

# ARLINGTON COUNTY PURCHASING RESOLUTION

## APPENDIX A OF THE ARLINGTON COUNTY PURCHASING MANUAL

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## ARLINGTON COUNTY PURCHASING RESOLUTION

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## **ARLINGTON COUNTY PURCHASING RESOLUTION**

### **PREAMBLE**

The County Board wants to buy goods and services of high quality at reasonable cost and also make sure that all purchasing actions are fair and impartial with no impropriety nor appearance of impropriety, that all qualified buyers and sellers have access to County business and that no offeror is arbitrarily or capriciously excluded, and that there is the maximum feasible amount of competition; therefore the County Board

RESOLVES that the following policies for the conduct of purchasing by Arlington County shall take effect immediately.

## ARTICLE 1 - GENERAL PROVISIONS

### 1-101 Application

This resolution applies to all contracts for goods, services, insurance, construction, and intellectual property entered into by this County. All public bodies in Arlington County, as defined in section 1-105 (21) of this Resolution, that are funded in whole or in part by Arlington County, except the Arlington County School Board, are required to comply with the provisions of this Resolution and purchase goods, services, insurance, construction, and intellectual property through the central purchasing system established under this Resolution.

When the procurement involves the expenditure of Federal assistance or contract funds, the procurement shall be conducted in accordance with any applicable mandatory federal law and regulation which is not reflected in this resolution.

### 1-102 Effective Date

This resolution shall become effective June 1, 1985. The provisions of this resolution shall not apply to those contracts entered into prior to passage which shall continue to be governed by the procurement policies and regulations of the County and State in effect at the time those contracts were executed.

### 1-103 Severability

If any provision of this resolution or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this resolution which can be given effect without the invalid provision or application, and to this end the provisions of this resolution are declared to be severable.

### 1-104 Gender References

Whenever in this Resolution words referring to a particular gender are used, they shall be deemed to include any gender unless the context otherwise clearly requires.

### 1-105 Definitions

- (1) Best Value As predetermined in the solicitation, means the overall combination of quality, price and various elements of required services that in total are optimal relative to the County's needs.
- (2) Brand Name Specification A specification by manufacturers' names or catalogue numbers.

- (3) Brand Name or Equal Specification A brand name specification to describe the standard of quality, performance, and other characteristics needed to meet County requirements and which provides for the submission of equivalent products.
- (4) Change order (Unilateral) A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the contract authorizes the Purchasing Agent to order without the consent of the contractor.
- (5) Confidential Information Any information which is available to an employee only because of the employee's status as an employee of this County and is not a matter of public knowledge or available to the public on request.
- (6) Construction Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- (7) Construction Management Contract A contract in which a party is retained by the owner to coordinate and administer contracts for construction services for the benefit of the owner, and may also include, if provided in the contract, the furnishing of construction services to the owner.
- (8) Contract Modification Any written alteration of a contract signed by the parties bound by the modification.
- (9) Cost-reimbursement Contract A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this resolution, and a fixed fee or profit, if any.
- (10) County Manager Unless otherwise prohibited by the Code of Virginia, or where the context clearly indicates otherwise, County Manager shall mean County Manager of Arlington County or her designee or authorized agent or representative.
- (11) Design-Bid Build means a project delivery method in which the County sequentially awards two separate contracts, the first for professional services to design the project and the second utilizing competitive sealed bidding for construction of the project according to the design.
- (12) Design-Build Contract means a contract between the County and another party in which the party contracting with the County agrees to both design and build the structure, roadway or other item specified in the contract.
- (13) Forced or indentured child labor means all work or service (i) exacted from any person younger than 18 years of age under the menace of any penalty for the nonperformance of such work or service and for which such person does not offer himself voluntarily or (ii) performed by any person younger than 18 years of age pursuant to a contract the enforcement of which can be accomplished by process or penalties.



- (14) Goods All material, equipment, supplies, printing and automated data processing hardware and software.
- (15) Governing Body The County Board of Arlington County.
- (16) Informality A minor defect or variation of a bid or proposal from the exact requirements of the Invitation to Bid, or the Request for Proposal, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.
- (17) Information technology goods and services means communications, telecommunications, automated data processing, applications, databases, data networks, management information systems, and other related goods and services.
- (18) Intellectual Property All trademarks, trade names, domain names, corporate or business names or identifiers, patents, inventions, copyrights, computer software programs, applications, systems, source and object codes, including all registrations and recordings of such intellectual property and all legal interests and rights therein.
- (19) Job Order Contracting means a method of procuring construction by establishing a book of unit prices and then obtaining a contractor to perform work as needed using the prices, quantities, and specifications in the book as the basis of its pricing. The contractor may be selected through either competitive sealed bidding or competitive negotiation depending on the needs of the public body procuring the construction services. A minimum amount of work may be specified in the contract. The contract term and the project amount shall not exceed the limitations specified in Section 4-102(5).
- (20) Multiphase Professional Service Contracts A contract for the providing of professional services where the total scope of work of the second or subsequent phase of the contract cannot be specified without the results of the first or prior phase of the contract.
- (21) Nominal Value A fair market value of five dollars or less, except that consumable items under \$25.00 in value offered to all participants or members at a professional association or organization meeting shall be considered as nominal.
- (22) Nonprofessional Services Any services not specifically identified as professional services in section 1-105 (20) of this Resolution.
- (23) Professional Services Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, actuarial services, or professional engineering.
- (24) Project Labor Agreement means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific public works project.
- (25) Public Body Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board, or political subdivision created by law to exercise

some sovereign power or to perform some governmental duty, and empowered by law to undertake the activities described in this resolution.

- (26) Public Works means the operation, erection, construction, alteration, improvement, maintenance, or repair of any public facility or immovable property, owned, used, or leased by a public body.
- (27) Request for Proposals All documents, whether attached or incorporated by reference, utilized for soliciting proposals.
- (28) Responsible Bidder or Offeror A bidder or offeror that has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.
- (29) Responsive Bidder A bidder that has submitted a bid which conforms in all material respects to the Invitation to Bid.
- (30) Services Any work performed by an independent contractor, except for construction, which does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.
- (31) Sheltered Workshop A facility that provides work experience and related services for the purpose of assisting handicapped persons to progress toward normal living and a productive vocational status.

## ARTICLE 2 - OFFICE OF THE PURCHASING AGENT

### 2-101 Establishment and Appointment

The purchasing system shall operate under the direction and supervision of the Purchasing Agent who shall be appointed, supervised and subject to the direction of the County Manager or his designee.

### 2-102 Authority and Duties of the Purchasing Agent

- (1) Authority: The Purchasing Agent shall serve as the principal public purchasing official for this County and shall be responsible for the procurement of goods, services, insurance, construction, and intellectual property in accordance with this resolution, as well as for the management of the disposal of surplus supplies and equipment.
- (2) Duties: In accordance with this resolution, and subject to the supervision and direction of the County Manager or his designee, the Purchasing Agent shall:
  - A. Contract for all goods, services, insurance, construction, and intellectual property needed by this County.
  - B. Sell, trade or otherwise dispose of surplus goods belonging to the County;
  - C. Establish and maintain programs for specification development, contract administration, inspection, and acceptance, in cooperation with the County agency or public body that has requested the good, service, insurance or construction;
  - D. Prepare and update standard specifications;
  - E. Inspect or require the using agency to inspect all deliveries of goods, services, or construction purchased through the Purchasing Agent to assure conformance with the contract specifications;
  - F. Procure for the County the highest quality goods, services, insurance, construction, and intellectual property in a manner calculated to yield the highest value to the County and, when applicable, consistent with the best value concept;
  - G. Endeavor to obtain maximum feasible competition for all purchases and sales;
  - H. Keep informed of current developments in the field of purchasing, prices, market conditions and new products;
  - I. Secure for the County the benefits of research done in the field of purchasing by other governmental jurisdictions, national societies, national trade associations, and private businesses and organizations;

- J. Prepare and adopt standard purchase definitions and forms;
- K. Prepare, adopt, and maintain a contract file containing descriptions of commodities, prices and discounts of goods and services available for purchase under term contracts established by the Purchasing Agent;
- L. Maintain a current file of sources of goods, services, insurance, construction, and intellectual property to be known as a "bidder list" on which vendors can request to be included;
- M. Assure that sufficient money has been appropriated to cover the cost of all purchases or contracts; and
- N. Perform other functions and duties as required by this Resolution or as the County Manager or his designee may assign.
- O. Incentive Contracting: The Purchasing Agent shall, after review and approval as to legal form by the County Attorney, adopt and amend from time to time as may be required, a policy that provides for the inclusion of incentive contracting in those County construction projects where such inclusion is considered by the Purchasing Agent to be in the best interest of the County. The policy shall offer a contractor whose bid is accepted the opportunity to share in any cost savings realized by the County when project costs are reduced by such contractor, without affecting project quality, during construction of the project. Such policy shall provide that the fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.
- P. Implement, administer and enforce the service contract wage provisions of this Resolution.
- Q. Apply for and obtain, on behalf of the County, patent, trademark and copyright protections as the County Manager or his designee may direct.
- R. Implement, administer, and enforce The Public-Private Transportation Act of 1995, as Amended Arlington County Guidelines, contained in Appendix A of this Resolution, as directed by the County Manager.
- S. Implement, administer, and enforce The Public-Private Education Facilities and Infrastructure Act of 2002, as Amended, Arlington County Guidelines, contained in Appendix B of this Resolution, as directed by the County Manager.

## 2-103 Delegation

With the written approval of the County Manager or his designee, the Purchasing Agent may delegate authority to purchase certain supplies, services, or construction items to other County employees or public bodies, if such delegation is deemed necessary for the effective procurement of those items.

#### 2-104 Revisory Authority

The Purchasing Agent shall have the authority to disapprove any purchase as to the quantity or quality of the commodity requested, and shall have the authority to change specifications. Decisions under this section may be appealed to the County Manager.

#### 2-105 Rules and Regulations

The Purchasing Agent shall prepare and maintain a purchasing manual containing detailed rules and regulations consistent with this resolution and the laws of the Commonwealth of Virginia governing the operation of the County purchasing system. Publication of this purchasing manual requires approval by the County Manager as will all subsequent amendments and reissuance.

## ARTICLE 3 - COOPERATIVE PROCUREMENT

### 3-101 Conditions for Use

The County may enter into a cooperative agreement for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

All cooperative contracts entered into or used by the County shall be based on procurement principles contained in this resolution.

The County may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined by the Purchasing Agent that such use is in the best interest of the County and the contract is based on competitive principles.

The County may participate in or purchase goods and services through contracts awarded by the Metropolitan Washington Council of Governments or the Virginia Sherriff's Association even if it did not participate in the request for proposals or bid, if the request for proposals or bid specified that the procurement was a cooperative procurement being conducted on behalf of other public bodies when it is determined by the Purchasing Agent that such use is in the best interest of the County and the contract is based on competitive principles, except for:

1. Contracts for architectural or engineering services; or
2. Construction. This, however, does not prohibit sole source or emergency procurements and does not apply to (i) the installation of artificial turf and track surfaces, (ii) stream restoration, (iii) stormwater management practices, or (iv) the installation of playground equipment, including all associated and necessary construction and maintenance.

The County may purchase energy conservation or operational efficiency measures under an energy performance-based contract entered into by another contracting entity even if it did not participate in the request for proposals if the request for proposals specified that the procurement was being conducted on behalf of other contracting entities.

The County may purchase services through or participate in contracts awarded by one or more utility operators which are not public bodies for utility marking services as required by the Underground Utility Damage Prevention Act (§ 56-265.14 et seq.). A purchase of services under this subsection may deviate from the procurement procedures set forth in this Resolution 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, and the contract is awarded based on competitive principles.

## ARTICLE 4 - CONTRACT FORMATION AND METHODS OF SOURCE SELECTION

### 4-100 Methods of Procurement

All contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction, shall be awarded after competitive sealed bidding, or competitive negotiation as provided in this Article, unless otherwise authorized by law. The County shall provide an option to submit bids or proposals through electronic means. In cases where bids or proposals are submitted electronically, the County may also require a certain number of paper submissions for review purposes.

### 4-101 Competitive Sealed Bidding

- (1) Conditions for Use: All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction in excess of \$100,000, or for the generation of revenue or cost recovery or other value received shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this resolution.
- (2) Prequalification of Bidders
  - A. The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance, construction, or intellectual property.
  - B. The application form used in such process shall set forth the criteria upon which the qualifications of prospective contractors will be evaluated. The application form shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to such criteria. Such form shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that certain information voluntarily submitted by the contractor may be considered a trade secret or proprietary information pursuant to §4-112 of the Arlington County Purchasing Resolution.
  - C. In all instances in which the Purchasing Agent requires prequalification of potential contractors for construction projects, advance notice shall be given of the deadline for the submission of prequalification applications. The deadline for submission shall be sufficiently in advance of the date set for the submission of bids for such construction so as to allow the procedures set forth in this subsection to be accomplished.
  - D. At least thirty days prior to the date established for submission of bids or proposals under the procurement of the contract for which the prequalification applies, the Purchasing Agent shall advise in writing each contractor which submitted an application whether that contractor has been prequalified. In the event that a contractor is denied prequalification, the written notification to such contractor shall state the reasons for such denial of prequalification and the factual basis of such reasons.

- E. A decision by the Purchasing Agent denying prequalification under the provisions of this subsection shall be final and conclusive unless the contractor appeals the decision as provided in §7-101 of this Resolution.
- F. The County may deny prequalification to any contractor only if the County finds one of the following:
  - 1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor 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 County shall be sufficient to establish the financial ability of such contractor to perform the contract resulting from such procurement;
  - 2. The contractor does not have appropriate experience to perform the construction project in question;
  - 3. The contractor or any officer, director, or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design build or construction management;
  - 4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with the County without good cause. If the County has not contracted with a contractor in any prior construction contracts, the Purchasing Agent may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. The County may not utilize this provision to deny qualification unless the facts underlying such substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto given to the contractor at that time, with the opportunity to respond;
  - 5. The contractor or any owner, officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to a violation of Article 9 of the Arlington County Purchasing Resolution, the Virginia Governmental Frauds Act (§ 18.2-498 et seq.), Chapter 4.2 (§ 59.1- 68.6 et seq.) of Title 59.1, or any substantially similar law of the United States or another state;
  - 6. The Contractor or any officer, director or owner thereof 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 contractor failed to provide to the County in a timely manner any information requested by the County relevant to subdivisions 1 through 6 of this subsection;



8. If the County adopts a prequalification ordinance which provides for minority participation in municipal construction contracts, the County may also deny prequalification based on minority participation criteria;
  9. Prequalification of a bidder shall not constitute a conclusive determination that the bidder is responsible, and such bidder may be rejected as non-responsible on the basis of subsequently discovered information;
  10. Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from responding to procurements which do not require prequalification.
- (3) Notice of Invitation to Bid The Purchasing Division shall solicit sealed bids from all responsible prospective suppliers on the Commonwealth e-Procurement and/or by other means, by sending such notice as will acquaint them with the proposed purchase or sale. In any case, invitations sent to the vendors on the bidder list shall be limited to commodities that they are registered for in the e-Procurement system.
- (4) Use of Brand Names Unless otherwise provided in the invitation to bid, the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand, make or manufacturer names; it conveys the general style, type, character, and quality of the articles desired, and any article which the County in its sole discretion determines to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.
- (5) Bid Bonds on Construction Contracts Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of \$500,000 or transportation-related projects authorized under Va. Code §33.2.208 et seq. in excess of \$350,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder that is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid. Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$500,000 for nontransportation-related projects or \$350,000 for transportation-related projects authorized under Va. Code §33.1- 12 and partially or wholly funded by the Commonwealth.
- No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bids for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
- (6) Bonds for other than Construction Contracts At the discretion of the Purchasing Agent bidders may be required to submit with their bid a bid bond in an amount to be determined by the Purchasing Agent and specified in the invitation to bid, as a guarantee that if the contract is awarded to such bidder, that the bidder will enter into the contract for the work described in the bid.

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

- (7) Rejection of Bids An Invitation for Bids, a Request for Proposals, or other solicitation may be canceled, or any or all bids or proposals may be rejected in whole or in part or informalities waived when the Purchasing Agent determines that it is in the best interest of the County to do so. The reasons therefore shall be made a part of the record in the matter.
- (8) Bid Opening All bids received under this section must be opened in public.
- (9) Withdrawal of Bid Due to Error
  - A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The procedure for bid withdrawal must be stated in the advertisement for bids.

The Purchasing Agent shall select one of these procedures:

- 1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and at the request of the Purchasing Agent shall submit original work papers with such notice; or
- 2. Where the public body opens the bids one day following the time fixed for the submission of bids, the bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid at or prior to the time fixed for the opening of bids. The work papers shall be delivered by the bidder in person or by registered mail. The bids shall be opened one day following the time fixed by the County for the submission of bids. The bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the County until the two-hour period has elapsed.

Under these procedures, the mistake shall be proved only from the original work papers, documents and materials delivered as required herein. The work papers, documents and materials submitted by the bidder shall, at the bidder's request, be considered trade secrets or proprietary information subject to the conditions of subsection F of Va. Code §2.2-4342.

- B. Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.
  - C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.
  - D. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.
  - E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.
  - F. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing within five business days of its decision regarding the bidder's request to withdraw its bid 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. 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.
- (10) Bid Evaluation In determining "a responsible bidder", in addition to price, the Purchasing Agent or designee shall consider:
- A. The ability, capacity, skill and financial resources of the bidder to perform the contract or provide the service required;
  - B. Whether the bidder can perform the contract or provide the service promptly, or within the time specified, without delay or interference;
  - C. The character, integrity, reputation, judgment, experience, and efficiency of the bidder;
  - D. The quality of performance of previous contracts or services;
  - E. The previous and existing compliance by the bidder with laws and ordinances relating to the contract or service;
  - F. The ability of the bidder to provide future maintenance and service for the use of the subject of the contract;
  - G. Whether the bidder is in arrears to the County on a debt or contract or is a defaulter on surety or whether the bidder's taxes or assessments are delinquent;
  - H. Whether the bidder complies with Article 4-103, if applicable.

- I. If bidder is not prequalified by the Virginia Department of Transportation, history or good faith assurances of (i) completion by the bidder and any potential subcontractors of specified safety training programs established by the U.S. Department of Labor, Occupational Safety and Health Administration; (ii) participation by the bidder and any potential subcontractors in apprenticeship training programs approved by state agencies or the U.S. Department of Labor; or (iii) maintenance by the bidder and any potential subcontractors of records of compliance with applicable local, state, and federal laws.

(11) Determination of Non-Responsibility

- A. Following public opening and announcement of bids received on an Invitation to Bid, the County shall evaluate the bids in accordance with Section 4-101. At the same time, the County shall determine whether the apparent low bidder is responsible. If the County so determines, then it may proceed with an award in accordance with the process for competitive sealed bidding. If the County determines that the apparent low bidder is not responsible, it shall proceed as follows:
  1. Prior to the issuance of a written determination of non-responsibility, the Purchasing Agent shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
  2. Within 10 business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The Purchasing Agent shall issue its written determination of responsibility based on all information in the possession of the Purchasing Agent, including any rebuttal information, within five business days of the date the Purchasing Agent received the rebuttal information. At the same time, the Purchasing Agent shall notify, with return receipt requested, the bidder in writing of its determination.
  3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within 10 days after receipt of the notice by invoking administrative procedures meeting the standards of Section 7-103.

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

- B. Nothing contained in this section shall be construed to require the County, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.
  - C. Any determination that a low bidder is not responsible that uses such factors listed in the Invitation to Bid as a basis for its decision shall be presumptively considered an honest exercise of discretion.
- (12) Energy-Efficient and Water-Efficient Products If the County receives two or more bids for products that are Energy Star certified, meet Federal Energy Management Program (FEMP) designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified, the County may only select among those bids unless, before selecting a different bid, the local public body provides a written statement that demonstrates the cost of the products that are Energy Star certified, meet FEMP-designated efficiency requirements, appear on FEMP's Low Standby Power Product List, or are WaterSense certified was unreasonable.
- (13) Bid Award Bids shall be awarded to the lowest responsive and responsible bidder. When the terms and conditions of the invitation to bid provide for the generation of revenue, cost recovery or other value received by the County bids shall be awarded to the highest responsive and responsible bidder. When the terms and conditions of the invitation to bid provide that multiple awards may be made, awards may be made to more than one bidder.

Unless canceled or rejected for good cause, a responsive bid from the lowest responsible bidder shall be accepted as submitted except that if the bid from the lowest responsible bidder exceeds available funds or is deemed excessive, the County may negotiate with the lowest responsible bidder to obtain an acceptable contract price.

When the award is not given to the lowest bidder, or as appropriate the highest bidder, a full and complete statement of the reasons for placing the order elsewhere shall be prepared by the Purchasing Agent and filed with the other papers relating to the transaction.

(14) Tie Bids

- A. In the case of a tie bid, preference shall be given to goods produced in Virginia, or goods, services or construction provided by a bidder domiciled in Arlington County. Like preference shall be given to bidders domiciled in Virginia when tied with bidders not domiciled in Virginia.
- B. Whenever any bidder is domiciled in any other state and such state under its laws allows a resident contractor of that state a preference, a like preference may be allowed to the lowest responsible bidder domiciled in Virginia .
- C. In the event that there is a tie bid which is not resolved under A or B above, the tie bidders may be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price.

- D. Notwithstanding the provisions of subsections A, B, and C, in the case of a tie bid in instances where goods are being offered, when the tie bid still exists after existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.
  - E. In the case of a tie bid, preference will be given to goods, services, and construction produced in Arlington County or provided by persons, firms or corporations having principal places of business in Arlington County, if such a choice is available.
  - F. In the event that none of the foregoing provisions of this section resolve the tie, the Purchasing Agent may decide the tie by lot or cancel the solicitation and rebid.
- (15) Multi-Step Sealed Bidding When it is considered impractical to prepare initially a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers. Bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation shall be invited to submit priced offers.
- (16) Contract Pricing Arrangement Public contracts may be awarded on any basis that is not prohibited. Except in case of emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carriers administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section. Architect, Engineer and similar contracts which are based on a percentage of construction cost shall not be prohibited by this section, providing the construction contract is not awarded by or to that Architect, Engineer or similar contractor.
- (17) Multi-Term Contracts
- A. Specified Period Unless otherwise provided by law, a contract for goods, services or insurance may be entered into for any period of time deemed to be in the best interest of the County provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.
  - B. Cancellation Due to Unavailability of Funds in Succeeding Fiscal Periods When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.
- (18) Retainage on Construction Contracts
- A. In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with not more than five percent

being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

- B. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.
- C. Nothing in this section shall preclude the Purchasing Agent from establishing retainage for contracts other than construction.

(19) Performance and Payment Bonds For Construction Contracts

- A. Upon the award of any (i) nontransportation-related public construction contract exceeding \$500,000 awarded to any prime contractor; or (ii) transportation-related project exceeding \$350,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the County 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, unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G.
  - 2. A payment bond in the sum of the contract amount, unless the contract is an indefinite delivery or quantity contract with a local public body and the local public body adopts an ordinance pursuant to subsection G. The 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 furtherance 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 furtherance of the work.
- B. 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.
- C. Bonds shall be made payable to the County.
- D. Each of the bonds shall be filed with the County, or a designated office or official thereof.
- E. Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below \$500,000 for nontransportation-related projects, or \$350,000 for transportation-related projects authorized under Va. Code §33.2-208 et seq. and partially or wholly funded by the Commonwealth.
- F. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill

contracts that are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for the in the subcontract.

- G. For indefinite delivery or quantity contracts awarded pursuant to subsection A, any locality may by ordinance allow the contractor awarded such contract to furnish to the local public body a performance bond and a payment bond, each of which shall be equal to the dollar amount of the individual tasks identified in the underlying contract. Such contractor shall not be required to pay the performance bond and payment bond in the sum of the contract amount if the contracting locality has adopted such an ordinance pursuant to this subsection. For purposes of this section, "indefinite delivery or quantity contract" means a contract that only requires performance of contractual obligations upon the request of the locality and which establishes an annual cap for the total work that may be authorized for such contract.
- (20) Action on Performance Bond No action against the surety on a performance bond shall be brought unless brought within five years after completion of the contract. Completion of the contract is the final payment to the contractor pursuant to the terms of the contract. However, if a final certificate of occupancy or written final acceptance of the project is issued prior to final payment, the five-year period to bring an action shall commence no later than 12 months from the date of the certificate of occupancy or written final acceptance of the project.
- (21) Actions on Payment Bonds
- 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 therefore before the expiration of ninety 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 4- 101 (17) F, 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 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 4-101, (17) F of this Resolution, but who has not 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 retainage 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.

(22) Alternative Forms of Security

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
- B. If approved by the County Attorney, a bidder may furnish a personal bond, property bond, or bank or saving and loan association's letter of credit on certain designated funds in the face amount required for the bid bond, payment bond or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the County equivalent to a corporate surety's bond.

4-102 Competitive Negotiation

(1) Competitive Negotiation for Goods or Services Other Than Professional Services

- A. Request for Proposal: The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

- B. Public Notice: Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals by posting on the Department of General Services' electronic procurement website and any other appropriate websites. Public notice may also be given in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors.
- C. Receipt of Proposals: Proposals shall not be public and no proposals shall be handled so as to permit disclosure of the identity of any offeror or the contents of any proposal to competing offerors during the process of negotiation.

- D. Selection and Award: Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the request for proposal, including price if so stated in the request for proposal. Negotiations shall then be conducted with each of the offerors so selected. The offer shall state any exception to any contractual terms or conditions, including any liability provisions contained in the Request for Proposal, in writing at the time of responding to such Request for Proposal, if so requested by the County. Such exceptions shall be considered during negotiation but shall not be used as a basis for scoring or evaluating which offerors are selected for negotiations. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the County shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. When the terms and conditions of multiple awards are so provided in the Request for Proposal, awards may be made to more than one offeror. Should the County determine in writing and in its sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration, a contract may be negotiated and awarded to that offeror.

(2) Competitive Negotiation for Professional Services

- A. Conditions for Use: Contracts for professional services, as defined in section 1-105 (20) of this Resolution, the cost of which is expected to exceed \$80,000 in the aggregate or for the sum of all phases of a contract or project, shall be entered into by use of the Competitive Negotiations for Professional Services method. Services estimated to cost \$80,000 or less may be procured in accordance with the procedures for Small Purchases or any other method, at the discretion of the Purchasing Agent.
- B. Professional Service Contracts For Multiple Projects: A contract for professional architectural or engineering services relating to multiple projects may be negotiated by the County, provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, 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, whichever occurs first. Such contract may be renewable for three additional terms at the option of the County. 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 a contract term shall not exceed ten million dollars (\$10,000,000); and (c) the project fee of any single project shall not exceed two million five hundred thousand dollars (\$2,500,000). Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term. Such procedures prohibit requiring the selected contractors to compete for individual projects based on price.
- C. Multiphase Professional Services Contracts: Multiphase Professional Services Contracts satisfactory and advantageous to the County for environmental, location, study, design, and inspection work regarding construction of infrastructure projects 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 County shall state the intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

- D. Request for Proposals: The Purchasing Agent shall issue a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor.

In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

- E. Public Notice: Public notice of the Request for Proposal shall be given at least ten days prior to the date set for receipt of proposals posting on the Department of General Services' electronic procurement website and any other appropriate websites. Public notice may also be given in a newspaper of general circulation in the area in which the contract is to be performed. In addition, proposals may be solicited directly from potential contractors.
- F. Selection and Award: The County shall engage in individual discussions with two or more offerors deemed fully qualified, responsible and suitable on the basis of initial response and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. The offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project, as well as alternative concepts. In addition, offerors shall be informed of any ranking criteria that will be used by the County in addition to the review of the professional competence of the offeror. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. At the discussion stage, the County may discuss non-binding estimates of total project costs, including, but not limited to, life-cycle costing, and where appropriate, non-binding estimates of prices for services. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined in this paragraph above, on the basis of evaluation factors published in the request for proposal and all information developed in the selection process to this point, the County shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed the most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the County can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. Should the County determine in writing and in its 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.

(3) Competitive Negotiation for the Acquisition of Construction:

A. Construction Management Enabling and Applicability

1. A design-bid-build project delivery method that utilizes competitive sealed bidding is the default method of procurement for construction. The County may, however, use Construction Management (CM) as a construction project delivery methodology on either a fixed price or a not-to-exceed price basis.
2. Any CM contract must be initiated no later than the Schematic Phase of design unless prohibited by authorization of funding restrictions.
3. CM contracts must be procured through the use of competitive negotiations.
4. CM projects must meet the following value requirements:
  - a. The use of CM contracts is authorized consistent with the procedures adopted by the Secretary of Administration for construction management.
  - b. CM may be used for projects provided that the following two criteria are met:
    - i. the use of CM is approved in advance, upon recommendation of the Purchasing Agent, by the County Board, and
    - ii. the construction project is a complex project that includes one or more of the following significant components:
      - difficult site location,
      - unique equipment,
      - specialized building systems,
      - multifaceted program,
      - accelerated schedule,
      - historic designation,
      - intricate phasing, or
      - some other aspect that makes the design-bid-build project delivery method not practical.

B. Procedure for Approval to Use CM:

The County shall adopt a resolution or motion to use the construction management method on a per-project basis in a public forum prior to issuing a Request for Qualifications. The written approval of the County Board shall be maintained in the procurement file.

Prior to making a determination as to the use of CM for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the County regarding the use of CM for that project and assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.

A written determination that the design-bid-build project delivery method is not practicable or fiscally advantageous shall be made in advance by the requesting department and sent to the Purchasing Agent for approval. Such writing shall document the basis for the determination to utilize construction management, including the determination of the project's complexity. The request shall justify and substantiate that a CM contract meets the criteria found in paragraph A4 above.

The determination in the preceding paragraph shall be included in the Request for Qualifications and be maintained in the procurement file.

Public notice of the Request for Qualifications shall be posted on the Commonwealth Department of General Services' electronic procurement website or the County's website at least 30 days prior to the receipt of qualification proposals.

Prior construction management experience or previous experience with the Division of Engineering and Buildings of the Commonwealth's Department of General Services shall not be a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable construction management projects.

The procedures allow for a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state public bodies.

Price is a basis for award of the contract.

C. Required Construction Management Contract Terms:

1. Any CM contract entered into by the County will contain provisions requiring that:
  - a. no more than 10% of the construction work (measured by the cost of the work) will be performed by the CM with its own forces and
  - b. the remaining 90% of the construction work (measured by the cost of the work) will be performed by subcontractors of the CM which the CM must procure by publicly advertised, competitive sealed bidding to the maximum extent practicable. The provisions of this subdivision shall not apply to construction management contracts involving infrastructure projects.
2. Documentation shall be placed in the file detailing the reasons any work is not procured by publicly advertised competitive sealed bidding.

D. Design-Build Enabling and Applicability

1. A design-bid-build project delivery method that utilizes competitive sealed bidding is the default method of procurement for construction. The County may, however, use

Design Build (DB) as a construction program delivery methodology on either a fixed price or not-to-exceed price basis.

2. DB contracts shall be procured through the use of competitive negotiations.
3. The use of DB contracts is authorized consistent with the procedures adopted by the Secretary of Administration for design-build.

E. Procedure for Approval to Use DB:

The County shall adopt a resolution or motion to use the design-build method on a per-project basis in a public forum prior to issuing a Request for Qualifications. The written approval of the County Board shall be maintained in the procurement file.

Prior to making a determination as to the use of DB for a specific construction project, the County shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the County regarding the use of DB for that project and assist the County with the preparation of the Request for Proposal and the evaluation of such proposals.

A written determination that the design-bid-build project delivery method is not practicable or fiscally advantageous shall be made in advance by the requesting department and sent to the Purchasing Agent for approval, and such writing shall document the basis for the determination to utilize DB, including the determination of the project's complexity.

The determination shall be included in the Request for Qualifications and be maintained in the procurement file.

Public notice of the Request for Qualifications is posted on the Commonwealth Department of General Services' electronic procurement website or the County's website at least 30 days prior to the receipt of qualification proposals.

Prior design-build experience or previous experience with the Division of Engineering and Buildings of the Commonwealth's Department of General Services shall not be a prerequisite or factor considered for prequalification of a contract. However, in the selection of a contractor, the County may consider the experience of each contractor on comparable design-build projects.

The procedures allow for a two-step competitive negotiation process consistent with the standards established by the Division of Engineering and Buildings of the Department of General Services for state public bodies.

Price is a basis for award of the contract.

- F. The Purchasing Agent may promulgate such additional procedures, not inconsistent with the provisions of this Section, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as deemed necessary and

appropriate to effect the selection and evaluation of offers and the award of design-build and construction management contracts.

- (4) Purchase of Insurance. Upon a written determination made in advance by the Purchasing Agent that competitive negotiation for the purchase of insurance is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker who shall be selected in the same manner provided for in Section 4-102 (1), above.
- (5) Job Order Contracting Limits (Effective for contracts into on or after July 1, 2024)
  - A. The following limits represent the allowable maximums. The Purchasing Agent may, at his or her discretion, set a lower limit for any particular contract or project.
  - B. The sum of all projects performed in a one-year contract term shall not exceed \$10 million.
  - C. The project fee for any single project shall not exceed \$1 Million.
  - D. The use of ancillary Architect/Engineering services related to job order construction are limited to \$25,000 per job order and \$75,000 per contract term.
  - E. Initial contract terms are limited to one year. Contract renewals are limited to a maximum of three additional one year terms.
  - F. Any unused amounts from one contract term shall not be carried forward to any additional term.
  - G. Job-order-splitting with the intent of keeping a project or annual expenditure under the maximum dollar amounts prescribed in section is prohibited.
  - H. Job order contracting shall not be used for construction, maintenance, or asset management services for a highway, bridge, tunnel, or overpass. However, job order contracting may be used for safety improvements or traffic calming measures for individual job orders up to \$250,000, subject to the maximum annual threshold amount established in this section.

#### 4-103 Service Contract Wages

- (1) Required Wage Rate. Except as otherwise provided in this Article, each public contract for the provision of services in excess of \$50,000 shall require that the contractor pay each employee assigned to perform such services under such public contract an hourly rate to be determined as follows:

The initial Required Wage Rate shall be \$10.98. The Required Wage Rate may be adjusted annually, as proposed by the County Manager and adopted by the County Board during the Budget adoption process. The annual adjustment shall be no less than that approved as the living wage for County employees. The Required Wage Rate, as adjusted, shall be effective July 1 of each

year for every contract which this Article 4-103 applies. The Purchasing Agent shall post the Rate on the County's website.

- A. The County will be responsible for funding the contractual costs of increases to the Required Wage Rate if a contractor requests the increase and can demonstrate to the Purchasing Agent's satisfaction that the increase in the Required Wage Rate will directly increase their service delivery costs.

(2) Covered Service Contracts

- A. The County Manager, or his or her designee, shall have the authority to determine those County contracts that are covered by the wage requirements of this Article, including the discretion to expand or otherwise adjust the limits set forth in 4-103(1) and 4-103(4)(A) consistent with Virginia law in order to best serve the interests of Arlington County.
- B. Service contract wage provisions will be determined at the time of solicitation or award of a sole source contract, and will not be added to an existing non-covered service contract until re-solicitation of that contract.
- C. The Purchasing Agent shall maintain at all times an updated list of covered service contracts.

(3) Contractor Responsibilities

- A. In addition to applying the Required Wage Rate to its own employees pursuant to the terms of its contract with the County, the contractor under each such public contract shall include the provisions of Article 4-103 in every subcontract so that such provisions will be binding upon each subcontractor. When a contractor undertakes a public contract subject to this Article 4-103, the contractor agrees to assume the obligation that this section's wage requirements will be observed in fulfilling the requirements of the public contract. The appropriate enforcement sanctions under Article 4-103 may be invoked against the contractor and any such subcontractor in the event of such subcontractor's failure to comply with any of the provisions of Article 4-103.
- B. The Required Wage Rate shall be paid without contemporaneous or subsequent deduction or rebate of any nature, except such payroll deductions as are required or permitted by law, by a collective bargaining agreement, or by specific written authorization from an employee.
- C. Publication and Notice
  - 1. As soon as possible after the annual determination of the Required Wage Rate, the contractor shall post the rate, in English and Spanish, on a form supplied by the Purchasing Agent, in a prominent place at its offices and at each location where its employees perform services under a County contract.
  - 2. Within five days of an employee's request, a contractor shall provide to such employee a written statement, in English and Spanish, on a form supplied by the Purchasing Agent, setting forth the then current Required Wage Rate.



3. Notice of the Required Wage Rate shall be stated in the procurement solicitation.
- D. Records and Reports. Each contractor and its subcontractors subject to the provisions of this Article 4-103, shall:
1. for a period of five years after the expiration or earlier termination of the applicable public contract, keep and preserve records which show wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under such public contract. The Purchasing Agent, or designee, shall have the authority to examine such records at reasonable times for the purpose of administering and enforcing the provisions of this Article, and to make copies of all or any parts thereof; and
  2. on a quarterly basis during the term of the applicable public contract, submit to the Purchasing Agent a report, in a form acceptable to the Purchasing Agent, which shows hourly wage rates, wages and benefits provided by such contractor and its subcontractors to each employee assigned to perform services under any such public contract, and such other information as may be required by the Purchasing Agent.
- E. Anti-Retaliation. No contractor or subcontractor shall discharge, reduce the compensation of, or otherwise retaliate against any employee who files a complaint with the Purchasing Agent as described below, or takes any other action to enforce the provisions of this Article.

(4) Limits on Applicability

- A. Subject to the authority conferred in 4-103(2)(A) to expand or adjust the limits of applicability, the provisions of Article 4-103 shall apply to public contracts with a value greater than \$50,000 performed on County-owned or controlled property, or contracts for home-based client services greater than \$50,000, and shall not apply to contracts for professional services, contracts for construction, construction management contracts, design build contracts, contracts for goods, or contracts procured by emergency. The Required Wage Rate shall not be applicable to jail inmates.
1. The \$50,000 threshold for contracts shall be measured as the estimated average annual spend for multi-year service contracts.
  2. County-owned or controlled property shall also include sites or facilities owned, or leased, and operated by a contractor if the services provided at that location are exclusive to Arlington County Government. Contracts where services are provided in non-County facilities serving multiple customers simultaneously (e.g., recycling or yard waste processing facilities, printing presses, shared congregate care facilities, etc.) are not subject to the Required Wage Rate.
  3. Public works operations and maintenance type services contracts are excluded from the definition of construction for purposes of this Article 4-103 and are therefore subject to the Required Wage Rate.

(5) Enforcement

- A. Any contractor or subcontractor that fails to pay an employee the then current Required Wage Rate shall be liable to the affected employee in the amount of the unpaid wage, plus interest at the judgment rate from the date originally due, and less any deductions required or permitted by law.
- B. Within six months of a contractor's or subcontractor's failure to comply with the wage requirements of a public contract, an aggrieved employee may file a complaint with the Purchasing Agent. The Purchasing Agent shall investigate the complaint and in the event that the complaint has merit, the Purchasing Agent shall direct the contractor or subcontractor to make restitution forthwith. The failure of the contractor or subcontractor to comply with the directive of the Purchasing Agent shall be grounds for termination of such public contract and for suspension or debarment of the contractor or subcontractor, in accordance with Article 6.

- (6) Administrative Procedures. The Purchasing Agent, in consultation with the County Manager or designee, shall have the authority to promulgate additional departmental procedures, not inconsistent with the provisions of this Article, designed to administer and enforcement this Article.

4-104 Prevailing Wages for Public Work Contracts Greater than \$250,000

- (1) Construction Contracts. Each contract for construction greater than \$250,000 shall require that the contractor and subcontractors pay wages, salaries, benefits, and other remuneration to any mechanic, laborer, or worker employed, retained, or otherwise hired to perform services in connection with the construction contract at or above the prevailing wage rate.
- A. "Construction" means building, altering, repairing, improving, or demolishing any structure, building or highway, and any draining, excavation, grading or similar work upon real property.
  - B. "Prevailing Wage Rate" means the rate, amount, or level of wages, salaries, benefits, and other remuneration prevailing for the corresponding classes of mechanics, laborers, or workers employed for the same work in the same trade or occupation in the locality in which the public facility or immovable property that is the subject of construction is located, as determined by the Commissioner of Labor and Industry on the basis of applicable prevailing wage rate determinations made by the U.S. Secretary of Labor under the provisions of the Davis-Bacon Act, 40 U.S.C. § 276 et seq., as amended.
- (2) Covered Prevailing Wage Contracts. Construction contracts funded in part or in whole with Federal funding, which funding requires payment of Federal Davis-Bacon Act wages, are exempted from Arlington County's prevailing wage policy.
- (3) Contractor Responsibilities.
- A. Upon the award of any contract subject to the provisions of this Article 4-104, the contractor to whom such contract is awarded shall certify, under oath, to the Purchasing Agent and the

Virginia Commissioner of Labor and Industry, the pay scale for each craft or trade employed on the project to be used by such contractor and any of the contractor's subcontractors for work to be performed under such contract. This certification shall, for each craft or trade employed on the project, specify the total hourly amount to be paid to employees, including wages and applicable fringe benefits, provide an itemization of the amount paid in wages and each applicable benefit, and list the names and addresses of any third party fund, plan or program to which benefit payments will be made on behalf of employees.

- B. In addition to applying the prevailing wage rates to its own employees pursuant to the terms of its contract with the County, the contractor under each such contract shall include the provisions of this Article 4-104 in every subcontract so that such provisions will be binding upon each subcontractor. The contractor agrees to assume the obligation that the wage requirements will be observed in fulfilling the requirements of the contract. The appropriate enforcement sanctions may be invoked against the contractor and any such subcontractor in the event of such subcontractor's failure to comply with any of the provisions of this Article 4-104.
  - C. A contractor or subcontractor who employs any mechanic, laborer, or worker to perform work contracted to be done under the construction contract at a rate that is less than the prevailing wage rate (i) shall be liable to such individuals for the payment of all wages due plus interest; and (ii) shall be disqualified from bidding on contracts with any public body until full restitution has been paid to the individuals. A contractor or subcontractor who willfully violates this Article 4- 104 shall be guilty of a Class I misdemeanor.
  - D. Publication and Notice. Each contractor and subcontractor must post a clearly legible statement of each prevailing wage rate in a prominent and easily accessible place at the work site during the entire time work is being performed in English and any other language that is primarily spoken by the employees at the work site. Within 10 days of such posting, a contractor or subcontractor shall certify to the Purchasing Agent and the Virginia Commissioner of Labor and Industry its compliance with this subsection.
  - E. Records and Reports. Each contractor, and its subcontractor subject to this Section, shall keep, maintain, and preserve (i) records relating to the wages paid to and hours worked by each individual performing the work of any mechanic, laborer, or worker; and (ii) a schedule of the occupation or work classification at which each individual performing the work of any mechanic, laborer, or worker on the construction project is employed each work day and week. The contractor or subcontractor shall make such records available to the Purchasing Agent within 10 days of a request, or per a regular schedule established in the construction contract, and shall certify that records reflect the actual hours worked and the amount paid to its workers for whatever time period is requested and must preserve these records for a period of six years after the expiration or earlier termination of the applicable contract.
- (4) Contract Compliance. Contractors and subcontractors shall fully cooperate with any contract compliance requirements specified in the executed contract documents, including but not limited to site visits, staff interviews to validate wage rates, and the submission of payroll records.

- (5) Administrative Procedures. The Purchasing Agent, in consultation with the County Manager or designee, shall have the authority to promulgate additional departmental procedures, not inconsistent with the provisions of this Article 4-104, designed to administer and enforce this Section.

#### 4-105 Project Labor Agreements for Public Works Contracts

- (1) The County, when procuring products or services for construction, manufacture, maintenance, or operation of public works or when overseeing or administering such procurement, construction, manufacture, maintenance, or operation, may in its bid specifications, project agreements, or other controlling documents:
- A. Require bidders, offerors, contractors, or subcontractors to enter into or adhere to project labor agreements with one or more labor organizations on the same or related public works projects; and
  - B. Require bidders, offerors, contractors, subcontractors, or operators to become or remain signatories or otherwise to adhere to project labor agreements with one or more labor organizations, on the same or other related public works projects.

Whether a project labor agreement is required under a County public works contract will be at the sole discretion of the County.

Article 4-104 of Arlington County's Purchasing Resolution is still applicable to public work contracts, and collectively bargained wages must meet or exceed those found in the contract-specific prevailing wage package provided by the Virginia Department of Labor and Industry. The contractor will be required to meet all prevailing wage provisions over the course of the contract.

- (2) Project Labor Agreement. The project labor agreement shall include elements that:
- A. Establish the terms and conditions of employment for all construction craft workers on the project;
  - B. Bind all contractors and subcontractors on the construction project to the terms and conditions set forth in the project labor agreement;
  - C. Contain contractual guarantees against strikes, lockouts, and other job disruptions;
  - D. Set effective, prompt, and mutually binding procedures for resolving labor disputes arising during the work undertaken on the contract;
  - E. Provide mechanisms for cooperation between the contract parties on matters of mutual interest and concern, including productivity, quality of work, safety, and health; and
  - F. Include any additional requirements that the parties consider necessary to promote the efficient and timely completion of the contract.

#### 4-106 Sole Source Procurement

A contract may be awarded without competitive bidding or competitive negotiation when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one source practicably available for that which is to be procured. The Purchasing Agent shall conduct negotiations, as appropriate, to obtain the best price, delivery, and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the type of each contract, the item(s) procured and the identification number of each contract file.

#### 4-107 Emergency Purchases

In case of emergency, a contract may be awarded without Competitive Sealed Bidding or Competitive Negotiation. If any emergency occurs during regular County business hours, the using department shall immediately notify the Purchasing Agent who shall either purchase the required supplies or contractual services, authorize the department to do so, or disapprove the emergency purchase. A written explanation of the circumstances of the emergency shall be filed with the Purchasing Agent.

If an emergency occurs at times other than regular business hours, the concerned department may purchase directly the required goods or contractual services. The department, shall, however, whenever practicable, secure competitive telephone bids and order delivery to be made by the lowest responsible bidder. The department shall also, as soon as practicable, submit to the Purchasing Agent a tabulation of bids received, if any, a copy of the delivery record and a written explanation of the circumstances of the emergency.

An emergency situation exists when the safety, health or welfare of the public is vitally affected by: (a) a breakdown in machinery and/or threatened termination of essential services, (including maintenance and repair of essential office equipment), or (b) the development of a dangerous condition, or (c) any other circumstance in which supplies are needed for immediate use.

Monthly, the Purchasing Agent shall submit a list of all emergency purchases in excess of \$1,000 to the County Manager.

#### 4-108 Small Purchases

- (1) Any contract for 1) goods and services other than professional services, if the aggregate or sum of all phases is not expected to exceed \$200,000 or 2) non-transportation-related construction, if the aggregate of all phases is not expected to exceed \$300,000, may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved by the County Manager and included in the Arlington County Purchasing Manual.
- (2) Small purchase procedures include, but are not limited to, the following provisions:
  - I. Contract requirements shall not be artificially divided so as to constitute a small purchase.

- II. Competition for small purchases shall be obtained using an informal written quotation process by soliciting on the Department of General Services' electronic procurement website and any other appropriate websites. However, for complex, high risk, or high visibility requests, Purchasing may require the use of a "formal" process for certain purchases even though they are under \$200,000 for goods and services other than professional services or \$300,000 for non-transportation-related construction.
- III. Award shall be made to the business offering the lowest acceptable quotation.
- IV. The name of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.
- V. All quotations solicited which are expected to exceed \$10,000 shall be submitted in writing by the businesses.
- VI. Purchases 10,000 or less for goods and non-professional services and purchases \$80,000 or less in aggregate or sum of all phases for professional services may be made without competitive quotations.
- VII. Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for purchases made under the small purchase method or from waiving these small purchase procedures in whole or in part when, in the opinion of the Purchasing Agent, the best interests of the County would be served by such waiver.

#### 4-109 Interest in More Than One Bid and Collusion

- (1) More than one bid or proposal received in response to a single solicitation from an individual, firm, partnership, corporation, affiliate, or association under the same or different names will be rejected.
- (2) Reasonable grounds for believing that a bidder or offeror is interested in more than one bid or proposal for a solicitation both as a bidder or offeror and as a subcontractor for another bidder or offeror, will result in rejection of all bids or proposals in which the bidder or offeror is interested. However, a firm acting only as a subcontractor may be included as a subcontractor for two or more bidders or offerors submitting a bid or proposal for the work.
- (3) Any or all bids or proposals may be rejected if reasonable grounds exist for believing that collusion exists among any bidders or offerors.
- (4) Bidders or offerors rejected under the above provisions shall be disqualified if they respond to a re-solicitation for the same work.
- (5) The Purchasing Agent may waive the provisions in Paragraph 2, above, prior to issuing a solicitation when the Purchasing Agent determines in writing that the County's interest would be best served by such a waiver.

#### 4-110 Contracts for Capital Construction Improvement Projects and Professional Services Contracts Related to Construction

- (1) No contract for a capital construction improvement project or professional services related to a capital construction improvement project that exceeds \$1,000,000 shall be awarded without the approval of the County Board.
- (2) Capital construction improvement projects are defined as work on real property or its improvements, other than normal maintenance, provided however that the work shall not be artificially divided to avoid classification as a capital improvement project under this section.

#### 4-111 Unauthorized Purchases

- (1) Whenever any officer or employee of the County government purchases or contracts for any supplies or contractual services contrary to the provisions of the Purchasing Manual or this resolution, such purchases or contract shall be void and shall not be considered to be an obligation of Arlington County.
- (2) Any County officer or employee making or approving the original purchase contrary to the provisions of the Purchasing Manual or this resolution shall be personally liable for the costs of such purchases or contract. If already paid out of County funds, the amount thereof may in the name of the County, be recovered by deduction from that person's compensation or, an appropriate legal action instituted.

#### 4-112 Competitive Bidding or Competitive Negotiation on State-aid Projects

No contract for the construction of any building or for an addition to or improvement of an existing building by the County for which state funds of \$50,000 in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 4-102 (1) A of this resolution. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections 2.2-4300 et seq.

#### 4-113 Public Access to Procurement Information

Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act. Cost estimates relating to a proposed transaction prepared by or for the County shall not be open to public inspection.

Any competitive sealed bidding bidder, upon request, shall be afforded the opportunity to inspect bid records within a reasonable time after the opening of all bids except in the event that the County decides not to accept any of the bids and to reopen the contract.

Any competitive negotiation offeror, upon request, shall be afforded the opportunity to inspect proposal records within a reasonable time after the evaluation and negotiations of proposals are completed, except in the event that the County decides not to accept any of the proposals and to reopen the contract.

Bid and proposal records shall be open to public inspection after award of the contract, subject to the provisions of this section.

Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records.

Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to subsection 4-101(2) shall not be subject to public disclosure under the Virginia Freedom of Information Act; however, the bidder, offeror or contractor must invoke the protection of this section prior to or upon submission of the data or other materials, and must identify the data or other materials to be protected and state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal or prequalification application prices.

#### 4-114 Employment Discrimination by Contractor Prohibited, Requirement of Sexual Harassment Training, and Prohibition of Forced and Indentured Child Labor

Every contract of over \$10,000 shall include the following provision:

(3) During the performance of this contract, the contractor agrees as follows:

- A. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, sexual orientation, gender identity, national origin, age, disability or any other basis prohibited by state law related to discrimination in employment except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- B. The contractor, in all solicitations or advertisements for employees placed by or on behalf of the contractor, will state that such contractor is an Equal Opportunity Employer.
- C. Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.
- D. The contractor will comply with the provisions of the Americans with Disabilities Act of 1990 which prohibits discrimination against individuals with disabilities in employment and mandates their full participation in both publicly and privately provided services and activities.



- E. If the contractor employs more than five employees, the contractor shall (i) provide annual training on the contractor's sexual harassment policy to all supervisors and employees providing services in the Commonwealth, except such supervisors or employees that are required to complete sexual harassment training provided by the Department of Human Resource Management, and (ii) post the contractor's sexual harassment policy in (a) a conspicuous public place in each building located in the Commonwealth that the contractor owns or leases for business purposes and (b) the contractor's employee handbook.
- F. The contractor shall prohibit the use of forced or indentured child labor in the performance of the contract.
- G. The contractor will include the provisions of the foregoing paragraphs in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

#### 4-115 Exemptions

Purchases exempted from competitive procurement include purchases of land and rights of way, sole source purchases, emergency purchases, printing and engraving of bonds, utility services, intergovernmental purchases, purchases from state government agencies which offer services or goods to Virginia political subdivisions, cooperative purchases as defined herein, purchases of goods or services produced or performed by nonprofit sheltered workshops serving the handicapped or which are produced or performed by persons, or in schools or workshops, under the supervision of the Virginia Department for the Visually Handicapped or other nonprofit organizations which offer transitional or supported employment services serving the handicapped, legal services, provided that pertinent provisions of Chapter 11, (2.1-117 et seq.) of Title 2.1 of the Virginia Code remain applicable and expert witnesses and other services associated with litigation or regulatory proceedings.

The County may enter into contracts without competitive sealed bidding or competitive negotiation for insurance if purchased through an association of which the County is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance by use of competitive principles and provided that the Purchasing Agent has made a determination in advance after reasonable notice to the public and set forth in writing that competitive sealed bidding and competitive negotiation are not fiscally advantageous to the public. The writing shall document the basis for this determination.

Upon a determination made in advance by the Purchasing Agent and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interest of the public, such items may be purchased at the auction. The writing shall document the basis for this determination.

The County and the Arlington County Community Service Board, in administering public assistance programs as defined in section 37.1-1 of the Code of Virginia (aid to dependent children, auxiliary grants to the aged, blind and disabled, medical assistance, food stamps, general relief, fuel assistance, and social services) may procure goods or personal services for direct use by the recipients of such programs without competitive sealed bidding or competitive negotiations if the procurement is made for an individual

recipient. Contracts for the bulk procurement of goods or services for the use of recipients are not exempt from the competitive process.

#### 4-116 Escrow Deposits on Certain Retained Funds

- (1) The County, when contracting directly with contractors for public contracts of \$200,000 or more for the construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavating, paving, pile driving, miscellaneous drainage structures, and the installation of water, gas, sewer lines and pumping stations where portions of the contract price are to be retained, shall include in the bid document an option for the contractor to use an escrow account procedure for utilization of the County's retainage funds by so indicating in the space provided in the bid form. In the event the contractor elects to use the escrow account procedure, the "Escrow Agreement" form included in the bid document shall be executed and submitted to the County within fifteen calendar days after notification. If the "Escrow Agreement" form is not submitted within the fifteen day period, the contractor shall forfeit his rights to the use of the escrow account procedure.
- (2) In order to have retained funds paid to an escrow agent, the contractor, the escrow agent, and the surety shall execute an "Escrow Agreement" form. The contractor's escrow agent shall be a trust company, bank or savings institution with its principal office located in the Commonwealth. The "Escrow Agreement" and all regulations promulgated by the County shall be substantially the same as that used by the Commonwealth of Virginia Department of Transportation.
- (3) This section shall not apply to public contracts for construction for railroads, public transit systems, runways, dams, foundations, installation or maintenance of power systems for the generation and primary and secondary distribution of electric current ahead of the customer's meter, the installation or maintenance of telephone, telegraph or signal systems for public utilities and the construction or maintenance of solid waste or recycling facilities and treatment plants.
- (4) Any such public contract for construction, which includes payment of interest on retained funds, may require a provision whereby the contractor, exclusive of reasonable circumstances beyond the control of the contractor stated in the contract, shall pay a specified penalty for each day exceeding the completion date stated in the contract.
- (5) Any subcontract for such public project which provides for similar progress payments shall be subject to the provisions of this section.

#### 4-117 Purchase of owner-controlled insurance in construction projects

- (1) Notwithstanding any other provision of law to the contrary, the County may purchase at its expense an owner-controlled insurance program in connection with any public construction contract where the amount of the contract or combination of contracts is more than \$100 million, provided that no single contract valued at less than \$50 million shall be combined pursuant to this section. The County shall provide notice if it intends to use an owner-controlled insurance

program, including the specific coverages of such program, in any request for proposal, invitation to bid, or other applicable procurement documents.

- (2) The County shall not require a provider of architecture or professional engineering services to participate in the owner-controlled insurance program, except to the extent that the County may elect to secure excess coverage. No contractor or subcontractor shall be required to provide insurance coverage for a construction project if that specified coverage is included in an owner-controlled insurance program in which the contractor or subcontractor is enrolled.
- (3) For the purposes of this section, "owner-controlled insurance program" means a consolidated insurance program or series of insurance policies issued to the County that may provide for some or all of the following types of insurance coverage for any contractor or subcontractor working on or at a public construction contract or combination of such contracts: general liability, property damage, workers' compensation, employer's liability, pollution or environmental liability, excess or umbrella liability, builder's risk, and excess or contingent professional liability.

#### 4-118 Drug-Free Workplace to be Maintained by Contractor

Every contract over \$10,000 shall include the following provisions:

During the performance of this contract, the contractor agrees to (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

For the purposes of this section, "drug-free workplace" means a site for the performance of work done in connection with a specific contract awarded to a contractor in accordance with the Arlington County Resolution, the employees of whom are prohibited from engaging in the unlawful manufacture, sale, distribution, dispensation, possession or use of any controlled substance or marijuana during the performance of the contract.

#### 4-119 Commercial activities list; publication of notice; opportunity to comment

- (1) As used in this section, unless the context requires a different meaning:

"Commercial Activities List" means the list developed by the Virginia Department of Planning and Budget.

- (2) Prior to entering into a contract to purchase services for an amount over \$25,000 from another governmental agency, which service is found on the Commercial Activities List, the County shall post notice of its intent in a manner consistent with the posting of all procurement postings.
- (3) Such notice provides the opportunity for comment by or the submission of information from the private sector on the intended purchase.
- (4) The provisions of this section shall not apply to mandatory purchases pursuant to Va. Code § 53.1-47 or contracts specifically exempted pursuant to the Virginia Public Procurement Act.
- (5) The provisions of this section shall not apply to services provided by central service state agencies, activities operated as an internal service fund of the Commonwealth, or purchases from public institutions of higher education.
- (6) That the provisions of this section shall not apply to the purchase of services found on the commercial activities list from another governmental agency that occurred before July 1, 2015; however, any renewal of such purchase agreement shall be in accordance with the provisions of this section.

#### 4-120 Purchase of the United States or Commonwealth Flag for Public Use

Whenever a purchase of a flag of the United States or a flag of the Commonwealth is made for public use, such flag shall be made in the United States from articles, materials, or supplies that are grown, produced, and manufactured in the United States, if available.

#### 4-121 Solar Photovoltaic Equipment and Facilities

The County shall not in any request for proposal, procurement agreement, contract or accompanying document prohibit or otherwise exclude from use any materials contained in or products associated with solar photovoltaic equipment and facilities that meet the U.S. Environmental Protection Agency's Recommendations of Specifications, Standards, and Ecolabels for Federal Purchasing.

#### 4-122 Information and Communications Technology Goods and Services

No term or provision in any public acquisition of information technology goods or services shall be valid or enforceable to the extent that it is in conflict with Virginia law. A public contract containing such a term or provision shall otherwise remain enforceable.

Any term or provision in such a public contract that (i) makes the public contract subject to, governed by, or interpreted under the laws of another state or country or (ii) requires or permits any litigation or other dispute resolution proceeding arising from the public contract to be conducted in another state or country shall be void. Such public contract shall instead be deemed to provide for the application of the law of the Commonwealth of Virginia, without regard to such contract's choice of law provisions, and to provide for jurisdiction in the courts of the Commonwealth.

## ARTICLE 5 - DISPOSAL OF SURPLUS PROPERTY

### 5-101 Procedure

- (1) The Purchasing Agent shall sell, transfer, trade or otherwise dispose of personal property belonging to the County which has become obsolete, unusable or surplus or which is being transferred in order to be leased back by the County under a lease purchase agreement. Any such sales, trades or exchanges shall be based on competitive bidding requirements wherever practicable. The Purchasing Agent may specifically authorize, in writing, the Department of Environmental Services to sell, transfer, trade or otherwise dispose of specified surplus County motor vehicles, trailers and related equipment under their responsibility and control, provided that such sale, transfer, trade or disposal shall be conducted in accordance with the procedures in this Article. No County agency shall permit any obsolete, surplus or damaged equipment, supplies or materials to be sold, transferred, traded, loaned or otherwise disposed of except as the Purchasing Agent shall specifically authorize.
- (2) County employees and their immediate family members (as defined in 9-102) are not eligible to buy surplus County personal property that is disposed of in accordance with this section.

## **ARTICLE 6 - DEBARMENT**

### **6-101 Authority to Debar or Suspend**

After ten days written notice to the person involved and reasonable opportunity for that person to be heard by the Purchasing Agent, the Purchasing Agent, after consulting with the County Attorney, may debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the County Attorney, the Purchasing Agent may suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding six months. When debarment or suspension occurs, such debarment or suspension shall be considered to be just cause for cancellation of any existing contracts held by the person or business debarred or suspended. The causes for debarment or suspension include:

- (1) Conviction for commission of a criminal offense relating to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;
- (2) Conviction under state or Federal statutes for embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty;
- (3) Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals;
- (4) Deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract;
- (5) A recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment;
- (6) Any other cause the Purchasing Agent determines to be so serious and compelling as to affect responsibility as a County contractor including debarment or suspension by another governmental entity for any cause in this Resolution; and for violation of the ethical standards set forth in this Resolution.

### **6-102 Decision to Debar or Suspend**

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

#### 6-103 Notice of Decision

A copy of the decision required by 6-102 (Decision to Debar or Suspend) shall be mailed or otherwise furnished immediately to the debarred or suspended person.

#### 6-104 Finality of Decision

A decision under 6-102 (Decision to Debar or Suspend) shall be final and conclusive, unless the debarred or suspended person within 10 days after receipt of the decision protests the decision in writing to the County Manager. The County Manager shall issue a decision in writing within ten days after receipt of the protest stating the reasons for the action taken. This decision shall be final unless legal action as provided for in 7-108 of this Resolution is taken within ten days of the County Manager's decision.

## **ARTICLE 7 - APPEALS AND REMEDIES FOR BID PROTESTS**

### **7-101 Ineligibility of Bidder, Offeror or Contractor**

Any bidder, offeror or contractor refused permission to participate, or disqualified from participating in public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror or contractor appeals within ten days of receipt by instituting legal action as provided in 7-108 of this resolution.

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

### **7-102 Appeal of Denial of Withdrawal of Bid**

A decision denying withdrawal of bid under the provisions of section 4-101 (9) of this Resolution shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action as provided in section 7-108 of this Resolution.

If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of section 4-101 (9) of this Resolution prior to appealing, shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

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

### **7-103 Determination of Nonresponsibility**

Any bidder or offeror who, despite being the apparent low, or high, as appropriate, responsive bidder, is determined not to be a responsible bidder for a particular contract shall be notified by the Purchasing Agent in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder or offeror appeals in writing the decision of the Purchasing Agent to the County manager within ten days after issuance of the notice. The written appeal shall include the basis for the appeal and the relief sought. The County Manager shall issue a decision in writing within ten days after receipt of the appeal. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision of the County manager by instituting legal action as provided in section 7-108 of this Resolution.

If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder or offeror is a responsible bidder for the contract in question. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the award has been made, the relief shall be as set forth in section 7-104 of this Resolution.



A bidder or offeror contesting a determination that he is not a responsible bidder or offeror for a particular contract shall proceed under this section, and may not protest the award or proposed award under section 7-104 of this Resolution.

Nothing contained in this section shall be construed to require the County, when procuring by the Competitive Negotiation method to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

#### 7-104 Protest of Award or Decision to Award

Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to the County Manager, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The County Manager shall issue a decision in writing within ten days after receipt of the appeal stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten days of the written decision by instituting legal action as provided in section 7-108 of this Resolution.

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

When the County Manager determines, after a hearing held following reasonable notice to all bidders, that there is probable cause to believe that a decision to award was based on fraud or corruption or on an act in violation of Article 9 of this Resolution, the County Manager may enjoin the award of the contract to a particular bidder and authorize either cancellation or re-bid.

#### 7-105 Effect of Appeal upon Contract

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

#### 7-106 Stay or Award during Protest

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will be taken unless there is a written

determination that proceeding without delay is necessary to protect the public interest or unless the bid or offer would expire.

#### 7-107 Contractual Disputes

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

A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the County Manager. If no time limit is established in the contract, the default shall be 15 days.

The decision of the County Manager shall be final and conclusive unless the contractor appeals within six months of the date of the decision on the claim by the County Manager to the County Board in accordance with the requirements of sections 15.2-1243 through 15.2-1248 of the Virginia Code.

A contractor may not institute legal action as provided in section 7-108 of this Resolution prior to receipt of the County Board's decision on the claim.

#### 7-108 Legal Actions

A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding on any competitive procurement, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging that decision, which shall be reversed only if the petitioner establishes that the decision was arbitrary or capricious or, in the case of denial of prequalification, that the decision to deny prequalification was not based upon the criteria for denial of prequalification set forth in subsection 4-101(2).

A bidder denied withdrawal of a bid under section 7-102 of this Resolution may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging that decision, which shall be reversed only if the bidder establishes that the decision of the County was clearly erroneous.

A bidder, offeror or contractor may bring an action only in the Circuit Court of Arlington County, and in no other Court, challenging a proposed award or the award of a contract, which shall be reversed only if the petitioner establishes that the proposed award or the award is not an honest exercise of discretion, but rather is arbitrary or capricious or not in accordance with the Constitution of Virginia, this Resolution or the terms and conditions of the Invitation to Bid or Request for Proposal.

If injunctive relief is granted, the court, upon request of the County shall require the posting of reasonable security to protect the County.

Subject to procedures in Section 7-107 of this resolution, a contractor may bring an action involving a contract dispute with the County only in the Circuit Court of Arlington County, and in no other Court. Nothing herein shall be construed to prevent the County from instituting legal action against a contractor.

## **ARTICLE 8 - ASSISTANCE TO SMALL AND DISADVANTAGED BUSINESSES**

### **8-101 Establishment of Programs to Expand Participation**

The Purchasing Agent shall establish programs consistent with all provisions of this resolution to facilitate the participation of small businesses owned by women and minorities in procurement transactions. Such programs shall be in writing, and shall include cooperation with the State Office of Minority Business Enterprise, the United States Small Business Administration and other public or private agencies.

Such programs may include special designation of local micro-businesses, providing technical support to micro-businesses, setting target goals for micro-business participation in the local procurement process, and other reasonable measures intended to promote micro-business participation in the County if enacted by ordinance.

"Micro-business" is defined as a small, women-owned, or minority-owned business with no more than 25 employees.

### **8-102 Discrimination Prohibited**

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

## ARTICLE 9 - ETHICS IN PUBLIC CONTRACTING

### 9-101 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 (sections 2.2- 3100 et seq.), the Virginia Governmental Frauds Act (section 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Comprehensive Conflict of Interests Act.

### 9-102 Definitions

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

"Immediate family" shall mean a spouse; children by blood, adoption, or marriage; parents; brothers and sisters; grandparents; grandchildren; and any other person living in the same household as the employee.

"Official responsibility" shall mean administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

"Pecuniary interest arising from the procurement" shall mean a material financial interest as defined in the Comprehensive Conflict of Interests Act.

"Procurement transaction" shall mean all functions that pertain to the obtaining of any goods, services, insurance, construction, or intellectual property, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

"Public employee" shall mean any person employed by a public body, including elected officials or appointed members of governing bodies.

### 9-103 Proscribed Participation by Public Employees in Procurement Transactions

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

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

- (3) The employee, the employee's partner, or any member of the employee's immediate family has a pecuniary interest arising from the procurement transaction; or
- (4) The employee, the employee's partner, or any member of the employee's immediate family is negotiating, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor.

#### 9-104 Solicitation or Acceptance of Gifts

No public employee having official responsibility for a procurement transaction shall solicit, demand, accept, or agree to accept from a bidder, offeror, contractor or subcontractor any payment, loan subscription, advance, deposit of money, services or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged. This provision also applies to members of the employee's immediate family.

#### 9-105 Disclosure of Subsequent Employment

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

#### 9-106 Gifts by Bidders, Offerors, Contractors or Subcontractors

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

#### 9-107 Kickbacks

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

No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.

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.

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 County and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

#### 9-108 Purchase of Building Materials, etc., from Architect or Engineer Prohibited

- (1) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County 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 personal interest as defined in Virginia Code section 2.2-3101.
- (2) No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any entity which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such entity has a personal interest as defined in Virginia Code section 2.2-3101.
- (3) The provisions of subsections A and B shall not apply in case of an emergency.

#### 9-109 Participation in bid preparation, limitation on submitting bid for same procurement

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

#### 9-110 Penalty for Violation

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

**Appendix A of the Arlington County Purchasing Resolution**

**Public-Private Transportation Act of 1995,  
as Amended**

**Arlington County Guidelines**



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## II. INTRODUCTION

The Public-Private Transportation Act of 1995, Va. Code Ann. §§ 33.2-1800, et seq. (the “PPTA”) as amended, grants responsible public entities the authority to create public-private partnerships for the development of transportation facilities for public use (“qualifying transportation facilities”) if the public entity determines that it serves the best interest of the public.

The PPTA defines “responsible public entity” to include local governments that have the power to develop and/or operate the qualifying transportation facility. Arlington County (“County”) is a local government with the authority to develop and/or operate qualifying transportation facilities in Arlington County, and therefore is a “responsible public entity” as that term is used in the PPTA.

The PPTA provides that a responsible public entity shall not proceed to consider any proposal by a public entity or approval of a qualifying transportation facility until the responsible public entity has adopted and made publicly available guidelines that are sufficient to establish the process for acceptance and review of proposals. Accordingly, these Guidelines are established by the Arlington County Board.

The PPTA authorizes public-private partnerships to develop "qualifying transportation facilities," The term "qualifying transportation facility" is defined in the PPTA as follows:

*"Qualifying transportation facility" means one or more transportation facilities acquired, constructed, improved, maintained and/or operated by a private entity pursuant to this chapter.*

The PPTA further defines a "transportation facility" as follows:

*"Transportation facility" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility or similar commercial facility used for the transportation of persons or goods, together with any buildings, structures, parking areas, appurtenances, and other property needed to operate such facility; however, a commercial or retail use or enterprise not essential to the transportation of persons or goods shall not be a transportation facility."*

When the term “County” is used in these guidelines, decisions to be made by the County are at the direction of the County Manager, or designee, unless otherwise specified herein.

## II. GENERAL PROVISIONS

### A. Proposal Submission

1. A proposal to provide a qualifying transportation facility to a responsible public entity may be either solicited from private entities by the public entity (a “Solicited Proposal”) or delivered to the public entity by a private entity on an unsolicited basis (an “Unsolicited Proposal”). Offerors must follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposer qualifications and experience, project

characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables. In either case, any such proposal shall be clearly identified as a “PPTA Proposal.”

2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPTA.
3. Any Unsolicited Proposal shall be submitted to the County by delivering one (1) original and six (6) complete copies and one electronic copy on CD, together with the required initial review fee as provided below in § IV(C), to the Arlington County Purchasing Agent, 2100 Clarendon Blvd., Suite 511, Arlington, VA 22201. The proposal shall be in the format as set forth in Section V.A. of these Guidelines. The County reserves the right to request additional copies from the private entity. Other requirements for an Unsolicited Proposal are as set forth below in § IV. A working group may be designated by the County Manager or designee to review and evaluate all unsolicited proposals. The County may also employ outside advisors and consultants to assist in the review of proposals.
4. The County may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.
5. Proposals should be prepared simply and economically, providing a concise description of the proposer’s capabilities to complete the qualifying transportation facility and the benefits to be derived from the project by Arlington County including person throughput, congestion mitigation, safety, economic development, environmental quality, and land use. Project benefits to be considered are those occurring during the construction, renovation, expansion or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means.
6. Private entities may propose innovative financing methods, including the imposition of user fees or service payments under the provision of the PPTA. Financing arrangement may include the issuance of debt, equity, or other securities or obligations. A private entity may enter into sale and lease back transactions and secure any financing with a pledge of security interest in, or lien on, any or all of its property, including all of its property interests in the qualifying transportation facility.

B. Reservation of Rights

In connection with any proposal, the County shall have all rights available to it by law in administering these procedures, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Private entities shall have no recourse against the County for such rejection. A private entity will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate the Interim Agreement or Comprehensive Agreement negotiations.
4. Negotiate with a private entity without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.
6. Issue addenda to and/or cancel any request for proposals ("RFP") or invitation to bids ("ITB").
7. Revise, supplement or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by a private entity hereunder, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
10. Request revisions to Conceptual or Detailed Proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Submit a proposal for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

Under no circumstances shall the County be liable for, or reimburse, the costs incurred by private entities, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any

kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these procedures, the proposer must submit the question in writing to the County Purchasing Agent and the County will respond in writing as it determines appropriate.

C. Affected Local Jurisdictions

1. The term “affected local jurisdiction” includes any county, city or town in which all or a portion of a qualifying transportation facility is located.
2. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County as the responsible public entity for a qualifying transportation facility must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The private entity is responsible for documenting delivery of the request or proposal. Any such other affected local jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying transportation facility is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.
3. In addition, in the case where the qualifying transportation facility is a highway or bridge, a copy of the proposal should be delivered to the Commonwealth Transportation Board on the same day it delivers the proposal to the County. The Board will be asked to provide written comments to the County within sixty (60) days of receipt of such proposal.

D. Virginia Freedom of Information Act

All proposals submitted to the County become the property of the County and are subject to the Virginia Freedom of Information Act ("FOIA") (§ 2.2-3700 et seq.). Proposers are advised to familiarize themselves with FOIA to ensure that documents identified as confidential or proprietary will not be subject to disclosure under FOIA.

In accordance with § 2.2-3705.6(11) of the FOIA, proposals and records voluntarily submitted to the County under the PPTA are subject to disclosure except to the extent that they relate to (i) confidential proprietary records submitted to the County under a promise of confidentiality, or (ii) memoranda, working papers, or other records related to proposals if making public such records would adversely affect the financial interest of the County or private entity or the bargaining position of either party.

Subsection 56-560(G) of the PPTA requires the County to take appropriate action to protect confidential proprietary information submitted by a private entity. In order for confidential proprietary information to be excluded from disclosure under FOIA, the private entity must (i)

invoke the exclusion when the data or materials for which protection from disclosure is sought are submitted to the County, (ii) identify the data or other materials for which protection from disclosure is sought, and (iii) state the reasons why exclusion from disclosure is necessary. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the proposer without reasonably differentiating between proprietary and non-proprietary information contained herein.

Upon timely receipt of a request that designated portions of a proposal be protected from disclosure as confidential and proprietary, the County shall determine whether such protection is appropriate under applicable law and, if appropriate, the scope of such appropriate protection, and shall communicate its determination to the proposer. Upon a final determination by the County to accord less protection than requested by the proposer, the proposer will be accorded an opportunity to withdraw its proposal. A proposal so withdrawn will be treated in the same manner as a proposal not accepted for publication and conceptual-phase consideration as provided below.

Once a comprehensive agreement has been entered into, and the process of bargaining of all phases or aspects of the comprehensive agreement is complete, the County shall make the procurement records available upon request in accordance with § 2.2-4342 of the Code of Virginia. Procurement records shall not be interpreted to include (1) proprietary, commercial or financial information, balance sheets, financial statements, or trade secrets that may be provided by the private entity as evidence of its qualifications; and (2) certain confidential and proprietary information, and related records may remain confidential if the financial interest of the County or the private entity would be adversely affected.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the County must comply with such order.

E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPTA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPTA project or projects.

F. Public Sector Analysis and Competition

For any transportation facility under consideration, the County shall ensure competition throughout the procurement process by developing a public sector option which shall identify a maximum public contribution.

The County shall undertake a public sector analysis of the cost for the County to develop the transportation facility under consideration. The analysis should at least contain:

1. Mitigation of risk of user-fee financing through assumptions related to competing facilities, compensation for high usage of the facility by high occupancy vehicles, or other considerations that may mitigate the risk of user-fee financing.
2. Whether the public sector option is based on the transfer of maintenance and operation responsibilities to the private sector.
3. Public contribution that would still be needed to cover necessary costs of development and/or operation of the transportation facility in excess of available financing.
4. Funds provided to support nonuser fee generating components of the project that contribute to the expected benefits of the transportation facility.

G. Applicability of Other Laws

Nothing in the PPTA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPTA. The applicability of the Virginia Public Procurement Act (the "VPPA") is as set forth in the PPTA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPTA, private entities shall comply with all applicable federal, state, and local laws.

While procedures incorporated in these guidelines are consistent with those of Virginia Code §§2.2-4301, under §56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§2.2-4300 et seq.).

### **III. SOLICITED PROPOSALS**

The County may request proposals from private entities for the development and/or operation of transportation facilities provided that a finding of public interest has been issued pursuant to Virginia Code §§ 33.2-1803.1.

The procedures applicable to any particular Solicited Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPTA and any other applicable law. All such solicitations shall be by issuance of a written Request for Proposal ("RFP") within the meaning of that term as used in the Arlington County Purchasing Resolution. The County may use a two-part proposal process consisting of an initial conceptual stage (part 1) and a detailed stage (part 2). In such case, the County shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPTA.

The RFP must specify any information and documents required by the County and the factors that will be used in evaluating proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

Any proposal submitted pursuant to the PPTA that is not received in response to an RFP shall be an Unsolicited Proposal under these guidelines, including but not limited to (i) proposals received in response to a notice of the prior receipt of another Unsolicited Proposal as required by the PPTA and provided for

below in § IV(A)(2) and (ii) proposals received in response to publicity by the County concerning particular needs when the County has not issued a corresponding IFB or RFP, even if the County otherwise has encouraged the submission of proposals pursuant to the PPTA that address those needs.

The County may also issue a Request for Information (RFI) inviting private entities to express a potential interest in developing and/or operating one or more qualifying transportation facilities. The issuance of a RFI does not require the County to issue a Solicited Proposal for the same project. The County will not accept unsolicited proposals for a project that is the subject of some, or all of a RFI, until the County makes a determination to accept unsolicited proposals. No fees shall be charged for the processing, reviewing, or evaluating an expression of interest.

#### Finding of public interest

1. Prior to the initiation of a procurement pursuant this section the County Manager shall make a finding of public interest. At minimum the finding of public interest shall include the following information:
  - a. A description of the benefits expected to be realized through the use of this section compared with the development and/or operation of the transportation facility through other options available to the County.
  - b. A discussion of whether revenue risk will be transferred to the private entity and the degree to which any such transfer may be mitigated through other provisions in the interim or comprehensive agreements;
  - c. A description of the risks, liabilities, and responsibilities to be retained by the responsible public entity;
  - d. The determination of whether the project has a high, medium, or low level of project delivery risk and a description of how such determination was made. If the qualifying transportation facility is determined to contain high risk, a description of how the public's interest will be protected through the transfer, assignment, or assumption of risks or responsibilities by the private entity in the event that issues arise with the development and/or operation of the qualifying transportation facility;
  - e. If the County proposes to enter into an interim or comprehensive agreement, information and the rationale demonstrating that proceeding in this manner is more beneficial than proceeding pursuant to other options.
  - f. Other items determined appropriate by the County.

#### **IV. UNSOLICITED PROPOSALS**

The County may receive unsolicited proposals at any time pursuant to these Guidelines. Additionally, the County may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPTA. When such proposals are received without issuance of an RFP,



the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited proposals shall be submitted to the County Purchasing Agent.

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the County's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the County will give public notice of the Unsolicited Proposal. In step three the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. However, the County may discontinue its evaluation of any proposal at any time.

The County shall engage the services of qualified consultants, which may include an architect, engineer, certified public accountant, or other consultant(s) not otherwise employed by the County, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying transportation facility unless the County determines that such analysis of a request by the County for approval of a qualifying transportation facility shall be performed by an employee of the County.

A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. The County may only accept an Unsolicited Proposal if the proposal meets the format required, the review fee is submitted, and the proposed qualifying transportation facility serves the best interest of the public. A qualifying transportation facility serves the best interest of the public if the private entity can develop the transportation facility with a public contribution amount that is less than the maximum public contribution, if there is a need for the transportation facility the private entity proposes, if the proposed transportation facility is reasonable and will address the needs of the regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficiency, if the plan for the development of the transportation facility is anticipated to have significant benefits, and if the private entity's plans will result in the timely development and/or operation or more efficient operation. The County Manager shall reject any proposal not meeting the above requirements and return the review fee to the private entity.
3. If the County chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall give public notice of the proposal in accordance with the PPTA and shall specify a period of time not less than one hundred twenty (120) days during which it will receive competing Unsolicited Proposals. During the 120-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal. The County shall provide for more than 120 days in situations where

the County deems that scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.

The notice shall state that the County (i) has received an unsolicited proposal under the PPTA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with Arlington County's adopted PPTA procedures. The notice will include specific information regarding the proposed nature, timing, and scope of the proposed qualifying transportation facility project or projects, identify their proposed location(s), and outline the opportunities for public comment during the review process. Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and §56- 560G of the PPTA.

Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer the balance due, if any, of the required project proposal review fee.

The County recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such case, the County reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal, and to proceed accordingly under these procedures.

Because of the consequences to a proposer for failing to submit within the designated period a proposal which the County could later deem a competing proposal, prospective proposers are strongly urged to monitor the County notices of proposals received, and to be prepared to submit within such designated period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the County a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The County will endeavor, no later than twenty-one (21) days thereafter, to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the County elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the County will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

If state or federal funds are anticipated in any proposal, the County may also notify the appropriate state or federal agencies and will require that the proposer provide additional copies of the proposal to be given to those agencies.

B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County on its website within ten (10) working days after acceptance of such proposals.
2. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Proposal Review Fees

1. No fee will be charged to process, review or evaluate any solicited proposal submitted under the PPTA.
2. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating any proposal or competing unsolicited proposal. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.
3. For unsolicited proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:
  - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The fee shall be paid in the form of a check, payable to "Arlington County Treasurer". The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPTA, it shall not do so until the entire, non-refundable proposal fee has been paid in full.
  - b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.

- c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded.

**D. Initial Review at the Conceptual Stage**

1. Only proposals complying with the requirements of the PPTA and these Guidelines that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed by:
  - a. procurement through competitive sealed bidding, as defined in Virginia Code § 2.2-4301; or
  - b. Procedures for other than professional services by competitive negotiation as defined under Virginia Code § 2.2-4301. The County may only use competitive negotiation upon a written determination that doing so would likely be advantageous to the County and the public based upon either (1) the scope, complexity, or priority of need; (2) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (3) an increase in funding, dedicated revenue or economic benefit from the project that would not otherwise be available.
3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

**V. PROPOSAL PREPARATION AND SUBMISSION**

**A. Format for Submissions at the Conceptual Stage (Part 1)**

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request subsequent to receipt of the unsolicited proposal:

One (1) original (marked "ORIGINAL" and six (6) copies, and one electronic copy on CD of the proposal must be submitted. Each copy shall be bound in a single volume where practical, except that information for which a claim of confidential or proprietary information is made should be

submitted in a separately bound document or volume for convenience of review by the County. Any such volume containing confidential or proprietary information shall be clearly marked on its cover. The proposal should contain a table of contents, which cross references the requirements by category. Each proposal shall be structured so that it contains individual tabs/sections detailing proposed services. Proposals should be prepared as simply as possible, with straightforward, concise descriptions of the proposer's capabilities to satisfy the requirements of the proposed offering. Offerors shall submit their proposals with the required information in the order listed below.

Proposal submitted shall meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors and shall be submitted in a format outlined herein. Whenever possible, proposals submitted shall comply with the following guidelines:

- The proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than 10 point font for each response item;
- All copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of pages (proposals with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided;
- Numbered tabs and dividers are required for each of the sections listed and in the order below:

- I. INTRODUCTION OF ENTITY/FIRM
- II. PROJECT CHARACTERISTICS
- III. PROJECT BENEFIT AND COMPATIBILITY
- IV. QUALIFICATIONS AND EXPERIENCE
- V. PROJECT FINANCING
- VI. REFERENCES
- VII. CONFLICT OF INTEREST STATEMENT

I. INTRODUCTION OF ENTITY (FIRM)

- a. Legal Name of Entity
- b. Address
- c. Tax ID Number (EIN)
- d. Type of Business Entity (i.e. Corporation, General Partnership, Limited Partnership, Unincorporated Association, Limited Liability Company, Sole Proprietorship). Identification number issued to the entity by the SCC.

- e. Indication whether or not the Firm or any of its principals are currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision.
- f. Minority/DBE Status.
- g. Contact Person, and contact information (i.e. telephone number, e- mail address)

## II. PROJECT CHARACTERISTICS

- a. Provide a description of the project, including the conceptual design and all proposed interconnections with other transportation facilities. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified. Include a description of any components, planned initially or for the future, that are expected to generate revenue for the project or the proposer.
- b. Identify and fully describe any work to be performed by the County or any other public entity.
- c. Identify the plans to secure all necessary property, including the names and addresses, if known, of the current owners of the subject property as well as a list of any property the proposer intends to request the County to acquire.
- d. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- e. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- f. Identify the projected positive social, economic and environmental impacts of the project.
- g. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- h. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.

- i. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- j. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- k. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.
- l. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- m. List any other assumptions relied on for the project to be successful.
- n. List any contingencies that must occur for the project to be successful.
- o. A statement of the risks, liabilities, and responsibilities to be transferred, assigned, or assumed by the private entity for the development and/or operation of the transportation facility, including revenue risk and operations and maintenance.

### III. PROJECT BENEFIT AND COMPATIBILITY

- a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- b. Describe the compatibility with the existing and planned transportation system.
- c. Describe how the project will enhance a community-wide transportation system.
- d. Describe how the project addresses the needs of local, regional, and state transportation plans.
- e. Identify how the project will achieve performance, safety, mobility, or transportation demand management.
- f. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.

- g. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- h. Describe the compatibility of the project with local, regional, and state economic development efforts.
- i. Explain the compatibility with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

#### IV. QUALIFICATION AND EXPERIENCE

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the proposer's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual stage. Identified team members, including major subcontractors (over \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the County.
- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past three (3) years with contact information for such clients (names/addresses/telephone numbers/email). If a firm has worked on more than ten (10) projects during this period, it may limit prior project list to 10, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three (3) years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.



- d. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
- f. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.
- i. Provide information on the level of commitment by the firm to using small, women-owned, or minority businesses in developing and implementing the project.
- j. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
- k. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- l. A completed qualification statement in a form acceptable to the County that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm or major subcontractors, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three (3) years, except as indicated, any of the following conduct:
  - 1. bankruptcy filings
  - 2. liquidated damages
  - 3. fines, assessments, or penalties
  - 4. judgments or awards in contract disputes
  - 5. contract defaults, contract terminations
  - 6. license revocations, suspensions, other disciplinary actions
  - 7. prior debarments or suspensions by a governmental entity

8. denials of prequalification, findings of non-responsibility
9. maximum five years safety performance data
10. "Experience Modification Rating" and issuing insurance company
11. "Recordable Incidence Rates" "Lost Time Incidence Rates"
12. OSHA 200 Summary and OSHA 300A Forms
13. OSHA violations, dates, and disposition
14. violations of any federal, state or local criminal or civil law by the firm or its principals
15. criminal indictments or investigations of the firm or its principals
16. legal claims filed by or against firm

#### V. PROJECT FINANCING

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.
- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify all anticipated risk factors and methods for dealing with these factors. Describe the methods and remedies associated with any financial default.
- e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
- f. Identify any proposed user fees.
- g. Provide financial information which indices the private entity's financial stability and ability to finance the project.
- h. Include a description and analysis (cost/benefit, tax, etc.) to demonstrate the project's financial feasibility.
- i. Identify the amounts and the terms and conditions for any revenue sources.

- j. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- k. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

## VI. REFERENCES

Provide the address, telephone number, and the name of a specific contact person for an entity, or entities, for which the firm or consortium of firms, or primary members of the consortium, have completed a similar project or projects. These references should include:

- Name and address of project owner/sponsor
- Name, telephone number, fax number, and email address of the owner's project manager
- A summary of the project including budget and final cost
- Project schedule (proposed and actual)

## VII. CONFLICT OF INTEREST STATEMENT

Firms must submit an executed copy of the County's approved Conflict of Interest Statement which is available online at [www.arlingtonva.us/purchasing](http://www.arlingtonva.us/purchasing).

### B. Format for Submissions at the Detailed Stage (Part 2)

If the County decides to proceed to the detailed phase (part 2) of review with one or more proposals, then proposers will be required to provide additional detailed information as a follow-up to the initial submission. The following are illustrative examples of the additional information which may be required by the County:

1. A topographical map (1:2,000 or other appropriate scale) depicting the location of the proposed project.
2. A conceptual site plan indicated proposed location and configuration of the project on the proposed site.
3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project if they differ from the County's Standard Form contract for this type of project.
5. A list of public utility facilities, if any, that will be crossed by or run parallel to the qualifying transportation facility and a statement of the plans of the private entity to accommodate such crossings.

6. A statement and strategy setting out the plans for securing all necessary property. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the County to acquire.
7. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
8. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
9. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes and usage of the project over the useful life of the project.
10. Identification and discussion of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
11. Demonstration of consistency with appropriate local comprehensive or infrastructure development plans, transportation plans, the capital improvement plan and capital budget, or indication of the steps required for acceptance into such plans.
12. Explanation of how the proposed project would impact local development plans of each affected local jurisdiction.
13. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.
14. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
15. Detailed analysis of the financial feasibility of the proposed project, including its impact on similar facilities operated or planned by the County. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.

16. Additional material and information as the County may request.

## **VI. PROPOSAL EVALUATION AND SELECTION CRITERIA**

Some or all of the following matters may be considered in the evaluation and selection of PPTA proposals. However, the County retains the right at all times to reject any proposal at any time for any reason whatsoever.

### **A. Project Characteristics**

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;
2. Proposed project schedule;
3. Operation of the project;
4. Technology; technical feasibility;
5. Conformity to laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Property impacts;
8. Utility impacts;
9. State and local permits;
10. Maintenance of the project; and
11. Ongoing Operations.

### **B. Project Benefit and Compatibility**

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits, such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for the greater Washington DC area, and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other

training programs for the greater Washington DC area residents generated by the project, and the number and value of subcontracts generated for the greater Washington DC area subcontractors.

2. Compatibility with existing transportation system and enhancement of community transportation system;
3. Community support or opposition, or both;
4. Public involvement strategy;
5. Compatibility with existing and planned facilities; and
6. Compatibility with local, regional, and state economic development efforts.
7. Compatibility with the County's land use plan, transportation plan, and capital improvement plan.

C. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience, training and preparation with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Organizational chart, including project staffing plans, the skill levels of the proposed task leaders, workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;

9. Financial condition including the ability to obtain required sureties and insurance coverages; and
10. Project ownership.

D. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;
4. Estimated cost;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment; and
7. Such other items as the County deems appropriate.

The County may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPTA proposals include, but are not limited to the following:

1. The proposed cost of the qualifying transportation facility;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design, operation, and feasibility of the of the qualifying transportation facility;
4. The eligibility of the facility for accelerated selection, review, and documentation;
5. Local citizen and government comments;

6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;
8. The private entity's plan to employ local contractors and residents;
9. The safety record of the private entity;
10. The ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficient; and
11. Other criteria that the County deems appropriate.

F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For unsolicited proposals, an estimated timeline will be developed and distributed within sixty (60) days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority, such as qualifying transportation facilities that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying transportation facility.

## **VII. INTERIM AND COMPREHENSIVE AGREEMENTS**

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. Any interim or comprehensive agreement executed pursuant to the PPTA requires prior approval by the County Board. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.



A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the County may enter into an interim agreement with the private entity proposing the development or operation of the qualifying transportation facility. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;
2. Establish the process and timing of the negotiation of the comprehensive agreement; and
3. Contain any other provisions related to any aspect of the development or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to developing or operating any qualifying transportation facility, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPTA. Any such comprehensive agreement and any amendment thereto, must be approved by the County Board before it is entered into on behalf of the County and the Arlington County Board Chairman must certify in writing to the Governor and the General Assembly that: The finding of public interest issued pursuant to § 33.2-1803.1 is still valid; the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities and the mitigation of revenue risk by the private sector have not materially changed since the finding of public interest was issued; and the public contribution requested by the private entity does not exceed the maximum.

As provided by the PPTA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any development or operation of the qualifying transportation project, in the forms and amounts satisfactory to the County;
2. Review and approval of plans and specifications for the qualifying transportation project by the County;

3. The right of the County to inspect the qualifying transportation project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. Maintenance of a policy or policies of liability insurance or self-insurance, each in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying transportation facility;
5. Monitoring of the practices of the private entity by the County to ensure proper maintenance;
6. Reimbursement to be paid to the County for services provided by the County;
7. Filing by the private entity of appropriate financial statements on a periodic basis;
8. Policies and guidelines governing the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County;
9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying transportation facility. Classifications according to reasonable categories for assessment of user fees may be made;
10. Requiring a copy of any service contract to be filed with the County and providing that a schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request;
11. Guaranteed cost and completion guarantees related to the development and/or operation of the qualified transportation facility and payment of damages for failure to meet the completion guarantee;
12. The date of termination of the private entity's authority and duties and dedication to the County;
13. The terms and conditions under which the responsible public entity may contribute financial resources, if any, for the qualifying transportation facility;
14. Any other terms and conditions the County determines serve the public purpose of the PPTA; and
15. Any other provisions required by applicable law.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting Requirements

1. For 30 days prior to entering into an interim agreement, the County shall provide an opportunity for public comment on the proposals.
2. For 30 days prior to the planned issuance of a final request for proposals, the County shall provide an opportunity for public comment on the draft comprehensive agreement.
3. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the County, the County shall a) publicly post the proposed agreement on the County's website; and b) post the major business points of the interim or comprehensive agreement, including the projected use of any public funds, on the Commonwealth of Virginia Department of General Services central electronic procurement website; and c) outline how the public can submit comments on those major business points.
4. Prior to entering into a comprehensive agreement the County Manager shall certify in writing to the Governor and the General Assembly that the transfer, assignment, and assumption of risks, liabilities, and permitting responsibilities or the mitigation of revenue risk by the private sector enumerated in the finding of public interest issued pursuant to IIA not materially changed since the finding was issued and the finding of public interest is still valid. Changes to the project scope that do not impact the assignment of risks or liabilities or the mitigation of revenue risk shall not be considered material changes to the finding of public interest, provided that such change was presented in a public meeting to the County Board.
5. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§2.2- 3700 et seq.).

- a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.
- b. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements of the private entity that are not generally available to the public through regulatory disclosure or otherwise.

#### **VIII. INDEPENDENT AUDIT**

If the construction costs of the proposed qualifying transportation facility exceed \$50 million and prior to entering into an agreement with the private entity, the County must comply with Section 56-560(E) of the Code and engage one or more consultants of its choosing with the expertise required to determine the accuracy and validity in their audit of such things as traffic, ridership, and the ability to capture the ridership assumed in the proposal, and revenue and cost estimates provided as part of the Proposer's proposal. The County also must review all the public costs and other liabilities which may require the expenditure of public funds. Such liabilities include improvements to other transportation facilities required as a result of the proposal, the Proposer's failure to reimburse the County for services rendered, and other risks to which the County may be exposed should the Proposer default on the interim agreement, the comprehensive agreement or bonds issued as part of the financing for the project. The Proposer shall reimburse the County for the costs for the independent audit and the results of the audit must be disclosed in accordance with FOIA.

#### **IX. GOVERNING PROVISIONS**

In the event of any conflict between these guidelines and procedures and the PPTA, the terms of the PPTA shall control.

**ARLINGTON COUNTY BOARD RESOLUTION**  
**Adopting the PPTA Guidelines and Providing Direction to the County Manager Concerning the PPTA Guidelines**

**WHEREAS**, the County Manager has recommended for adoption Arlington County Guidelines for Use of the Public-Private Transportation Act of 1995, as amended (“Guidelines”) providing the County with an additional procurement and project delivery tool as it implements that capital improvement program; and

**WHEREAS**, maintaining the County’s triple AAA bond rating is of utmost importance; and

**WHEREAS**, the Guidelines provide that the County Manager may consider unsolicited proposals for qualifying transportation facilities from private entities for rejection or acceptance, and further provide that if an unsolicited proposal is accepted then the County Manager shall give public notice that competing proposals will also be accepted, and the Guidelines further provide that the County Manager will determine whether to seek detailed proposals from those private entities submitting unsolicited and competing proposals, and further provide that the County Manager will determine whether to recommend that the County Board enter into an Interim or Comprehensive Agreement with a private entity for a transportation project, and the Guidelines further provide that a public hearing shall be held at least 30 days prior to entering into an Interim or Comprehensive Agreement.

**NOW, THEREFORE, BE IT RESOLVED**, that the County Board hereby adopts the Guidelines effective April 1, 2013; and

**BE IT FURTHER RESOLVED**, that the County Board provides the following direction to the County Manager for the purposes of implementing the PPTA Guidelines:

- 1) The County Manager shall notify the County Board before deciding to accept an unsolicited proposal and advertise for competing proposals. The County Manager shall use best efforts to promote adequate outreach and robust competition. The County strives to have more than one proposal to consider for complex or very costly projects;
- 2) The County Manager shall ensure that, once they are accepted, conceptual proposals are posted on the County website in accordance with the Guidelines;
- 3) The County Manager shall consult with the County Board prior to requesting detailed proposals from private entities who submit unsolicited proposals or competing proposals;
- 4) After review of the detailed proposals, the County Manager shall either 1) report to the County Board that no contract is recommended for award, or 2) shall make a recommendation to the County Board to award an Interim or Comprehensive Agreement to a private entity for development or operation of a qualifying transportation facility. A recommendation to award an agreement will be accompanied by a proposed public review process designed to inform the public about the proposed agreement and meet the requirements of the public review process contained in the Guidelines; and
- 5) A copy of this Resolution shall be maintained with Guidelines.

**Appendix B of the Arlington County Purchasing Resolution**

**Public-Private Education Facilities and Infrastructure Act of 2002,  
as Amended**

**Arlington County Guidelines**

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## I. INTRODUCTION

The Public-Private Education Facilities and Infrastructure Act of 2002, Va. Code Ann. §§ 56-575, et seq. (the “PPEA”) as amended, grants responsible public entities the authority to create public-private partnerships for the development of a wide range of projects for public use (“qualifying projects”) if the public entity determines that there is a need for a project and that private involvement may provide the project to the public in a timely or cost-effective fashion.

The PPEA defines “responsible public entity” to include local governments that have the power to develop and/or operate the qualifying project. Arlington County (“County”) is a local government with the authority to develop and/or operate qualifying projects in Arlington County, and therefore is a “responsible public entity” as that term is used in the PPEA. Individually negotiated interim or comprehensive agreements between a private entity and the County will define the respective rights and obligations of the County and the private entity. Section 56-575.16 of the PPEA provides that a responsible public entity may not consider any proposal by a private entity for approval of the qualifying project pursuant to the PPEA until the responsible public entity has adopted and made publicly available guidelines that are sufficient to establish the process for acceptance and review of proposals. Accordingly, these Guidelines are established by the Arlington County Board.

In order for a project to come under the PPEA, it must meet the definition of a “qualifying project.” The PPEA contains a broad definition of qualifying project that includes public buildings and facilities of all types; for example:

- (i) An education facility, including but not limited to a school building (including any stadium or other facility primarily used for school events), any functionally related and subordinate facility and land to a school building and any depreciable property provided for use in a school facility that is operated as part of the public school system or as an institution of higher education;
- (ii) A building or facility that meets a public purpose and is developed or operated by or for any public entity;
- (iii) Improvements, together with equipment, necessary to enhance public safety and security of buildings to be principally used by a public entity;
- (iv) Utility and telecommunications and other communications infrastructure;
- (v) A recreational facility;
- (vi) Technology infrastructure and services, including but not limited to telecommunications, automated data processing, word processing and management information systems, and related information, equipment, goods and services;
- (vii) Technology, equipment, or infrastructure designed to deploy wireless broadband services to schools, businesses, or residential areas;
- (viii) Services designed to increase the productivity or efficiency using technology or other means;



- (ix) Any improvements necessary or desirable to any unimproved locally owned real estate;
- (x) A solid waste management facility that produces electric energy from solid waste.

In order for the County to grant approval of the development or operation of the education facility, technology infrastructure or other public infrastructure or government facility needed by the County as a qualifying project, or the design or equipping of a qualifying project so developed or operated, the County must determine that the project serves the public purpose. The County may determine that the qualifying project serves such public purpose if:

1. There is a public need for or benefit derived from the qualifying project of the type the private entity proposes as a qualifying project;
2. The estimated cost of the qualifying project is reasonable in relation to similar facilities; and
3. The private entity's plans will result in the timely development or operation of the qualifying project.

When the term "County" is used in these guidelines, decisions to be made by the County are at the direction of the County Manager, or designee, unless otherwise specified herein.

## **II. GENERAL PROVISIONS**

### **A. Proposal Submission**

1. Pursuant to Section 56-575.4 of the PPEA, a proposal to provide a qualifying project to a responsible public entity may be either solicited from private entities by the public entity (a "Solicited Proposal") or delivered to the public entity by a private entity on an unsolicited basis (an "Unsolicited Proposal"). Offerors must follow a two-part proposal submission process consisting of an initial conceptual phase and a detailed phase. The initial phase of the proposal should contain specified information on proposer qualifications and experience, project characteristics, project financing, anticipated public support or opposition, or both, and project benefit and compatibility. The detailed proposal should contain specified deliverables. In either case, any such proposal shall be clearly identified as a "PPEA Proposal."
2. The requirements for any particular Solicited Bid/Proposal shall be as specified in the solicitation by the County for that particular proposal and shall be consistent with all applicable provisions of the PPEA.
3. Any Unsolicited Proposal shall be submitted to the County by delivering one (1) original and six (6) complete copies and one electronic copy on CD, together with the required initial review fee as provided below in § IV(C), to the Arlington County Purchasing Agent, 2100 Clarendon Blvd., Suite 511, Arlington, VA 22201. The proposal shall be in the format as set forth in Section V.A. of these Guidelines. The County reserves the right to request additional copies from the private entity. Other requirements for an Unsolicited Proposal are as set

forth below in § IV. A working group may be designated by the County Manager or designee to review and evaluate all unsolicited proposals. The County may also employ outside advisors and consultants to assist in the review of proposals.

4. The County may require that any proposal be clarified. Such clarification may include but is not limited to submission of additional documentation, responses to specific questions, and interviews with potential project participants.
5. Proposals should be prepared simply and economically, providing a concise description of the proposer's capabilities to complete the qualifying project and the benefits to be derived from the project by Arlington County. Project benefits to be considered are those occurring during the construction, renovation, expansion, or improvement phase and during the life cycle of the project. Proposals also should include a scope of work and a financial plan for the project, containing enough detail to allow an analysis by the County of the financial feasibility of the proposed project. The cost analysis of a proposal should not be linked solely to the financing plan, as the County may determine to finance the project through other available means.
6. Private entities may include innovative financing methods, including the imposition of user fees or service payments in a proposal. Such financing arrangements may include the issuance of debt instruments, equity or other securities or obligations, including, if applicable, the portion of the tax-exempt private activity bond limitation amount to be allocated annually to the Commonwealth of Virginia pursuant to the Economic Growth and Tax Relief Reconciliation Act of 2001 for the development of education facilities using public-private partnerships, and to provide for carryovers of any unused limitation amount. The PPEA is a flexible development tool that allows the use of innovative financing techniques.

B. Reservation of Rights

In connection with any proposal, the County shall have all rights available to it by law in administering these procedures, including without limitation, the right in its sole and unfettered discretion to:

1. Reject any or all proposals at any time, for any reason, solely within the discretion of the County. Private entities shall have no recourse against the County for such rejection. A private entity will be notified in writing of such rejection in accordance with these procedures.
2. Terminate evaluation of any and all proposals at any time.
3. Suspend, discontinue and/or terminate the Interim Agreement or Comprehensive Agreement negotiations.
4. Negotiate with a private entity without being bound by any provision in its proposal.
5. Request or obtain additional information about any proposal.

6. Issue addenda to and/or cancel any request for proposals ("RFP") or invitation to bids ("ITB").
7. Revise, supplement, or withdraw all or any part of these procedures at any time.
8. Modify any standard fee schedule as stated herein for a specific proposal or for all future proposals.
9. Decline to return any and all fees required to be paid by a private entity hereunder, except for initial fees paid by proposers with an unsolicited conceptual proposal where the County declines to accept the proposal for consideration.
10. Request revisions to Conceptual or Detailed Proposals.
11. Treat any proposal which may have certain characteristics in common yet differ in meaningful ways from a previously received proposal as either a competing proposal or a noncompeting unsolicited proposal and proceed accordingly.
12. Submit a proposal for review by outside consultants or advisors selected by the County without notice to the proposer. Such consultants or advisors shall be advised of and contractually required to agree to maintain the confidentiality of information that has been designated as confidential pursuant to an agreement between the County and the proposer, and to refer all requests for such information to the County.
13. Modify the stated timeline for consideration, review or negotiation of proposals when deemed necessary by the County in its sole discretion. Written notice will be provided to any affected proposers when such departures from a stated timeline are deemed significant.

Under no circumstances shall the County be liable for, or reimburse, the costs incurred by private entities, whether or not selected for negotiations, in developing proposals or in negotiating agreements. Any and all information the County makes available to proposers shall be as a convenience to the proposer and without representation or warranty of any kind. Proposers may not rely upon any oral responses to inquiries. If a proposer has a question regarding application of these procedures, the proposer must submit the question in writing to the County Purchasing Agent and the County will respond in writing as it determines appropriate.

#### C. Affected Jurisdictions

1. The term "affected local jurisdiction" includes any county, city or town in which all or a portion of a qualifying project is located.
2. Any private entity requesting approval from or submitting a conceptual or detailed proposal to the County as the responsible public entity for a qualifying project must provide any other affected local jurisdiction with a copy of the proposal by certified mail, express delivery, or hand delivery within five (5) business days of submission of the proposal to the County. The

private entity is responsible for documenting delivery of the request or proposal. Any such other affected local jurisdiction shall have sixty (60) days from the date it receives its copy of the proposal to submit written comments to the County and to indicate whether the proposed qualifying project is compatible with the (i) local comprehensive plan, (ii) local infrastructure development plans, or (iii) capital improvements budget, or other government spending plan. The County will consider comments received within the 60-day period in evaluating the request or proposal; however, no negative inference shall be drawn from the absence of comment by an affected jurisdiction. The County may begin or continue its evaluation of any such proposal during the 60-day period for the receipt of comments from affected local jurisdictions.

D. Virginia Freedom of Information Act

**1. General applicability of disclosure provisions.**

Proposal documents submitted by private entities are generally subject to the Virginia Freedom of Information Act ("FOIA") except that subdivision 11 of § 2.2-3705.6 exempts certain documents from public disclosure. FOIA exemptions, however, are discretionary, and the County may elect to release some or all of documents except to the extent the documents are:

- a. Trade secrets of the private entity as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.);
- b. Financial records of the private entity that are not generally available to the public through regulatory disclosure or otherwise, including but not limited to, balance sheets and financial statements; or
- c. Other information submitted by a private entity, where if the record or document were made public prior to the execution of an interim or comprehensive agreement the financial interest or bargaining position of the public or private entity would be adversely affected.

Additionally, to the extent access to proposal documents submitted by private entities are compelled or protected from disclosure by a court order, the County must comply with the provisions of such order.

**2. Protection from mandatory disclosure for certain documents submitted by a private entity.**

- a. Any confidential and proprietary information provided to a responsible public entity by a private entity pursuant to the PPEA shall be subject to disclosure under the Virginia Freedom of Information Act ("FOIA") except as provided by § 56-575.4(G) of the PPEA.
- b. Before a document of a private entity may be withheld from disclosure, the private entity must make a written request to the County at the time the documents are submitted designating with specificity the document for which the protection is being sought and a clear statement of the reasons for invoking the protection with reference

to one or more of the three class of records listed in Section C.1.a. A private entity may request and receive a determination from the County as to the anticipated scope of protection prior to submitting the proposal. The County is authorized and obligated to protect only confidential proprietary information, and thus will not protect any portion of a proposal from disclosure if the entire proposal has been designated confidential by the private entity without reasonably differentiating between the proprietary and non-proprietary information contained therein.

- c. Upon receipt of a written request from a private entity that designated portions of a proposal be protected from disclosure, the County will determine whether the documents contain (i) trade secrets, (ii) financial records, or (iii) other information that would adversely affect the financial interest or bargaining position of the County or private entity in accordance with Section C.1.a. The County shall make a written determination of the nature and scope of the protection to be afforded by the County under this subdivision. If the determination regarding protection or the scope thereof differs from the private entity's request, then the County will accord the private entity a reasonable opportunity to clarify and justify its request. Upon a final determination by the County to accord less protection than requested by the private entity, the private entity will be given an opportunity to withdraw its proposal. Nothing shall prohibit further negotiations of the documents to be afforded protection from release although what may be protected must be limited to the categories of records identified in Section C.1.a. Once a written determination has been made by the County, the protected documents shall continue to be protected from disclosure when in the possession of the County or any affected local jurisdiction.

Cost estimates relating to a proposed procurement transaction prepared by or for the County shall not be open to public inspection.

**3. Protection from mandatory disclosure for certain documents produced by the County.**

Memoranda, staff evaluations, or other records prepared by or for the County, its staff, outside advisors or consultants, exclusively for the evaluation and negotiation of proposals may be withheld from disclosure if the disclosure of such records required by the PPEA would adversely affect the financial interest or bargaining position of the County or private entity, and the basis for the determination of adverse affect is documented in writing by the County.

If a private entity fails to designate confidential or proprietary information, records or documents from disclosure, such information, records or documents shall be subject to disclosure under FOIA.

The County may not withhold from public access:

- a. Procurement records other than those subject to the written determination of the County;

- b. Information concerning the terms and conditions of any interim or comprehensive agreement, service contract, lease, partnership, or any agreement of any kind executed by the County and the private entity;
- c. Information concerning the terms and conditions of any financing arrangement that involves the use of any public funds; or
- d. Information concerning the performance of any private entity developing or operating a qualifying project.

However, to the extent that access to any procurement record or other document or information is compelled or protected by a court order, then the County must comply with such order.

#### E. Use of Public Funds

Virginia constitutional and statutory requirements as they apply to appropriation and expenditure of public funds apply to any interim or comprehensive agreement entered into under the PPEA. Accordingly, the processes and procedural requirements associated with the expenditure or obligation of public funds shall be incorporated into planning for any PPEA project or projects.

#### F. Applicability of Other Laws

Nothing in the PPEA shall affect the duty of the County to comply with all other applicable law not in conflict with the PPEA. The applicability of the Virginia Public Procurement Act (the “VPPA”) is as set forth in the PPEA. Likewise, in submitting proposals and in developing, executing or operating facilities under the PPEA, private entities shall comply with all applicable federal, state, and local laws.

While procedures incorporated in these guidelines are consistent with those of Virginia Code §§ 2.2-4301, under § 56-573.1 the selection process for solicited or unsolicited project proposals is not subject to the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

### **III. SOLICITED PROPOSALS**

The procedures applicable to any particular Solicited Proposal shall be specified in the solicitation for that proposal and shall be consistent with the requirements of the PPEA and any other applicable law. All such solicitations shall be by issuance of a written Request for Proposal (“RFP”) within the meaning of that term as used in the Arlington County Purchasing Resolution. The County may use a two-part proposal process consisting of an initial conceptual stage (part 1) and a detailed stage (part 2). In such case, the County shall set forth in the RFP the format and supporting information that is required to be submitted, consistent with the provisions of the PPEA.

The RFP must specify any information and documents required by the County and the factors that will be used in evaluating proposals. Pre-proposal conferences may be held as deemed appropriate by the County.

#### IV. UNSOLICITED PROPOSALS

The County may receive unsolicited proposals at any time pursuant to these Guidelines. Additionally, the County may publicize its needs and encourage interested parties to submit unsolicited proposals subject to the terms and conditions of the PPEA. When such proposals are received without issuance of an RFP, the proposal shall be treated as an unsolicited proposal under the Act. Unsolicited proposals shall be submitted to the County Purchasing Agent.

The process for evaluating an Unsolicited Proposal, which is described in detail below, consists of four steps. Briefly summarized, upon receipt of an Unsolicited Proposal the County's first step will be to determine whether to accept it for consideration at the conceptual stage. If so, then in step two the County will give public notice of the Unsolicited Proposal. In step three the County will proceed with a review at the conceptual stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the conceptual stage. Step four is an in-depth review at the detailed stage of the original Unsolicited Proposal and/or any proposal received in response to the public notice and accepted for consideration at the detailed stage. However, the County may discontinue its evaluation of any proposal at any time.

The County shall engage the services of qualified consultants, which may include an architect, engineer, certified public accountant, or other consultant(s) not otherwise employed by the County, to provide independent analysis regarding the specifics, advantages, disadvantages, and the long- and short-term costs of any request by a private entity for approval of a qualifying project unless the County determines that such analysis of a request by the County for approval of a qualifying project shall be performed by an employee of the County.

##### A. Decision to Accept and Consider Unsolicited Proposal; Notice

1. The County reserves the right to reject any and all proposals at any time.
2. Upon receipt from a private entity of any Unsolicited Proposal accompanied by payment of any required fees, the County will determine whether to accept the Unsolicited Proposal for publication and conceptual-phase consideration, as described below. The County may only accept an Unsolicited Proposal if the proposal meets the format required, the review fee is submitted, and the proposed qualifying project serves the best interest of the public. The County Manager shall reject any proposal not meeting the above requirements and return the review fee to the private entity.
3. If the County chooses to accept an Unsolicited Proposal for conceptual-phase consideration, it shall give public notice of the proposal in accordance with the PPEA and shall specify a period of time not less than forty-five (45) days during which it will receive competing Unsolicited Proposals, pursuant to § 56-575.4(A) of the PPEA. During the 45-day period for receiving competing Unsolicited Proposals, the County may continue to evaluate the original Unsolicited Proposal. The County shall provide for more than 45 days in situations where the County deems that scope or complexity of the original proposal warrants additional time for potential competitors to prepare proposals.

The notice shall state that the County (i) has received an unsolicited proposal under the PPEA, (ii) intends to evaluate the proposal, (iii) may negotiate an interim or comprehensive agreement with the proposer based on the proposal, and (iv) will accept for simultaneous consideration any competing proposals that comply with Arlington County's adopted PPEA procedures. The notice will summarize the proposed qualifying project or projects, and identify their proposed location(s). Copies of unsolicited proposals shall be available upon request, subject to the provisions of FOIA and § 56-575.4 G of the PPEA.

Prior to posting of the notices provided for in this subsection, the County shall receive from the initial proposer the balance due, if any, of the required project proposal review fee.

The County recognizes that it may receive proposals which have certain characteristics in common yet differ in meaningful ways. In such case, the County reserves the right, in its sole discretion, to treat such a proposal or any portion of such proposal received after the original proposal, as either a competing proposal or a non-competing unsolicited proposal, and to proceed accordingly under these procedures.

Because of the consequences to a proposer for failing to submit within the designated period a proposal which the County could later deem a competing proposal, prospective proposers are strongly urged to monitor the County notices of proposals received, and to be prepared to submit within such designated period if they perceive that a proposal they are considering or are preparing bears certain similarities to, or has characteristics in common with, a proposal which is the subject of a notice.

In the event a proposer is unsure whether its planned proposal will be sufficiently similar to the proposal which was the subject of a notice to be deemed a competing proposal, such proposer may submit to the County a written request for a preliminary determination of whether its project would be deemed a competing proposal in whole or in part. The County will endeavor, no later than twenty-one (21) days thereafter, to respond to such request with a preliminary determination as to whether or not the proposal would be a competing proposal or that it has received insufficient information to make a determination. In the event the County elects to treat a proposal, or part of a proposal, received within the designated period as a non-competing proposal, the County will follow the above notice procedure to permit competing proposals to be submitted, including from the proposer whose proposal triggered the original notice.

If state or federal funds are anticipated in any proposal, the County may also notify the appropriate state or federal agencies and will require that the proposer provide additional copies of the proposal to be given to those agencies.

#### B. Posting Requirements

1. Conceptual proposals, whether solicited or unsolicited, shall be posted by the County on its website within ten (10) working days after acceptance of such proposals.
2. In addition to the posting requirements, at least one copy of the proposals shall be made available for public inspection. Trade secrets, financial records, or other records of the



private entity excluded from disclosure under the provisions of subdivision 11 of §2.2-3705.6 shall not be required to be posted, except as otherwise agreed to by the County and the private entity. Any inspection of procurement transaction records shall be subject to reasonable restrictions to ensure the security and integrity of the records.

C. Proposal Review Fees

1. No fee will be charged to process, review or evaluate any solicited proposal submitted under the PPEA.
2. A review fee will be charged to a private entity submitting an Unsolicited Proposal to the County, to cover the County's costs of processing, reviewing, and evaluating any proposal or competing unsolicited proposal. Such costs include but are not limited to County staff time, the cost of any materials or supplies expended, and the cost of any outside advisors or consultants, including but not limited to attorneys, consultants, financial and technical advisors, used by the County in its sole discretion to assist in processing, reviewing, or evaluating the proposal. Such fees generally shall be in the amount necessary to completely cover all of the County's costs.
3. For unsolicited proposals and competing proposals, review fees shall be imposed based on the reasonably anticipated costs to the County in accordance with the following schedule:
  - a. Initial fee. Payment of an initial fee must accompany the submission of the Unsolicited Proposal to the County in order for the County to proceed with its review. The initial fee shall be two and one-half percent (2.5%) of the reasonably anticipated total cost of the implementing the proposal, but shall be no less than \$5,000 nor more than \$50,000, regardless of the anticipated total cost. For purposes of initial processing of the proposal, the County may accept the \$5,000 minimum fee with the balance to be due and payable prior to proceeding beyond the initial review stage. If the County chooses to proceed with evaluation of the proposal(s) under the PPEA, it shall not do so until the entire, non-refundable proposal fee has been paid in full.
  - b. Additional fees. Additional fees shall be imposed on and paid by the private entity throughout the processing, review, and evaluation of the Unsolicited Proposal if and as the County reasonably anticipates incurring costs in excess of the initial fee paid by the private entity. The County will notify the private entity of the amount of such additional fees as and when it anticipates incurring such costs. Prompt payment of such additional fees is required before the County will continue to process, review, and evaluate the proposal.
  - c. Reimbursement of excess fees paid. In the event the total fees paid by the private entity exceed the County's total costs incurred in processing, reviewing, and evaluating the proposal, the County shall reimburse the difference. Otherwise, the County shall retain all fees paid. If during the initial review, the County decides not to proceed to conceptual-stage review of an unsolicited proposal, the proposal fee, less any direct costs of the initial review, shall be refunded.

**D. Initial Review by the County at the Conceptual Stage**

1. Only proposals complying with the requirements of the PPEA and these Guidelines that contain sufficient information for a meaningful evaluation and that are provided in an appropriate format, as described below, will be considered by the County for further review at the conceptual stage.
2. The County will determine at this initial stage of review whether it will proceed by:
  - a. procurement through competitive sealed bidding, as defined in Virginia Code § 2.2-4301; or
  - b. procedures for other than professional services by competitive negotiation as defined under Virginia Code § 2.2-4301. The County may only use competitive negotiation upon a written determination that doing so would likely be advantageous to the County and the public based upon either (1) the scope, complexity, or priority of need; (2) risk sharing including guaranteed cost or completion guarantees, added value or debt or equity investments proposed by the private entity; or (3) an increase in funding, dedicated revenue or economic benefit from the project that would not otherwise be available.
3. After reviewing an Unsolicited Proposal and any competing Unsolicited Proposals submitted during the notice period, the County may determine (a) not to proceed further with any proposal, (b) to proceed to the detailed phase of review with the original proposal, (c) to proceed to the detailed phase with a competing proposal, or (d) to proceed to the detailed phase with multiple proposals. The County at all times retains the right to reject any proposal at any time for any reason whatsoever.

**V. PROPOSAL PREPARATION AND SUBMISSION**

**A. Format for Submissions at Conceptual Stage (Part 1)**

Unsolicited Proposals at the conceptual stage shall contain the following information in the following format, plus such additional information as the County may request subsequent to receipt of the unsolicited proposal:

One (1) original (marked "ORIGINAL" and six (6) copies, and one electronic copy on CD of the proposal must be submitted. Each copy shall be bound in a single volume where practical, except that information for which a claim of confidential or proprietary information is made should be submitted in a separately bound document or volume for convenience of review by the County. Any such volume containing confidential or proprietary information shall be clearly marked on its cover. The proposal should contain a table of contents, which cross references the requirements by category. Each proposal shall be structured so that it contains individual tabs/sections detailing proposed services. Proposals should be prepared as simply as possible, with straightforward, concise descriptions of the proposer's capabilities to satisfy the requirements of the proposed

offering. Offerors shall submit their proposals with the required information in the order listed below.

Proposal submitted shall meet standards of professional writing established for the type of report or written material provided, shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors and shall be submitted in a format outlined herein. Whenever possible, proposals submitted shall comply with the following guidelines:

- The proposal shall be limited to a page size of 8 ½" x 11", single space and type size shall not be less than 10 point font for each response item;
- All copies shall be printed on at least thirty percent (30%) recycled-content and/or tree-free paper;
- All copies shall be double-sided;
- Covers or binders shall be recyclable, made from recycled materials, and/or easily removable to allow for recycling of pages (proposals with glued bindings that meet all other requirements are acceptable);
- The use of plastic covers or dividers should be avoided;
- Numbered tabs and dividers are required for each of the sections listed and in the order below:

- I. INTRODUCTION OF ENTITY/FIRM
- II. PROJECT CHARACTERISTICS
- III. PROJECT BENEFIT AND COMPATIBILITY
- IV. QUALIFICATIONS AND EXPERIENCE
- V. PROJECT FINANCING
- VI. REFERENCES
- VII. CONFLICT OF INTEREST STATEMENT

I. INTRODUCTION OF ENTITY (FIRM)

- a. Legal Name of Entity
- b. Address
- c. Tax ID Number (EIN)
- d. Type of Business Entity (i.e. Corporation, General Partnership, Limited Partnership, Unincorporated Association, Limited Liability Company, Sole Proprietorship). Identification number issued to the entity by the SCC.
- e. Indication whether or not the Firm or any of its principals are currently debarred from submitting bids to Arlington County, Virginia, or any other state or political subdivision.
- f. Minority/DBE Status.

- g. Contact Person, and contact information (i.e. telephone number, e-mail address)

## II. PROJECT CHARACTERISTICS

- a. Provide a description of the project, including the conceptual design. Describe the proposed project in sufficient detail so that type and intent of the project, the location, and the communities that may be affected are clearly identified.
- b. Identify and fully describe any work to be performed by the County or any other public entity.
- c. Include a list of all federal, state and local permits and approvals required for the project and a schedule for obtaining such permits and approvals.
- d. Identify any anticipated adverse social, economic and environmental impacts of the project. Specify the strategies or actions to mitigate known impacts of the project. Indicate if environmental and archaeological assessments have been completed. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- e. Identify the projected positive social, economic and environmental impacts of the project.
- f. Identify the proposed schedule for the work on the project, including the estimated time for completion.
- g. Identify contingency plans for addressing public needs in the event that all or some of the project is not completed according to projected schedule.
- h. Propose allocation of risk and liability for work completed beyond the agreement's completion date, and assurances for timely completion of the project.
- i. State assumptions related to ownership, legal liability, law enforcement and operation of the project and the existence of any restrictions on the public entity's use of the project.
- j. Provide information relative to phased or partial openings of the proposed project prior to completion of the entire work.

- k. Describe any architectural, building, engineering, or other applicable standards that the proposed project will meet.
- l. List any other assumptions relied on for the project to be successful.
- m. List any contingencies that must occur for the project to be successful.

### III. PROJECT BENEFIT AND COMPATIBILITY

- a. Describe the anticipated benefits to the community, region or state, including anticipated benefits to the economic condition of the County, and identify who will benefit from the project and how they will benefit. Such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for County residents and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for County residents generated by the project, and the number and value of subcontracts generated for County subcontractors.
- b. Identify any anticipated public support or opposition, as well as any anticipated government support or opposition, for the project.
- c. Explain the strategy and plans that will be carried out to involve and inform the general public, business community, and governmental agencies in areas affected by the project.
- d. Describe the compatibility of the project with local, regional, and state economic development efforts.
- e. Explain the compatibility with the County's comprehensive plan, infrastructure development plans, capital improvements budget, or other government spending plan.

### IV. QUALIFICATION AND EXPERIENCE

- a. Identify the legal structure of the firm or consortium of firms making the proposal. Identify the organizational structure for the project, the management approach and how each partner and major subcontractor in the structure fits into the overall team. All members of the proposer's team, including major subcontractors known to the proposer must be identified at the time a proposal is submitted for the Conceptual stage. Identified team members, including major subcontractors (over \$5 million), may not be substituted or replaced once a project is approved and comprehensive agreement executed without the written approval of the County.

- b. Describe the experience of the firm or consortium of firms making the proposal and the key principals involved in the proposed project including experience with projects of comparable size and complexity. Describe the length of time in business, business experience, public sector experience and other engagements of the firm or consortium of firms. Describe the past safety performance record and current safety capabilities of the firm. Describe the past technical performance history on recent projects of comparable size and complexity, including disclosure of any legal claims of the firm. Include the identity of any firms that will provide design, construction and completion guarantees and warranties and a description of such guarantees and warranties. Provide resumes of the key individuals who will be involved in the project.
- c. For each firm or major subcontractor (\$1 million or more) that will be utilized in the project, provide a statement listing all of the firm's prior projects and clients for the past three (3) years with contact information for such clients (names/addresses/ telephone numbers/email). If a firm has worked on more than ten (10) projects during this period, it may limit prior project list to 10, but shall first include all projects similar in scope and size to the proposed project, and second, it shall include as many of its most recent projects as possible. Each firm or major subcontractor shall be required to submit all performance evaluation reports or other documents in its possession evaluating the firm's performance during the preceding three (3) years in terms of cost, quality, schedule, safety and other matters relevant to the successful project development, operation, and completion.
- d. Provide the names, addresses, email, and telephone numbers of persons within the firm or consortium of firms who may be contacted for further information.
- e. Provide a current or most recently audited financial statement of the firm or firms and each partner with an equity interest of twenty percent (20%) or greater. Submit the most recent Securities and Exchange Commission 10-K and 10-Q reports if applicable.
- f. Identify any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
- g. Identify proposed plan for obtaining sufficient numbers of qualified workers in all trades or crafts required for the project.
- h. Provide information on any training programs, including but not limited to apprenticeship programs registered with the U.S. Department of Labor or a State Apprenticeship Council, in place for employees of the firm and employees of any member of a consortium of firms.

- i. Provide information on the level of commitment by the firm to using small, women-owned, or minority businesses in developing and implementing the project.
- j. For each firm or major subcontractor that will perform construction and/or design activities, provide a sworn certification by an authorized representative of the firm attesting to the fact that the firm is not currently debarred or suspended by any federal, state or local government entity.
- k. Describe worker safety training programs, job-site safety programs, accident prevention programs, written safety and health plans, including incident investigation and reporting procedures.
- l. A completed qualification statement in a form acceptable to the County that reviews all relevant information regarding technical qualifications and capabilities, firm resources and business integrity of the firm or major subcontractors, including but not limited to, bonding capacities, insurance coverage and firm equipment. This statement shall also include a mandatory disclosure by the firm for the past three (3) years, except as indicated, any of the following conduct:
  - 1. bankruptcy filings
  - 2. liquidated damages
  - 3. fines, assessments, or penalties
  - 4. judgments or awards in contract disputes
  - 5. contract defaults, contract terminations
  - 6. license revocations, suspensions, other disciplinary actions
  - 7. prior debarments or suspensions by a governmental entity
  - 8. denials of prequalification, findings of non-responsibility
  - 9. maximum five years safety performance data
  - 10. "Experience Modification Rating" and issuing insurance company
  - 11. "Recordable Incidence Rates" "Lost Time Incidence Rates"
  - 12. OSHA 200 Summary and OSHA 300A Forms
  - 13. OSHA violations, dates, and disposition
  - 14. violations of any federal, state or local criminal or civil law by the firm or its principals
  - 15. criminal indictments or investigations of the firm or its principals
  - 16. legal claims filed by or against firm

#### V. PROJECT FINANCING

- a. Provide a preliminary estimate and estimating methodology of the cost of the work by phase, segment, or both.
- b. Submit a plan for the development, financing and operation of the project showing the anticipated schedule on which funds will be required. Describe the anticipated costs of and proposed sources and uses for such funds, including

any anticipated debt service costs. The operational plan should include appropriate staffing levels and associated costs. Include any supporting due diligence studies, analyses, or reports.

- c. Include a list and discussion of assumptions underlying all major elements of the plan. Assumptions should include all fees associated with financing given the recommended financing approach. In addition, complete disclosure of interest rate assumptions should be included. Any ongoing operational fees, if applicable, should also be disclosed as well as any assumptions with regard to increases in such fees.
- d. Identify all anticipated risk factors and methods for dealing with these factors. Describe the methods and remedies associated with any financial default.
- e. Identify any local, state or federal resources that the private entity contemplates requesting for the project. Describe the total commitment, if any, expected from governmental sources (and identify each such source) and the timing of any anticipated commitment. Such disclosure should include any direct or indirect guarantees or pledges of the County's credit or revenue.
- f. Identify the amounts and the terms and conditions for any revenue sources.
- g. Identify any aspect of the project that could disqualify the project from obtaining tax-exempt financing.
- h. Identify any third parties that the private entity contemplates will provide financing for the project and describe the nature and timing of each such commitment.

## VI. REFERENCES

Provide the address, telephone number, and the name of a specific contact person for an entity, or entities, for which the firm or consortium of firms, or primary members of the consortium, have completed a similar project or projects. These references should include:

- Name and address of project owner/sponsor
- Name, telephone number, fax number, and email address of the owner's project manager
- A summary of the project including budget and final cost
- Project schedule (proposed and actual)

## VII. CONFLICT OF INTEREST STATEMENT

Firms must submit an executed copy of the County's approved Conflict of Interest Statement which is available online at [www.arlingtonva.us/purchasing](http://www.arlingtonva.us/purchasing).



B. Format for Submissions at Detailed Stage (Part 2)

If the County decides to proceed to the detailed phase (part 2) of review with one or more proposals, then proposers will be required to provide additional detailed information as a follow-up to the initial submission. The following information must accompany a request for project approval by the County unless waived:

1. A topographical map (1:2,000 or other appropriate scale) indicating the location of the proposed project.
2. A description of the qualifying project, including the conceptual design of such facility or facilities or a conceptual plan for the provision of services or technology infrastructure, and a schedule for the initiation of and completion of the qualifying project to include the proposed major responsibilities and timeline for activities to be performed by both the public and private entity.
3. Conceptual (single line) plans and elevations depicting the general scope, appearance and configuration of the project.
4. A detailed description of the proposed participation, use and financial involvement of the County in the project. Include the proposed terms and conditions for the project if they differ from the County's Standard Form contract for this type of project.
5. Information relating to the current plans for development of facilities or technology infrastructure to be used by a public entity that are similar to the qualifying project being proposed by the private entity, if any, of each affected local jurisdiction.
6. A statement setting forth the method by which the private entity proposes to secure necessary property interests required for the qualifying project. The statement must include the names and addresses, if known, of the current owners of the subject property as well as a list of any property the private entity intends to request the County to acquire.
7. A detailed listing of all firms that will provide specific design, construction and completion guarantees and warranties, and a brief description of such guarantees and warranties.
8. A total life-cycle cost specifying methodology and assumptions of the project or projects and the proposed project start date. Include anticipated commitment of all parties; equity, debt, and other financing mechanisms; and a schedule of project revenues and project costs. The life-cycle cost analysis should include, but not be limited to, a detailed analysis of the projected return, rate of return, or both, expected useful life of facility and estimated annual operating expenses.
9. A detailed discussion of assumptions about user fees or rates, lease payments and other service payments, and the methodology and circumstances for changes to such user fees, lease payments, and other service payments over time.

10. Identification and discussion of any known government support or opposition, or general public support or opposition for the project. Government or public support should be demonstrated through resolution of official bodies, minutes of meetings, letters, or other official communications.
11. A list of all permits and approvals required for the qualifying project from local, state, or federal agencies and a projected schedule for obtaining such permits and approvals.
12. A list of public utility facilities, if any, that will be crossed by the qualifying project and a statement of the plans of the private entity to accommodate such crossings.
13. Description of an ongoing performance evaluation system or database to track key performance criteria, including but not limited to schedule, cash management, quality, worker safety, change orders, and legal compliance.
14. Identification of any known conflicts of interest or other limitations that may impact the County's consideration of the proposal, including the identification of any persons known to the private entity who would be obligated to disqualify themselves from participation in any transaction arising from or in connection to the project pursuant to The Virginia State and Local Government Conflict of Interest Act, Chapter 31 (§ 2.2-3100 et seq.) of Title 2.2.
15. A statement setting forth the private entity's general plans for financing the qualifying project including the sources of the private entity's funds and identification of any dedicated revenue source or proposed debt or equity investment on the behalf of the private entity. Include a detailed description of any financing plan proposed for the project, a comparison of that plan with financing alternatives that may be available to the County, and all underlying data supporting any conclusions reached in the analysis or the selection by the private entity of the financing plan proposed for the project.
16. The names and addresses of the persons who may be contacted for further information concerning the request.
17. Additional material and information as the County may reasonably request.

## **VI. PROPOSAL EVALUATION AND SELECTION CRITERIA**

Some or all of the following matters may be considered in the evaluation and selection of PPEA proposals. However, the County retains the right at all times to reject any proposal at any time for any reason whatsoever.

### **A. Project Characteristics**

Factors to be considered in determining the project characteristics may include but are not necessarily limited to:

1. Project definition;

2. Proposed project schedule;
3. Operation of the project;
4. Technology, technical feasibility;
5. Conformity to laws, regulations, codes, guidelines and standards;
6. Environmental impacts;
7. Property impacts;
8. Utility impacts;
9. State and local permits;
10. Maintenance of the project; and
11. Ongoing Operations.

B. Project Benefit and Compatibility

Factors to be considered in determining the proposed project's compatibility with the appropriate local or regional comprehensive or development plans may include but are not necessarily limited to:

1. Community benefits, such social and economic impacts should include but are not limited to community benefits, including the economic impact the project will have on the local community in terms of the amount of additional tax revenue to be generated for the County, the number of jobs generated for the greater Washington DC area, and level of pay and fringe benefits of such jobs, the training opportunities for apprenticeships and other training programs for the greater Washington DC area residents generated by the project, and the number and value of subcontracts generated for the greater Washington DC area subcontractors.
2. Compatibility with existing transportation system and enhancement of community transportation system;
3. Community support or opposition, or both;
4. Public involvement strategy;
5. Compatibility with existing and planned facilities;
6. Compatibility with local, regional, and state economic development efforts; and

7. Compatibility with the County's land use plan, transportation plan, and capital improvement plan.

C. Qualifications and Experience

Factors to be considered in either phase of the County's review to determine whether the private entity possesses the requisite qualifications and experience may include but are not necessarily limited to:

1. Experience, training and preparation with similar projects;
2. Demonstration of ability to perform work;
3. Demonstrated record of successful past performance, including timeliness of project delivery, compliance with plans and specifications, quality of workmanship, cost-control and project safety;
4. Demonstrated conformance with applicable laws, codes, standards, regulations, and agreements on past projects;
5. Leadership structure;
6. Project manager's experience;
7. Management approach;
8. Organizational chart, including project staffing plans, the skill levels of the proposed task leaders, workforce, apprenticeship and other training programs offered for the project, and the proposed safety plans for the project;
9. Financial condition including the ability to obtain required sureties and insurance coverages; and
10. Project ownership.

D. Project Financing

Factors to be considered in determining whether the proposed project financing allows adequate access to the necessary capital to finance the project may include but are not necessarily limited to:

1. Cost and cost benefit to the County;
2. Financing and the impact on the debt or debt burden of the County;
3. Financial plan, including overall feasibility and reliability of the plan; operator's past performance with similar plans and similar projects; degree to which the operator has

conducted due diligence investigation of proposed financial plan and results of any such inquiries or studies;

4. Estimated cost;
5. Life-cycle cost analysis;
6. The identity, credit history, and past performance of any third party that will provide financing for the project and the nature and timing of their commitment; and
7. Such other items as the County deems appropriate.

The County may elect to accept the private entity's financing proposal or may select its own finance team, source, and financing vehicle.

E. Other Factors

Other factors that may be considered in the evaluation and selection of PPEA proposals include, but are not limited to the following:

1. The proposed cost of the qualifying project;
2. The general reputation, industry experience, and financial capacity of the private entity;
3. The proposed design, operation, and feasibility of the of the qualifying transportation facility;
4. The eligibility of the facility for accelerated selection, review, and documentation;
5. Local citizen and government comments;
6. Benefits to the public; including whether the project will lead to productivity or efficiency improvements in the County's processes or delivery of services to the public;
7. The private entity's minority business plan or good faith effort to comply with the goals of such plan;
8. The private entity's plan to employ local contractors and residents;
9. The safety record of the private entity;
10. The ability of the facility to address the needs identified in the appropriate state, regional or local transportation plan by improving safety, reducing congestion, increasing capacity, and/or enhancing economic efficient; and
11. Other criteria that the County deems appropriate.

#### F. Timelines

Guidelines for determining applicable timelines are as follows:

1. For solicited proposals, the timeline for selecting proposals and negotiating an agreement will be consistent with the terms and conditions set forth in the Request for Proposals.
2. For unsolicited proposals, an estimated timeline will be developed and distributed within sixty (60) days of receipt of the proposal. The timeline will be subject to revision(s), as required.
3. Accelerated selection, review, and documentation timelines shall be permitted for proposals involving a qualifying facility that the County deems a priority, such as qualifying projects that have approved or pending state and federal environmental clearances, secured significant right of way, have previously allocated significant state or federal funding, or exhibit other circumstances that could reasonably reduce the amount of time to develop and/or operate the qualifying project.

### **VII. INTERIM AND COMPREHENSIVE AGREEMENTS**

The County shall not accept liability for any part or phase of a project prior to entering into a properly executed interim or comprehensive agreement. Any interim or comprehensive agreement executed pursuant to the PPEA requires prior approval by the County Board. Any changes in the terms of an executed interim or comprehensive agreement shall be in the form of a written amendment.

#### A. Interim Agreement Terms

Interim agreements may be used when it is necessary or advisable to segment a project to produce distinct and clear deliverables necessary to keep the project moving towards development of a comprehensive agreement. An interim agreement may not be used to have the County assume risks that should be assumed by the proposer or to pay costs attributable to the private entity's efforts in making the proposal. Interim agreements require the same level of approval as Comprehensive Agreements.

Development of an interim agreement is in the sole discretion of the County and in no way limits the rights reserved by the County to terminate the evaluation of any or all proposals at any time.

Prior to or in connection with the negotiation of the comprehensive agreement, the County may enter into an interim agreement with the private entity proposing the development or operation of the qualifying transportation facility. Such interim agreement may:

1. Permit the private entity to commence activities for which it may be compensated relating to the proposed qualifying transportation facility, including, but not limited to, project planning and development, design and engineering, environmental analysis and mitigation, survey, and ascertaining the availability of financing for the proposed facility or facilities;

2. Establish the process and timing of the negotiation of the comprehensive agreement; and
3. Contain any other provisions related to any aspect of the development or operation of a qualifying transportation facility that the parties may deem appropriate.

B. Comprehensive Agreement Terms

Prior to developing or operating any qualifying project, a selected private entity shall enter into a comprehensive agreement with the County as provided by the PPEA. Any such comprehensive agreement and any amendment thereto, must be approved by the County Board before it is entered into on behalf of the County.

As provided by the PPEA, the terms of the comprehensive agreement shall include but not be limited to:

1. Delivery of maintenance, performance and payment bonds or letters of credit in connection with any development or operation of the qualifying transportation project, in the forms and amounts satisfactory to the County;
2. Review and approval of plans and specifications for the qualifying project by the County;
3. The right of the County to inspect the qualifying project to ensure compliance with the comprehensive agreement and any development plans and specifications;
4. Maintenance of a policy or policies of liability insurance or self-insurance, each in form and amount satisfactory to the County and reasonably sufficient to insure coverage of tort liability to the public and employees and to enable the continued operation of the qualifying project;
5. Monitoring of the practices of the private entity by the County to ensure proper maintenance;
6. Reimbursement to be paid to the County for services provided by the County;
7. Filing by the private entity of appropriate financial statements on a periodic basis;
8. Policies and guidelines governing the rights and responsibilities of the County and the private entity in the event that the comprehensive agreement is terminated or there is a material default by the private entity, including the conditions governing assumption of the duties and responsibilities of the private entity by the County and the transfer or purchase of property or other interests of the private entity by the County;
9. Providing for such user fees, lease payments, or service payments, if any, as may be established from time to time by agreement of the parties, which shall be the same for persons using the facilities under like conditions and shall not materially discourage use of the qualifying project. Classifications according to reasonable categories for assessment of user fees may be made;

10. Requiring a copy of any service contract to be filed with the County and providing that a schedule of the current user fees or lease payments shall be made available by the private entity to any member of the public upon request;
11. The terms and conditions under which the County may contribute financial resources, if any, for the qualifying project;
12. Any other terms and conditions the County determines serve the public purpose of the PPEA; and
13. Any other provisions required by applicable law.

Any changes in the terms of the comprehensive agreement as may be agreed upon by the parties from time to time shall be added to the comprehensive agreement only by written amendment.

Parties submitting proposals understand that representations, information and data supplied in support of or in connection with proposals play a critical role in the competitive evaluation process and in the ultimate selection of a proposal by the County. Accordingly, as part of the comprehensive agreement, the prospective operator and its team members shall certify that all material representations, information and data provided in support of, or in connection with, a proposal is true and correct. Such certifications shall be made by authorized individuals who have knowledge of the information provided in the proposal. In the event that material changes occur with respect to any representations, information or data provided for a proposal, the prospective operator shall immediately notify the County of same. Any violation of this section of the comprehensive agreement shall give the County the right to terminate the agreement, withhold payment or other consideration due, and seek any other remedy available under the law.

C. Notice and Posting Requirements

In addition to the posting requirements of Section IV, the County shall hold a public hearing on the proposals during the proposal review process, but not later than thirty (30) days prior to entering into an interim or comprehensive agreement.

1. Once the negotiation phase for the development of an interim or a comprehensive agreement is complete and a decision to award has been made by the County, the County shall publicly post the proposed agreement.
2. Once an interim agreement or a comprehensive agreement has been executed, the County shall make procurement records available for public inspection, in accordance with the Virginia Freedom of Information Act (§2.2-3700 et seq.).
  - a. Such procurement records shall include documents initially protected from disclosure on the basis that the release of such documents would adversely affect the financial interest or bargaining position of the County.
  - b. Such procurement records shall not include (i) trade secrets of the private entity or (ii) financial records, including balance sheets or financial statements of the private entity



that are not generally available to the public through regulatory disclosure or otherwise.

#### **VIII. GOVERNING PROVISIONS**

In the event of any conflict between these guidelines and procedures and the PPEA, the terms of the PPEA shall control.