12
3 Second reading and enactment: 2/25/12
4

5 INFORMATION ON PROPOSED ORDINANCE

6 Title

7
8 AN ORDINANCE to amend and reordain Section 3-3-35 (PREQUALIFICATION OF
9 BIDDERS), Section 3-3-39 (BID BONDS ON CONSTRUCTION PROJECTS), Section
10 3-3-43 (WITHDRAWAL OF BID), Section 3-3-52 (PERFORMANCE AND PAYMENT
11 BONDS), Section 3-3-54 (ACTION ON PAYMENT BONDS), all of Division 1
12 (COMPETITIVE SEALED BIDDING) of Article D (CONTRACT FORMATION AND
13 METHODS OF SOURCE SELECTION); to amend and reordain Section 3-3-62
14 (CONDITIONS FOR USE), to add and ordain Section 3-3-63.2 (PREQUALIFICATION
15 OF PROPOSERS), to amend and reordain Section 3-3-69 (CONTRACTING FOR
16 PROFESSIONAL SERVICES BY COMPETITIVE NEGOTIATION), Section 3-3-70
17 (DESIGN-BUILD AND CONSTRUCTION MANAGEMENT CONTRACTS), all of
18 Division 2 (COMPETITIVE NEGOTIATION) of Article D (CONTRACT FORMATION
19 AND METHODS OF SOURCE SELECTION); to amend and reordain Section 3-3-81
20 (PROCEDURE), of Article E (DISPOSAL OF SURPLUS PROPERTY); to amend and
21 reordain Section 3-3-121 (PURPOSE), Section 3-3-122 (DEFINITIONS), Section 3-3-127
22 (KICKBACKS), Section 3-3-128 (PURCHASE OF BUILDING MATERIALS, ETC.,
23 FROM ARCHITECT OR ENGINEER PROHIBITED), of Article I (ETHICS IN PUBLIC
24 CONTRACTING), all of Chapter 3 (PURCHASES AND CONTRACTUAL SERVICES),
25 of Title 3 (FINANCE, TAXATION AND PROCUREMENT), of The Code of the City of
26 Alexandria, Virginia, 1981, as amended.
27

28 Summary

29
30 The proposed ordinance amends and adds the above listed Sections of the Code of the
31 City of Alexandria, Virginia, 1981, as amended, in order to make the procurement
32 provisions comply with the Code of Virginia and make clerical changes.
33

34 Sponsor

35
36 Eleanor Foddrell, Purchasing Agent
37

38 Staff

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40 Laura Triggs, Acting Chief Financial Officer
41 Debbie Kidd, Acting Director of Finance
42 Eleanor Foddrell, Purchasing Agent
43 Christina Zechman Brown, Assistant City Attorney
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1 Authority

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3 Virginia Code §§ 2.2-4301, -4303, -4308, -4317, -4330, -4336, -4337, -4341, -4343,
4 -4367, -4372, -4374, 15.2-951, City Charter 2.03(g)

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6 Estimated Costs of Implementation

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8 None

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

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12 None

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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.

45

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 \$1500,000 to any
35 prime contractor; (ii) construction contract exceeding \$1500,000 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 \$1500,000 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 \$~~1~~500,000 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

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

3
4 ~~(2) on a fixed price design build basis or construction management basis under section~~
5 ~~2.2-4308 of the Code of Virginia, 1950, as amended, when the contract is not expected to cost~~
6 ~~more than \$1.5 million;~~

7
8 ~~(3)(1) for~~ for the construction of highways, streets and alleys;

9
10 ~~(4)(2) for~~ for the draining, dredging, excavation or grading of, or similar work upon, real
11 property; ~~or~~

12
13 (3) for construction contracts on a fixed price or not-to-exceed price design-build or
14 construction management basis and otherwise in compliance with sections 2.2-4303 and 2.2-
15 4308 of the Code of Virginia, 1950, as amended, and other applicable law governing design-
16 build or construction management contracts for public bodies; or

17
18 ~~(5)(4)~~ as otherwise provided in section 3-3-70.

19
20 Section 7. That Section 3-3-63.2 of The Code of the City of Alexandria, Virginia,
21 1981, as amended, be, and the same hereby is, added by inserting new language as follows:

22
23 Sec. 3-3-63.2 Prequalification for proposers.

24
25 The provisions of section 3-3-35 shall apply to prequalification for public contracts awarded
26 by competitive negotiation.

27
28 Section 8. That Section 3-3-69 of The Code of the City of Alexandria, Virginia,
29 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

30
31 Sec. 3-3-69 Contracting for professional services by competitive negotiation.

32
33 (a) Professional services shall be procured by competitive negotiation. The purchasing
34 agent may establish purchase procedures, if adopted in writing, not requiring competitive
35 negotiation for single or term contracts for professional services if the aggregate or the sum of all
36 phases is not expected to exceed \$50,000; however, such small purchase procedures shall
37 provide for competition wherever practicable.

38
39 (b) The purchasing agent shall engage in individual discussions with two or more
40 offerors deemed fully qualified, responsible and suitable on the basis of initial responses and
41 with emphasis on professional competence to provide the required services. Repetitive informal
42 interviews shall be permissible. Such offerors shall be encouraged to elaborate on their
43 qualifications and performance data or staff expertise pertinent to the proposed project and to
44 explore alternative concepts of performance of the contract. In addition, offerors shall be
45 informed of any ranking criteria that will be used by the purchasing agent in addition to the
46 review of professional competence of the offeror. The request for proposals shall not seek

1 estimates of person hours or costs for services. However, these discussions may encompass
2 nonbinding estimates of total project costs, including, but not limited to, where appropriate
3 design, construction, and life cycle costs and nonbinding estimates of price for services.
4 ~~Methods to be utilized in arriving at the price for services may also be discussed.~~ Proprietary
5 information from competitive offerors shall not be disclosed to the public or to competitors. At
6 the conclusion of the discussions and on the basis of evaluation factors published in the request
7 for proposals and all information developed in the selection process to this point, the purchasing
8 agent shall select in the order of preference two or more offerors whose professional
9 qualifications and proposed services are deemed most meritorious. Negotiations shall then be
10 conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to
11 the city can be negotiated at a price considered fair and reasonable, the award shall be made to
12 that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated
13 and negotiations shall be conducted with the offeror ranked second, and so on until such a
14 contract can be negotiated at a fair and reasonable price. Notwithstanding the foregoing, if the
15 terms and conditions for multiple awards are included in the request for proposal, the city may
16 award contracts to more than one offeror. If, at the conclusion of the discussions, the purchasing
17 agent determines in writing and in his sole discretion that only one offeror is fully qualified or
18 that one offeror is clearly more highly qualified and suitable than the others under consideration,
19 a contract may be negotiated and awarded to that offeror. Once formally terminated,
20 negotiations may not be reopened with any offeror.

21
22 (c) With respect to the procurement of legal services, the duties and responsibilities
23 imposed upon the purchasing agent in subsection (b) above shall devolve upon the city attorney.

24
25 (d) A contract for architectural or professional engineering services relating to
26 construction projects may be negotiated by the purchasing agent, for multiple projects provided
27 (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly
28 identified in the request for proposals, and (iii) the contract term is limited to one year or when
29 the cumulative total project fees reach the maximum cost authorized in this ~~paragraph~~ subsection
30 (d), whichever occurs first. Such contract may be renewable for ~~two~~ four additional ~~term~~ one-
31 year terms at the option of the city, as exercised by the purchasing agent. Under such contract,
32 (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each
33 project performed; (b) the sum of all projects performed in one contract term shall not exceed
34 one million dollars; and (c) the project fee of any single project shall not exceed \$500,000. Any
35 unused amounts from one contract term shall not be carried forward to a successive term.
36 Competitive negotiations for such contracts may result in awards to more than one offeror
37 provided (1) the request for proposals so states, and (2) the purchasing agent has established
38 procedures for distributing multiple projects among the selected contractors during the contract
39 term.

40
41 (e) Multiphase professional services contracts for environmental, location, design and
42 inspection work regarding construction of infrastructure projects satisfactory and advantageous to
43 the city may be negotiated and awarded based on qualifications at a fair and reasonable price for
44 the first phase only, when completion of the earlier phases is necessary to provide information
45 critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the
46 procurement of any such contract, the purchasing agent shall state the anticipated intended total

1 scope of the project and determine in writing that the nature of the work is such that the best
2 interests of the city require awarding the contract.
3

4 Section 9. That Section 3-3-70 of The Code of the City of Alexandria, Virginia,
5 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
6

7 Sec. 3-3-70 Design-build and construction management contracts.
8

9 (a) While the competitive sealed bid process remains the preferred method of
10 construction procurement for the city, the city may enter into a contract for construction on a
11 fixed price or not-to-exceed price design-build or construction management basis, provided the
12 city either complies with the requirements of this section ~~and has obtained the approval of the~~
13 ~~Commonwealth of Virginia Design-Build/Construction Management Review Board (the Review~~
14 ~~Board) pursuant to section 2.2 2406 of the Code of Virginia (1950), as amended, or the Review~~
15 ~~Board has made a one-time determination that the city has the personnel, procedures, and~~
16 ~~expertise to enter into a contract for construction on a fixed price or not to exceed price design-~~
17 ~~build or construction management basis. Provided, however, that projects undertaken pursuant~~
18 ~~to subdivision D-2 of section 2.2 4303 of the Code of Virginia (1950), as amended, shall be~~
19 ~~exempt from approval of the review board.~~
20

21 (b) Prior to making a determination as to the use of design-build or construction
22 management for a specific construction project, the city shall employ or contract with a licensed
23 architect or engineer with professional competence appropriate to the project to advise the city
24 regarding the use of design-build or construction management for that project and to assist in the
25 preparation of the request for qualifications and the request for proposals and the evaluation of
26 such proposals.
27

28 (c) The following procedures shall be followed in the selection and evaluation of offerors
29 and award of design-build and construction management contracts:
30

31 (1) Prior to the issuance of a request for qualifications, the purchasing agent shall
32 determine that a design-build or construction management contract is more advantageous for the
33 construction project than a competitive sealed bid construction contract, that there is benefit to
34 the city in using a design-build or construction management contract, and that competitive sealed
35 bidding is not practical or fiscally advantageous. The basis for this determination shall be
36 documented in writing.
37

38 (2) The purchasing agent shall appoint an evaluation committee of not less than three
39 members, one of whom shall be the architect or professional engineer employed by or under
40 contract with the city pursuant to subsection (b).
41

42 (3) Prequalification of potential offerors:
43

44 (i) The purchasing agent shall issue a notice of request for qualifications from potential
45 offerors by posting on a public bulletin board and advertising in ~~two~~ two newspapers of
46 ~~general~~ general daily circulation in the city at least 10 days preceding the last day set for the receipt of

1 qualifications. In addition, qualifications may be solicited directly from potential offerors. The
2 request for qualifications shall indicate in general terms that which is sought to be procured,
3 specifying the criteria which will be used in evaluating the potential offerors' qualifications, and
4 containing or incorporating by reference the other applicable contractual terms and conditions,
5 including any unique capabilities or qualifications which will be required of offerors. The
6 request for qualifications shall request of potential offerors only such information as is
7 appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The
8 purchasing agent shall receive and consider comments concerning specifications or other
9 provisions in the request for qualifications, prior to the time set for receipt of qualifications.

10
11 (ii) The evaluation committee shall evaluate each responding potential offeror's
12 qualifications submittal and any other relevant information, and shall select a minimum of two
13 offerors deemed fully qualified and best suited on the basis of the criteria contained in the
14 request for qualifications. An offeror may be denied prequalification only upon those grounds
15 specified in section ~~2.2-4317 of the Code of Virginia (1950), as amended~~ 3-3-35(f). At least 30
16 days prior to the date established for the submission of proposals, the purchasing agent shall
17 advise in writing each potential offeror whether that offeror has been selected. In the event that a
18 potential offeror is not selected, the written notification to such potential offeror shall state the
19 reasons there-for.

20
21 (4) Request for proposals.

22
23 (i) The purchasing agent shall issue a request for proposals to the selected offerors at
24 least 10 days prior to the date set for receipt of proposals. The request for proposals shall
25 indicate in general terms that which is sought to be procured, specifying the factors that will be
26 used in evaluating the proposal and containing or incorporating by reference the other applicable
27 contractual terms and conditions, including any unique capabilities or qualifications that will be
28 required of the contractor. The request for proposals shall include and define the requirements of
29 the specific construction project in areas such as site plans, floor plans, exterior elevations, basic
30 building envelope materials, fire protection information plans, structural, mechanical (HVAC)
31 and electrical systems, and special telecommunications. The request for proposals may also
32 define such other requirements as the purchasing agent deems appropriate for the construction
33 project. In the case of a construction management contract, the request for proposals shall also
34 define the pre-design, design phase, bid phase and/or construction phase services to be
35 performed by the construction manager. The request for proposals shall specify the evaluation
36 criteria to be used by the evaluation committee to evaluate proposals. The purchasing agent shall
37 receive and consider comments concerning specifications or other provisions in the request for
38 proposals, prior to the time set for receipt of proposals.

39
40 (ii) Each selected offeror shall submit a cost proposal and a technical proposal. Cost
41 proposals shall be sealed separately from technical proposals and, in the case of a construction
42 management contract, shall include the offeror's lump sum price for all requested pre-
43 construction phase services. A lump sum price or guaranteed maximum price shall be
44 established for all requested construction services. Upon receipt of an offeror's technical and
45 cost proposals, the offeror's cost proposal shall be secured by the purchasing agent and kept
46 sealed until evaluation of all technical proposals is completed.

1
2 (iii) The evaluation committee shall evaluate each technical proposal based on the
3 criteria set forth in the request for proposals. As a part of the evaluation process, the evaluation
4 committee shall grant each of the offerors an equal opportunity for direct and private
5 communication with the evaluation committee. Each offeror shall be allotted the same fixed
6 amount of time. In its conversations with offerors, the evaluation committee shall exercise care
7 to discuss the same owner information with all offerors. ~~In addition, the evaluation committee~~
8 ~~shall not disclose any trade secret or proprietary information for which the offeror has invoked~~
9 ~~protection pursuant to section 2.2-4342 F of the Code of Virginia.~~ Based upon its review of each
10 offeror's technical proposal, the evaluation committee shall determine whether any changes to
11 the request for proposals should be made to correct errors or omissions or to clarify ambiguities
12 in the request for proposals, or to incorporate project improvements or additional details
13 identified by the committee during its review. Any such changes shall be set out in an addendum
14 to the request for proposals. Each offeror shall be provided an opportunity to amend or
15 supplement its technical proposal to address the changes.

16
17 (iv) Based on final technical proposals, the evaluation committee shall conduct
18 negotiations with the offerors. After negotiations have been conducted, offerors may submit
19 sealed additive and/or deductive modifications to their cost proposals.

20
21 (v) Following receipt of the cost proposal modifications, the evaluation committee shall
22 publicly open, read aloud and tabulate the cost proposals including any modifications submitted
23 by an offeror.

24
25 (5) Final selection of design-builder.

26
27 (i) Following opening of cost proposals, the evaluation committee shall make its
28 recommendation to the purchasing agent based upon its evaluation and negotiations.

29
30 (ii) Following receipt of the recommendation of the evaluation committee, the
31 purchasing agent shall award the contract to the fully qualified offeror who submits an
32 acceptable proposal determined to be the best value in response to the Request for Proposal.

33
34 (6) Final selection of construction manager.

35
36 (i) Following the opening of cost proposals, the evaluation committee shall make its
37 recommendation to the purchasing agent based on its evaluation and negotiations. In making its
38 recommendation, price shall be considered, but need not be the sole determining factor.

39
40 (ii) ~~Following receipt of the recommendation of the evaluation committee, the~~
41 ~~purchasing agent shall select the offeror which, in the opinion of the purchasing agent, has made~~
42 ~~the best proposal, and shall award the contract to that offeror.~~ Following receipt of the
43 recommendation of the evaluation committee, the purchasing agent shall award the contract to
44 the fully qualified offeror who submits an acceptable proposal determined to be the best value in
45 response to the Request for Proposal. Should the purchasing agent determine in writing that only

1 one offeror is fully qualified, or that one offeror is clearly more highly qualified than the other
2 offerors under consideration, a contract may be negotiated and awarded to that offeror.

3
4 (iii) For any guaranteed maximum price construction management contract, the contract
5 shall provide that not more than 10 percent of the construction work (measured by the cost of the
6 work) shall be performed by the construction manager with its own forces, that the remaining 90
7 percent of the construction work shall be performed by subcontractors of the construction
8 manager, and that the construction manager shall procure such work by competitive sealed
9 bidding or competitive negotiation.

10
11 (7) Trade secrets or proprietary information provided by an offeror in response to a
12 request for qualifications or a request for proposals shall not be disclosed to the public or to
13 competitors, provided the offeror has invoked protection pursuant to section 3-3-33.

14
15 ~~(8) The city shall submit information for post project evaluation when requested by the~~
16 ~~review board.~~

17
18 (d) Subject to the approval of the city manager, the purchasing agent may promulgate
19 such additional procedures, not inconsistent with the provisions of this section or the applicable
20 rules and regulations of the review board, and consistent with the procedures for the procurement
21 of nonprofessional services through competitive negotiation, as he deems necessary and
22 appropriate to effect the selection and evaluation of offerors and the award of design-build and
23 construction management contracts.

24
25 Section 10. That Section 3-3-81 of The Code of the City of Alexandria, Virginia,
26 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

27
28 Sec. 3-3-81 - Procedure.

29
30 (a) All using agencies shall submit to the purchasing agent at such time and in such form
31 as he shall prescribe, reports showing stocks of all ~~supplies and other property which are no~~
32 ~~longer used, have become obsolete, worn out or unusable, or are otherwise surplus~~ surplus
33 property.

34
35 (b) ~~The purchasing agent shall have the authority to transfer such surplus property to~~
36 ~~other using agencies. Except as provided in subsection (c), (e) The purchasing agent, with~~
37 ~~the consent~~ supervision of the city manager, shall have the authority to sell all surplus property,
38 ~~or to exchange the same for or trade in the same on new property, exchange, trade-in, or~~
39 otherwise dispose of all surplus property. Except as provided in subsection (d), all sales of such
40 surplus property shall be made to the highest responsible bidder.

41
42 (d) ~~Upon a written determination by the purchasing agent that it is in the best interests of~~
43 ~~the city, surplus property may be sold to another public body at a fair and reasonable negotiated~~
44 price without seeking competitive bids.

45

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

6
7 (d) With the approval of the city manager, the purchasing agent may delegate authority
8 to dispose of surplus property.

9
10 (e) Surplus property as set forth herein means personal property owned by the city,
11 including, but not limited to, materials, supplies, equipment, and recyclable items, which is
12 obsolete, worn out, unusable, or no longer used.

13
14 Section 11. That Section 3-3-121 of The Code of the City of Alexandria, Virginia,
15 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

16
17 Sec. 3-3-121 Purpose.

18
19 The provisions of this article supplement but do not supersede other provisions of law
20 including, but not limited to, the State and Local Government Conflict of Interests Act (section
21 ~~2.1-639-12.2-3100~~, et seq., Code of Virginia (1950), as amended), the Virginia Governmental
22 Frauds Act (section 18.2-498.1, et seq., Code of Virginia (1950), as amended) and articles 2
23 (section 18.2-438, et seq.) and 3 (section 18.2-446, et seq.) of chapter 10, title 18.2, Code of
24 Virginia (1950), as amended. The provisions of this article apply notwithstanding the fact that
25 the conduct described may not constitute a violation of the State and Local Government Conflict
26 of Interests Act.

27
28 Section 12. That Section 3-3-122 of The Code of the City of Alexandria, Virginia,
29 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:

30
31 Sec. 3-3-122 Definitions.

32
33 The words defined in this section shall have the meanings set forth below throughout this
34 article.

35
36 (a) Immediate family: A spouse, children, parents, brothers and sisters and any other
37 person living in the same household as the employee.

38
39 (b) Official responsibility: Administrative or operating authority, whether intermediate
40 or final, to initiate, approve, disapprove or otherwise affect a procurement transaction or any
41 claim resulting therefrom.

42
43 (c) Pecuniary interest arising from the procurement: A personal interest as defined in the
44 State and Local Government Conflict of Interests Act.

45

1 (d) Procurement transaction: All functions that pertain to the obtaining of any goods,
2 services or construction, including description of requirements, selection and solicitation of
3 sources, preparation and award of contract and all phases of contract administration.
4

5 (e) Public employee: Any person employed by the city, including elected officials and
6 appointed members of boards and commissions.
7

8 (f) Transaction: Any matter under consideration or considered by a public employee or
9 on which official action is taken or contemplated.
10

11 Section 13. That Section 3-3-127 of The Code of the City of Alexandria, Virginia,
12 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
13

14 Sec. 3-3-127 Kickbacks.
15

16 (a) No contractor or subcontractor shall demand or receive from any of his suppliers or
17 his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan,
18 subscription, advance, deposit of money, services or anything of ~~more than nominal value~~,
19 present or promised, unless consideration of substantially equal or greater value is exchanged.
20

21 (b) No subcontractor or supplier shall make or offer to make kickbacks as described in
22 this section.
23

24 (c) No person shall demand or receive any payment, loan, subscription, advance, deposit
25 of money, services or anything of value in return for an agreement not to compete on a public
26 contract.
27

28 (d) If a subcontractor or supplier makes a kickback or other prohibited payment as
29 described in this section, the amount thereof shall be conclusively presumed to have been
30 included in the price of the subcontract or order and ultimately borne by the city and will be
31 recoverable from both the maker and the recipient. Recovery from one offending party shall not
32 preclude recovery from other offending parties.
33

34 Section 14. That Section 3-3-128 of The Code of the City of Alexandria, Virginia,
35 1981, as amended, be, and the same hereby is, amended and reordained to read as follows:
36

37 Sec. 3-3-128 Purchase of building materials, etc., from architect or engineer prohibited.
38

39 (a) Except in cases of emergency, no building materials, supplies or equipment for any
40 building or structure constructed by or for the city shall be sold by or purchased from any person
41 employed as an independent contractor by the city to furnish architectural or engineering
42 services, but not construction, for such building or structure, or from any partnership, association
43 or corporation in which such architect or engineer has a pecuniary interest arising from the
44 procurement.
45

1 (b) Except in cases of emergency, ~~no building materials, supplies or equipment for any~~
2 ~~building or structure constructed by or for the city shall be sold by or purchased from any person~~
3 ~~who has provided or is providing design services to the independent contractor employed by the~~
4 ~~city to furnish architectural or engineering services for such building or structure, if such person~~
5 ~~(i) has specified a sole source for such materials, supplies or equipment, and (ii) has a pecuniary~~
6 ~~interest arising from the procurement in such architect or engineer.~~ no building materials,
7 supplies or equipment for any building or structure constructed by or for the city shall be sold by
8 or purchased from any person who has provided or is currently providing design services
9 specifying a sole source for such materials, supplies or equipment to be used in the building or
10 structure to the independent contractor employed by the city to furnish architectural or
11 engineering services in which such person has a pecuniary interest.
12

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

16 WILLIAM D. EUILLE
17 Mayor
18

19 Introduction: 2/14/2012
20 First Reading: 2/14/2012
21 Publication:
22 Public Hearing: 2/25/2012
23 Second Reading: 2/25/2012
24 Final Passage: 2/25/2012
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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.

(ee) 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.~~

(~~df~~) 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.

(~~eg~~) 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.

(~~fh~~) 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.

(~~gi~~) 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 \$1500,000 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~~ 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 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 ~~2.1-639.12.2-3100~~, 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