

**CITY OF SUFFOLK  
PROCUREMENT MANUAL  
POLICIES AND PROCEDURES**

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Contact the Purchasing Division for electronic versions of the above listed documents.

**CITY OF SUFFOLK, VA**  
**PROCUREMENT MANUAL**  
**POLICIES AND PROCEDURES**

**FORWARD - PURPOSE**

This Procurement Manual, hereafter referred to as manual, is designed to promulgate<sup>1</sup> the policies and procedures by which departments within the Suffolk City government are to follow for the procurement of goods, services, insurance and construction. The manual is designed to comply with the Virginia Public Procurement Act, the City of Suffolk Procurement Ordinance and policies established by the Suffolk City government. This manual shall be used as a reference resource to maintain the conduct of procurement related activities within the realm of the law and comply with the stated purpose of Suffolk's procurement policy:

...to encourage competition among vendors and contractors, to provide for the fair and equitable treatment of all persons involved in public purchasing by this City, to maximize the purchasing value of public funds in procurement so that high quality goods and services may be obtained at the lowest possible price, and to increase public confidence in procurement practices by providing safeguards for maintaining a procurement system of quality and integrity.

The Office of the Purchasing Agent is a service agency. Cooperation and understanding between departments are essential in the effective operation of the purchasing function.

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<sup>1</sup> Promulgate: To put (a law) into effect by formal public announcement.

## CHAPTER I - LEGAL ASPECTS OF PURCHASING

- A. **Procurement contracts entered into by the City.** The policies and procedures of this manual apply to all contracts for the procurement of goods, services, insurance and construction entered into by this City with nongovernmental sources. The policy and procedures of this manual shall apply whether the consideration is monetary or non monetary and regardless whether the City, the contractor, or some third party is providing the consideration. Policy and procedures of this manual shall be followed without deviation unless authorized in writing by the City Manager or his designee; substantial changes in policy shall be subject to City Council's approval by resolution.
- B. **Procurement involving expenditure of federal funds.** Where any procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned upon compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of this chapter, the City may comply with such federal requirements, notwithstanding the provisions of this manual, only upon the written determination of the governing body that acceptance of the grant or contract funds under the applicable conditions is in the public's interest. Such determination shall state the specific provision of this manual in conflict with the conditions of the grant or contract.
- C. **Penalty for willful violations.** Willful violation of any provision of this manual may constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, may be required to forfeit his employment.

Except as otherwise provided in this manual, no official elected or appointed, or employee shall purchase or contract for any goods, services, insurance, or construction within the purview of this manual other than by and through the provisions of this manual.

Except as otherwise provided for herein for emergencies, requisitions that are submitted to Purchasing marked Aconfirmation@or other indication that goods or services have been received or vendor commitment has been made without benefit of a purchase order, may be returned to the department and the City employee who purchased the goods or services may be liable for the total dollar value of the obligation incurred by said employee.

- D. Severability.** If any provision of this manual or any application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of this manual which can be given effect without the invalid provision or application, and to this end the provisions of this manual are declared to be severable.
- E. Effective date.** The provisions of this manual shall become effective on August 18, 2004. The provisions of this manual shall not apply to those contracts entered into prior to August 18, 2004, which shall continue to be governed by the procurement policies and regulations of the City at the time those contracts were executed.

## CHAPTER II – AUTHORITY, RESPONSIBILITY AND DUTIES

A. **Authority, Responsibilities and Duties of the City Manager.** Except as provided in the following sections of this chapter or as otherwise specifically provided by the City Council, the City Manager shall have the authority<sup>2</sup> and responsibility<sup>3</sup> to:

1. Establish regulations and procedures, consistent with this manual, governing the procurement, management, control, and disposal of any and all goods, services, and construction to be procured by the City;
2. Consider and decide matters of policy within the provisions of this manual;
3. Exercise authority over the award or administration of any particular contract, or over any dispute, claim, or litigation pertaining thereto, with appropriate consultation with the City's legal counsel as necessary.
4. Delegate authority, or revoke delegated authority, such authority as may be deemed appropriate to designees or to the head of any department or using agency. Such delegation shall be in writing and shall specify any limits of restriction.

B. **Authority, Responsibilities and Duties of the Purchasing Agent.** The Purchasing Agent, as appointed by the City Manager, shall have the following responsibilities and perform such duties in accordance with the rules and regulations promulgated to implement the City's procurement policy and other duties and such functions as the City Manager may assign:

1. Administer purchasing objectives, policies, programs and operational procedures consistent with this manual to organize and manage procurement functions in a manner that the maximum value will be obtained for the money expended.
2. Procure or supervise the procurement of all goods, services, insurance, and

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<sup>2</sup> Authority: The formal right to require action of others or to act oneself.

<sup>3</sup> Responsibility: The formal obligation to act without guidance from superior authority and to be accountable for said action(s).

construction needed by the City in accordance with the quality, quantity and delivery requirements of the using agency.

3. Sell, trade, or otherwise dispose of surplus property.
4. Administer uniform policies and procedures with respect to buyer-seller relationships which promote competition and provide for the fair and equitable treatment of all persons involved in public purchasing by the City.
5. Assist with contract administration upon requests, and maintain close liaison with departments in order to meet their purchase requirements.
6. Monitor the implementation of its regulations and the requirements of this manual.
7. Be a representative for the City on all matters pertaining to purchasing.
8. Report procurement policy and procedural violations to the City Manager.

C. **Departmental Authority, Responsibilities and Duties.** It is the responsibility of each department head to determine the goods or services needed for efficient operation and to relay this information to the Purchasing Agent in a timely manner to ensure feasibility of compliance with procurement policies and procedures. Authority, responsibilities, and duties at the department level include:

1. Prepare sufficient and concise technical specifications that characteristically define the quality, which will best serve the interest of the City within available funding, of goods or services needed to perform a specific function. Specifications shall provide a basis for full and fair competition.
2. Identify special terms and conditions which are pertinent to the procurement, such as delivery schedules, local service, warranty provisions, etc.
3. Plan and submit requirements to Purchasing sufficiently in advance of need to allow

the necessary time for compliance with appropriate competitive procedures and allow the supplier ample time for regular (versus expedited) delivery.

4. Issue a formal Notice to Proceed (or Stop Work) after appropriate execution of contract documents for construction, professional services, generally applicable, and after issuance of a Purchase Order.
5. Receive goods and services and ensure that goods and services received are in strict accordance with the purchase order or other form of contract. Should substitute goods or services of a lesser quality or alternate other terms of the purchasing transaction be proposed (or delivered), the department head shall notify and request instruction for executing the original contract.
6. Document vendor performance and provide an appropriate level of contract administration to monitor all aspects of the contract/purchase order to insure proper fulfillment. Should any problems arise, it is the department's responsibility to notify the Purchasing division; copies of all procurement related correspondence shall be forwarded to Purchasing.

**D. Constitutional Officers and Other Agencies – Responsibilities and Duties.**

If Constitutional Officers or any other agencies generally associated with the City desire to obtain goods and services in cooperation with the City, then such procurement will be done in accordance with policies and procedures set forth herein. Otherwise, Constitutional Officers and other agencies associated with the City shall follow the provisions of the then current version of the Virginia Public Procurement Act.

**E. Delegation of Purchasing Authority.** Unless otherwise provided by the City Council, the following procurement need not be processed through the office of the Purchasing Agent but shall nevertheless be procured by the appropriate agency subject to the requirements of this manual.

1. **Public Utilities.** Professional architectural or engineering services and construction

of capital projects included in the annually adopted Utility Capital Improvements Budget, including amendments, for which purposes the Director of Public Utilities will be the appropriate procurement agent. The Department of Public Utilities shall maintain adequate and appropriate documentation of the procurement records in accordance with the Records Retention and Disposition requirements of Virginia State Library and Archives.<sup>4</sup> Such procurement contracts shall be processed for payment by requisition or purchase order.

2. **Director of Library Services.** Published books, binding services, maps, periodicals, pamphlets, audiovisual recordings, and materials for library circulation<sup>5</sup>, for which purposes the Director of Library Services will be the appropriate procurement agent. These items are exempt for the requisition/purchase order process and may be processed for payment by submitting a payment voucher to the Director of Finance.
3. **Director of Capital Program Management.** Professional architectural or engineering services and construction of capital projects included in the annually adopted Capital Improvements Budget, including amendments, for which purposes the Director of Capital Program Management will be the appropriate procurement agent. The Department of Capital Program Management shall maintain adequate and appropriate documentation of the procurement records in accordance with the Records Retention and Disposition requirements of Virginia State Library and Archives.<sup>4</sup> Such procurement contracts shall be processed for payment by requisition or purchase order.

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<sup>4</sup> General Schedule 102, , requires permanent retention of contracts and agreements which specify the details of the project and how they are to be carried out for capital improvements.

<sup>5</sup> Emphasis added. This delegation is limited to published materials which are available for circulation to the public. It does not include furniture, equipment, fixtures, supplies, etc.

### CHAPTER III – PROCUREMENT PROCESS AND PROCEDURES

- A. **Definitions.** For the purposes of this manual, the following words and phrases shall have the meanings respectively ascribed to them. Nothing in this section shall preclude the City Manager, or his designee from defining additional terms to provide consistency for the purposes of this manual in the conduct of procurement related activities

*Act or VPPA.* Virginia Public Procurement Act, Title 11, Chapter 7 of the Code of Virginia.

*Addendum.* A modification of the bid/contract documents issued in writing by the engineer or owner prior to the opening of the bids.

*Brand Name Specification.* A specification limited to one or more items by manufacturers= names or catalog numbers.

*Brand Name or Approved Equal Specification.* A specification limited to one or more items by manufacturers=names or catalog numbers to describe the standard of quality, performance, and other salient characteristics needed to meet the requirements of the City and which provides for the submission of equivalent products.

*Business.* Any corporation, general or limited partnership, individual, sole proprietorship, joint stock company, joint venture or any other non-governmental legal entity. Business shall be synonymous with vendor.

*Change Order.* A modification of the contract requirements issued in writing by the procuring agent subsequent to the formal execution of the contract documents which involves a change in contract price and/or the contract time.

*City.* The City of Suffolk, a municipal corporation of the Commonwealth of Virginia, in its present incorporated form or in any other reorganized consolidated or changed form.

*City Code.* AThe Code of the City of Suffolk,@including the Charter and such ordinances of a general and permanent nature promulgated by the governing body

*Contract.* A legal obligation between a buyer and a seller to perform certain duties/provide certain goods. General requirements of a contract include an offer and acceptance by capable parties; mutual assent/consent; lawful objective; and mutual consideration.

*Construction.* Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavating, grading or similar work upon real property.

*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.

*Contract Modification.* Any written alteration in a specification, delivery point, rate of delivery, period of performance, price, quantity, or other provision of any contract accomplished by mutual action of the parties to the contract.

*Contractor.* Any person having a contract with the City or a using agency thereof.

*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 provisions of this ordinance, and a fee or profit, if any.

*Design-build Contract.* A contract between a public body and another party in which the party contracting with the public body agrees to both design and build the structure, roadway or other item specified in the contract.

*Emergency.* An emergency shall exist when a breakdown in an essential service occurs or under any other circumstances when goods or services are needed for immediate use in work which may vitally affect the safety, health or welfare of the public.

*Employee.* An individual drawing a salary, wages or other compensation from the City whether elected or not; any noncompensated individual performing personal services

for the City or any department, division, office, section, agency, commission, council, board or any other entity established by the executive or legislative branch of this City.

*Field Order.* A written order issued by the owner subsequent to the formal execution of the contract documents which orders minor changes in the work but does not involve a change in contract price or the contract times

*Goods.* All material, equipment, supplies, printing and automated data processing hardware and software.

*Immediate Family.* A spouse, child, parent, brother and sister, and any other person living in the same household as the employee.

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

*Informality.* A minor defect or variation of a bid, proposal, or other offer from the exact requirements of the Invitation to Bid, the Request for Proposal, or other solicitation, which does not affect the price, quality, quantity or delivery schedule for the goods, services or construction being procured.

*Invitation for Bids.* All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids; Request for Bids (RFB) shall be synonymous with Invitation for Bids (IFB).

*Nominal Value.* So small, slight, or the like in comparison to what might properly be expected, as scarcely to be entitled to the name.

*Life Cycle Costing.* An evaluation that takes into account all costs incidental to the planning, design, construction, operation, maintenance and disposal of a system or facility calculated in terms of present value, annual owning and operating costs.

*Non-Professional Services.* Any services not specifically identified as professional services in the definition below.

*Official Responsibility.* Administrative or operating authority, whether intermediate or final, to initiate, approve/disapprove or otherwise affect procurement transactions or any claim resulting there from.

*Pecuniary Interest Arising from the Procurement.* A material financial interest as defined in the Virginia Conflict of Interests Act.

*Potential Bidder or Offeror.* Any person, for the purposes of emergency and sole-source purchases, who at the time the City negotiates and awards or proposes to award a contract, is engaged in the sale or lease of goods, or sale of the services of the type to be procured under such contract, and who at such time is eligible and qualified in all respects to perform that contract, and who would have been eligible and qualified to submit a bid or proposal had the contract been procured through competitive sealed bidding or competitive negotiation.

*Procurement Transaction.* All functions that pertain to the obtaining of any goods, services, insurance, or construction, including description of requirements, selection and solicitation of sources, preparation and award of contract, and all phases of contract administration.

*Professional Services.* Work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy, professional engineering, or as subsequently amended by the Virginia Public Procurement Act.

*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.

*Public Contract.* Any form of agreement between a public body/the City and a nongovernmental source that is enforceable in a court of law.

*Purchase Order.* A form of contract which provides the supplier authorization to provide goods/services and is the purchaser's commitment for the value of the goods/services. Special terms and conditions may be incorporated in the purchase order by reference.

*Qualified Products List.* A form of specification in which various brands have previous approval; the Request for Bid is limited to those products of the list.

*Quotation Analysis.* The review and appraisal of competitive offers including a record of the considerations which were recognized by the buyer, including but not limited to price, which were the basis of the selection.

*Requisition.* A written or electronic communication describing the needs of the using agency to the purchasing department; a request to purchase. It includes appropriate authorization of the using agency to proceed to purchase the designated items and the appropriate funding source/account to be charged.

*Request for Proposals.* All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

*Responsible Bidder or Offeror.* A person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability which will assure good faith performance, and who has been prequalified, if required.

*Responsive Bidder.* A person who has submitted a bid which conforms in all material respects to the Invitation to Bid.

*Services.* Any work performed by an independent contractor wherein the service rendered does not consist primarily of acquisition of equipment or materials, or the rental of equipment, materials and supplies.

*Sheltered Workshop.* Any work-oriented rehabilitative facility with a controlled working environment and individual goals which utilizes work experience and related services for assisting the handicapped person to progress toward normal living and a productive vocational status.

*Small Dollar Procedures.* The respective procurement procedures and transaction amounts, which apply when said requirement is exempt from formal competitive sealed bid or sealed proposal procedures, as established herein.

*Tie Bid.* Two or more bids in which all things are equal with regard to product, price, delivery terms and availability, and payment terms.

*Using Agency.* Any department, division, section, office, agency, board, commission, bureau, or other unit in the City government requiring goods, services, insurance or construction as provided for in this ordinance.

**B. Requisition/Purchase Order Process** The major tasks of the requisition/purchase order process are as follows:

1. The department or using agency determines needs and budgets accordingly. Purchasing staff is available to assist departments; state contract and catalog resources are available upon request.
2. The department or using agency enters/prepares a requisition via the AS400 requisition/purchase order software; typed requisitions may be submitted if access to the AS400 is not available to the using agency. The requisition is the using agency's request to purchase and authorization to Purchasing to proceed accordingly.

The requisition form must be completed and must describe the item(s) needed in sufficient detail to specify the level of quality required, identify the quantity and packaging requirements, identify delivery constraints, identify any known vendors,

identify the source of funding in the form of the proper budgetary account and fund. Supporting documentation may be furnished as a written or electronic attachment to be incorporated by reference, when appropriate.

3. Upon entry of the requisition, if there is a system message indicating an invalid account number or insufficient funds, the department or using agency shall communicate with Finance to resolve the problem. The department shall advise Purchasing of action being taken in the comments field of the requisition, including deletion of the requisition, if necessary.
4. Purchasing shall review the requisition for sufficient detail. Purchasing shall contact the department for additional information, if needed; recommend changes in the specifications, substitutions, or functional equivalents, etc. Purchasing will coordinate information with the user throughout the procurement process.
5. Purchasing will review prices submitted by the user, if any, and may contact additional sources if additional savings are anticipated. Purchasing will ensure that pricing is obtained by the method required by this manual.
6. Purchasing evaluates offers including pricing, and compliance with specifications terms and conditions; the using agency will be advised of any exceptions or viable substitutions prior to award. The using agency will be the final authority as to whether or not a product is acceptable to its needs; Purchasing will be the final authority as to compliance with specifications, terms and conditions.
7. Purchasing edits the system requisition to reflect the intended award, verifying the availability of sufficient funds, the appropriateness of the budgetary code, and summarizing competitive pricing. The using agency has access to monitor system requisitions and should notify Purchasing of any concerns.
8. Upon determination of the lowest responsive and responsible offer, Purchasing releases system requisitions for processing into a purchase order. The purchase order is sent to the vendor to authorize delivery of goods or services; the using agency

should review its copy for accuracy of the goods/services requested and immediately report discrepancies to Purchasing.

9. The using agency receives the goods/services and verifies that quality and quantity are in accordance with the purchase order. The purchase order is a contract; the using agency is not authorized to accept substitutions and should advise Purchasing immediately of any discrepancies.
10. Wherever practicable, the end user should be provided a copy of the purchase order to record the date of receipt, the quantity received, verify that items were received without substitutions, and document any damages. The receiving copy of the purchase order shall be completed, including pertinent information for fixed assets such as serial numbers, and must be signed by the department head or his designee and be sent, with the original supplier's invoice and one copy thereof, to Finance to be processed for payment.
11. The receiving report and supplier's invoice will be verified for accuracy, eligibility for discounts, and budgetary allowance by Finance. Discrepancies will be discussed with the user and/or Purchasing as appropriate.
12. The using agency is responsible for use and care of the goods received to maximize its benefit to the City. The using agency shall report surplus property as specified herein.
13. The office of the Purchasing Agent shall retain procurement documentation for a minimum of three years or as prescribed by the Commonwealth of Virginia.

C. **Competitive Sealed Bidding.** Competitive Sealed Bids "Competitive sealed bidding" is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation to Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Unless the Purchasing Agent has provided for prequalification of bidders, the

Invitation to Bid shall include a statement of any requisite qualifications of potential contractors. In addition, the City reserves the right to reject any and all bids, and to accept the lowest responsive and responsible bid which may best serve the interest of the City.

2. Public notice of the Invitation to Bid shall be given at least ten days prior to the date set for receipt of bids by posting on bid board maintained by the Purchasing Division, the City's website or other designated public area or publication in a newspaper of general circulation in the City of Suffolk, or both. When the estimated amount of the procurement requires competitive sealed bidding or competitive negotiation, the solicitation shall be advertised in a newspaper having general circulation in the City; others may be advertised in newspaper(s) or other publications when deemed appropriate by the Purchasing Agent and/or the Department Head.
3. Public opening and announcement of all bids received.
4. Evaluation of bids shall be based upon the requirements set forth in the invitation, which may include special qualifications of potential contractors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
5. If awarded, award shall be to the lowest responsive and responsible bidder. When the terms and conditions of multiple bids are so provided in the Invitation to Bid, awards may be made to more than one bidder.
6. Nothing in this section shall preclude the use of a multi-step bid process.
7. Competitive sealed bidding shall not be required for procurement of professional services; professional services shall be procured by competitive negotiation as defined herein.

**D. Competitive Negotiation.**

1. **Defined.** Competitive negotiation is a method of contract selection which includes the following elements:
  - a. Issuance of written Request for Proposals 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.
  - b. Public notice of the Request for Proposals shall be given at least ten days prior to the date set for receipt of offers by posting on the bid board maintained by the Purchasing Division, the City's website or other designated public area or publication in a newspaper of general circulation in the City of Suffolk, or both. When the estimated amount of the procurement under competitive negotiation is expected to exceed \$30,000, the solicitation shall be advertised in a newspaper having general circulation in the City; others may be advertised in newspaper(s) or other publications when deemed appropriate by the Purchasing Agent and/or Department Head.
2. **Competitive Negotiation – Professional Services.** Procurement of professional services shall be by competitive negotiation. The City, via the City Manager or his designees, shall engage in individual discussions with all offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data pertinent to the proposed project as well as alternative concepts and proposals. The Request for Proposals shall not, however, request that offerors furnish estimates of man-hours or cost of services. These discussions may encompass non-binding estimates of total project costs, including design, construction and life cycle costs as related to concepts of the end product. Methods to be utilized in arriving at price for services may also be discussed.

Proposals or information from competing offerors shall not be disclosed to the public or to competitors.

At the conclusion of informal discussions on the basis of evaluation factors published in the Request for Proposals and all information developed in the selection process, the Purchasing Agent and the Director of the Department involved shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the City can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on and until such a contract can be negotiated at a fair and reasonable price. The City shall not be required to make an award and may reject any or all proposals at any time during the process. Should the City Manager or his designees 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. Except as provided by design-build or construction management procedures, no person or firm shall be eligible neither to bid on the construction or any such implementation contract nor to have the same awarded to him or it who has been engaged as architect, engineer or provider of other professional service for the same project.

- 3. Other than Professional Services.** Procurement of other than professional services. 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 Proposals, including price if so stated in the Request for Proposals. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the public body shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. The City shall not be required to make

an award and may reject any or all proposals at any time during the process. Should the public body 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.

**4. Design-Build or Construction Management Contracts Authorized.**

Notwithstanding any other provisions of law, after reasonable notice to the public and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public for a specific procurement of construction, then that specific procurement may be made by competitive negotiation on a fixed price or not-to-exceed price design-build basis or construction management basis in accordance with the provisions of this section.

- a. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. In the second-step, based upon the information submitted and any other relevant information which the City may obtain, the City shall request two or more offerors deemed fully qualified and most suited for the project to submit a detailed proposal including non-binding pricing.
- b. Negotiations shall then be conducted with each of the offerors so selected. The City shall not be required to award the design-build contract based on lowest price; price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the City may select the offeror which, in its opinion, has made the best proposal, and may award the contract to that offeror.
- c. The City may authorize payment to no more than three of the second-step participating offerors who are not awarded the design-build contract if the City determines that payment is necessary to promote competition.

- d. The City shall not be required to award a contract; the City reserves the right to reject any and all proposals.

- E. **Modification of Contracts.** A City contract may include provisions for modification of the contract during performance. Subject to the availability of funding, the Department Head of the using agency and the Purchasing Agent may authorize modifications to the contract with regard to time, a decrease in the contract amount, and/or an increase or cumulative increases up to ten (10) percent of the original contract amount. No fixed or unit price contract may be increased by more than a cumulative increase of ten (10) percent, without prior approval of the City Manager; subject to the availability of funding, the City Manager may authorize contract modifications up to a cumulative increase of twenty-five (25) percent. Proposed modifications to any contract which would result in a cumulative increase of more than twenty-five (25) percent, shall have prior approval of the City Council.
- F. **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.
- G. **Discrimination Prohibited.** In the solicitation or awarding of contracts, the City shall not discriminate against a bidder or offeror because of race, religion, color, sex, or national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment.
- H. **Prequalification.** Prospective contractors may be prequalified for particular types of supplies, services, insurance or construction, and consideration of bids or proposals limited to prequalified contractors. Any prequalification procedure shall be established in writing and sufficiently in advance of its implementation to allow potential contractors a fair opportunity to complete the process.
- I. **Debarment.** In accordance with Suffolk City Code, the City may, in the public interest, debar a contractor for any of the causes.

- J. Preference for Suffolk and Virginia Products and Firm.** In case of a tie bid, preference shall be given to goods, services and construction produced in Suffolk or provided by Suffolk persons, firms or corporations, if such a choice is available; otherwise the tie shall be decided by lot. Like preference shall be given for Virginia persons, firms and corporations when tied with non-Virginia firms, persons or corporations.
- K. 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 named; it conveys the general style, type, character, and quality of the article desired, and any article which the City 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.
- L. Employment Discrimination by Contractor Prohibited.** The City shall include in every contract of over \$10,000 the provisions in a and b herein:
1. 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 or national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in a conspicuous place, 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, rules or regulations shall be deemed sufficient for the purpose of meeting the requirements of this section.
2. The contractor will include the provisions of the forgoing paragraphs a, b and c in every subcontract or purchase order of over \$10,000 so that the provisions will be binding upon each subcontractor or vendor.

**M. Drug-free Workplace.** 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 this chapter, 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.

The City shall include in every contract of over \$10,000 the provisions herein:

1. During the performance of this contract, the contractor agrees to:
  - a. provide a drug-free workplace for contractor's employees;
  - b. 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;
  - c. 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
  - d. 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.

- N. **Negotiation With Lowest Responsible Bidder.** Unless canceled or rejected, 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, the City may negotiate with the apparent low bidder to obtain a contract price within available funds.

When the award is not to the apparent low bidder, a statement for placing the order elsewhere shall be prepared by the Director of the Using Department and approved by the Purchasing Agent, and shall be filed with the transaction.

1. **Procedures for Negotiations.** If the City wishes to negotiate with the apparent low bidder to obtain a contract price within available funds, negotiations shall be conducted in accordance with the following procedures:
  - a. The Director of Finance and the Purchasing Agent shall determine that the apparent low bid exceeds available funds.
  - b. The Purchasing Agent shall advise the lowest responsible bidder, in writing, that the proposed purchase exceeds available funds. After consultations with the Director of the Department involved, the Purchasing Agent may suggest a reduction in scope for the proposed purchase, and invite the lowest responsible bidder to amend its bid proposal based upon the proposed reduction in scope.
  - c. Repetitive informal discussions with the lowest responsible bidder for purposes of obtaining a contract within available funds shall be permissible.
  - d. The lowest responsible bidder shall submit a written addendum to its bid, which addendum shall include: the change in scope for the proposed purchase; the reduction in price; and the new contract value.
  - e. If the proposed addendum is acceptable to the City, the City may award a contract within funds available to the lowest responsible bidder based upon the amended bid proposal.

- f. If the City and the lowest responsible bidder cannot negotiate a contract within available funds, all bids shall be rejected.

**O. Withdrawal of Bid Due to Error**

1. In accordance with Section 2.2.4330 of the Code of Virginia method (ii), 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 bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within two business days after the conclusion of the bid opening. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of the Virginia Freedom of Information Act. Pursuant to the Invitation for Bid, the bids shall be opened one day following the date and time fixed for the submission of bids. A contract shall not be awarded until two hours after the opening of the bids. Documentation of such mistake shall be provided only from the original work papers, documents and materials delivered as required herein.
2. 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.
3. If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

4. 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.
5. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing stating the reasons for his decision.

**P. Retainage on Construction Contracts.**

1. 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.
2. Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

**Q. Deposit of certain retained funds.**

1. When contracting directly with contractors for public contracts of \$200,000 or more for construction of highways, roads, streets, bridges, parking lots, demolition, clearing, grading, excavation, 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 with the Bid Proposal an option for the contractor to use an escrow account procedure for utilization of the political subdivision's retainage funds by so indicating in the space provided in the proposal documents. In the event the contractor elects to use the escrow account procedure, the Escrow Agreement form included in the Bid Proposal and Contract shall be executed and submitted to the City 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 political subdivision entering into the contract 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 with a county, city, town or agency thereof or other political subdivision of the Commonwealth, 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.

**R. Public construction contract provisions barring damages for unreasonable delays declared void.**

1. Any provision contained in any public construction contract entered into, that purports to waive, release, or extinguish the rights of a contractor to recover costs or damages for unreasonable delay in performing such contract, either on his behalf or

on behalf of his subcontractor if and to the extent such delay is caused by acts or omissions of the public body, its agents or employees and due to causes within their control is against public policy and is void and unenforceable.

2. Subsection A shall not be construed to render void any provision of a public construction contract that:
  - a. Allows a public body to recover that portion of delay costs caused by the acts or omissions of the contractor, or its subcontractors, agents or employees;
  - b. Requires notice of any delay by the party claiming the delay;
  - c. Provides for liquidated damages for delay; or
  - d. Provides for arbitration or any other procedure designed to settle contract disputes.
3. A contractor making a claim against a public body for costs or damages due to the alleged delaying of the contractor in the performance of its work under any public construction contract shall be liable to the public body and shall pay it of a percentage of all costs incurred by the public body in investigating, analyzing, negotiating, litigating and arbitration the claim, which percentage shall be equal to the percentage of the contractor's total delay claim which is determined through litigation or arbitration to be false or to have no basis in law or in fact.
4. A public body denying a contractor's claim for costs or damages due to the alleged delaying of the contractor in the performance of work under any public construction contract shall be liable to and shall pay such contractor a percentage of all costs incurred by the contractor to investigate, analyze, negotiate, litigate and arbitrate the claim. The percentage paid by the public body shall be equal to the percentage of the contractor's total delay claim for which the public body's denial is determined through litigation or arbitration to have been made in bad faith.

**S. Workers' Compensation – Construction Contracts.**

No contractor shall perform any work on a construction project of the City unless he (i) has obtained, and continues to maintain for the duration of the work, workers' compensation coverage required pursuant to the provisions of the Code of Virginia, Chapter 8.

**T. Bid Bonds.**

1. Except in cases of emergency, all bids or proposals for construction contracts in excess of \$100,000 shall be accompanied by a bid bond from a surety company selected by the bidder which 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.
2. No forfeiture under a bid bond shall exceed the lesser of (i) the difference between the bid for which the bond was written and the next low bid, or (ii) the face amount of the bid bond.
3. Nothing in this section shall preclude the City from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than \$100,000.

**U. Performance and Payment Bonds.**

1. Upon the award of any public construction contract exceeding \$100,000 awarded to any prime contractor, such contractor shall furnish to the City the following bonds:
  - a. Except for transportation-related projects, a performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects, such bond shall be in a form and amount

satisfactory to the public body.

- b. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the role provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.
2. 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.
  3. Such bonds shall be payable to the City.
  4. Each of the bonds shall be filed with the Purchasing Agent.
  5. Nothing in this section shall preclude the City from requiring payment or performance bonds for construction contracts below \$100,000.
  6. Nothing in this section shall preclude such contractor from requiring each subcontractor to furnish a payment bond or alternative forms of security with surety thereon in the sum of the full amount of the contract with such subcontractor conditioned upon the payment to all persons who have and fulfill contracts which are directly with the subcontractor for performing labor and furnishing materials in the prosecution of the work provided for in the subcontract.
- V. **Alternative Forms of Security**. If approved by the City, in lieu of a bid, payment, or performance bond, a bidder may furnish a letter of credit, certified check, personal bond, or a property bond, on certain designated funds in the face amount required for the surety bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the City equivalent to a corporate surety's bond.

**W. Bonds or Alternative Forms of Security on Other Than Construction Contracts.** The Purchasing Agent may require bid, payment, performance bonds or alternative forms of security for contracts for goods and services if provided in the Invitation to Bid or Request for Proposals.

**X. Action on Bonds.**

**1. Action on Performance Bond or Alternative Forms of Security** No action against the surety on a performance bond or alternative forms of security shall be brought unless within one year after (i) completion of the contract, including the expiration of all warranties and guarantees, or (ii) discovery of the defect of breach of warranty, if the action be for such, in all other cases.

**2. Actions on Payment Bonds or Alternative Forms of Security.**

a. Subject to the provisions of subsection B hereof, any claimant who has performed labor or furnished material in accordance with the contract documents in the prosecution of the work provided in any contract for which a payment bond or alternative forms of security have 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 or alternative forms of security 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 but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within 180 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. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

- c. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.
- d. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

**Y. Public inspection of certain records.**

- 1. 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 (§2.2-3700 et seq.).
- 2. Cost estimates relating to a proposed procurement transaction prepared by or for a public body shall not be open to public inspection.
- 3. 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 but prior to award, except in the event that the public body decides not to accept any of the bids and to reopen the contract. Otherwise, bid records shall be open to public inspection only after award of the contract.

4. 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 but prior to award, except in the event that the public body decides not to accept any of the proposals and to reopen the contract. Otherwise, proposal records shall be open to public inspection only after award of the contract.
5. Any inspection of procurement transaction records under this shall be subject to reasonable restrictions to ensure the security and integrity of the records.
6. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction or prequalification application submitted pursuant to Code of Virginia subsection B of 2.2-4317, shall not be subject to public disclosure under the Virginia Freedom of Information Act; (§2.2-3700 et seq.) however, the bidder, offeror or contractor must invoke the protections 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.

## CHAPTER IV – METHODS OF PROCUREMENT

Except as provided herein, all public contracts with non-governmental contractors for the purchase or lease of goods, services, insurance, or construction shall be awarded after competitive procedures as provided in this manual. The City's thresholds for exception to formal competitive sealed bids or competitive negotiations shall not exceed those established by Virginia Public Procurement Act. Such procurement transactions shall provide for competition wherever practicable and shall be subject to requirements of this manual and regulations promulgated by the City Manager.

**A. Small Dollar.** The City may award single or term contracts not to exceed \$30,000 for goods—and non-professional services without formal competitive sealed bidding or competitive negotiation; this ~~small dollar~~ threshold applies to the total value of all phases of single or term contracts. Contract requirements shall not be artificially divided so as to qualify as an exception and shall be subject to small dollar procedural requirements established herein. Small dollar purchase procedures for purchases of goods and non-professional services are outlined below:

- 1. Less than \$1,000 per unit for goods and \$5,000 for non-professional services.** Requirements for goods which are less than \$1,000 per unit may be purchased at the discretion of the using agency provided the total order does not exceed \$5,000. Agencies are encouraged to consider total delivered cost and convenience in making a vendor selection and to seek competition where practicable. Requirements for non-professional services which are less than \$5,000 may be purchased at the discretion of the using agency. The exception to these thresholds is the use of established City Annual Contracts for goods and services. Said purchases should be processed for payment by Payment Voucher rather than Requisition/Purchase Order unless special circumstances (unique purchase, grant requirements, vendor requirements, or service contracts) exist. The Purchasing Agent may execute the contract for small dollar purchases, or refer them to the City Manager, and issue a Purchase Order for the City.
  
- 2. Goods with a cost between \$1,000 and \$5,000 per unit.** Where the cost is expected to be between \$1,000 and \$5,000 per unit and the total order does not exceed

\$30,000, no fewer than two valid responsible vendors shall be solicited to submit oral, electronic, or written quotations. The using agency may elect to obtain quotations and provide documentation to Purchasing but the using agency shall not make any commitment to a vendor without benefit of a Purchase Order. Oral quotations shall be documented and must contain the name of the business submitting quotation; the person providing the quote, the date, and the amount of each quotation shall be recorded and maintained as a public record by the Purchasing Division unless otherwise delegated herein. Use of the City's Telephone Quotation Form is encouraged. The purchase and payment shall be processed by Requisition/Purchase Order. The exception to this is the use of established City Annual Contracts for goods and services.

**3. Total cost between \$5,000 and \$30,000 for goods and non-professional services**

Where the total cost is expected to be between \$5,000 and \$30,000, written quotations shall be solicited from no fewer than three valid responsible vendor sources. The using agency or Purchasing shall furnish a written scope of work and/or specifications to responsible vendors and obtain written quotations. The using agency shall not make any commitment to a vendor without benefit of a Purchase Order. The name and address of the vendor, the name of the vendor's representative submitting the quotation, the date, and the amount of each quotation shall be submitted in writing or electronically by the vendor and maintained as a public record by Purchasing; the purchase and payment shall be processed by Requisition/Purchase Order.

**4. Requirement of more stringent procedures.** Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for small dollar purchases.

**B. Competitive Sealed Bidding.** Except as provided for herein, the City shall award single or term contracts expected to exceed \$30,000 for goods and non-professional services after formal competitive sealed bidding as defined herein, including a written Request for Bids.

**1. Construction.** Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a

determination made in advance by the public body and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

- a. By any public body for the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;
- b. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

2. **Design-build construction management contracts.** Design-build construction management contracts under \$1 million do not require a local public body to obtain approval of the Design-Build Review Board.

C. **Competitive Negotiation – Professional Services.** Professional services means work performed by an independent contractor within the scope of the practice of accounting, actuarial services, architecture, land surveying, landscape architecture, law, dentistry, medicine, optometry, pharmacy or professional engineering. Professional services shall be procured by competitive negotiation, as defined herein, including a written Request for Proposals.

1. **Professional Services less than \$30,000.** Contracts for professional services which are expected to be less than \$30,000 may be initiated at the using agency level; the using agency shall not make any commitment to a vendor without benefit of a Purchase Order. The using agency shall solicit qualifications from at least three valid responsible vendors known to provide the type of service(s) desired. The Department Head may negotiate a contract with the vendor deemed fully qualified and best suited. The negotiated contract, a written explanation of the selection process, and a Requisition shall be forwarded to the Purchasing Agent for review for compliance with procedures stated in this manual; the Purchasing Agent may execute the contract and subsequent change orders, or refer it/them to the City Manager, and

issue a Purchase Order for the City. The purchase and payment shall be processed by requisition/purchase order.

- 2. Professional Services \$30,000 or more.** Professional services expected to exceed \$30,000, as the total value of all phases of a single or term contract, shall be procured by formal competitive negotiation as defined herein. Contracts shall be approved as to form by the City Attorney; contracts and subsequent change orders shall be executed by the City Manager or his designee. The Purchasing Agent will issue a Purchase Order for the purpose of processing and tracking payments.
  
- 3. Architectural and Engineering Services Annual Contract Limits.** A contract for architectural or professional engineering services relating to construction projects may be negotiated by a public body, for multiple projects provided (i) the projects required 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 two additional one-year terms at the option of the public body. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed, (b) the sum of all projects performed in one contract term shall not exceed \$500,000 or, in the case of a state agency, as defined in § 2.2-4347, such lesser amount as may be determined by the Director of the Department of General Services, except that in any locality or any authority or sanitation district with a population in excess of 80,000, the sum of all such projects shall not exceed \$1 million; and (c) the project fee of any single project shall not exceed \$100,000 or, in the case of a state agency, such lesser amount as may be determined by the Director of the Department of General Services, except that in any locality or any authority or sanitation district with a population in excess of 80,000, such fee shall not exceed \$200,000. 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 public body has established procedures for distributing multiple

projects among the selected contractors during the contract term. (VPPA §2.2-4301.3.a)

- D. Competitive Negotiation – Other than Professional Services.** Upon a determination made in advance by the public body after reasonable notice to the public and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public for a specific procurement of goods, services, insurance or construction, then that specific procurement may be made by competitive negotiation. The writing shall document the basis for this determination.
- E. Emergencies.** In the event of a threat to public health, welfare, or safety, a contract may be awarded without competitive sealed bidding, competitive sealed proposals or competitive negotiation. Such procurement, however, shall be made with such competition as is practicable under the circumstances. If an emergency occurs during office hours, the using department shall immediately notify the Purchasing Agent, who shall either purchase directly or authorize the purchase of the needed supplies. If any emergency occurs during non-office hours, the using department may purchase any supplies or services needed to meet such existing emergency, provided that the department head shall send as soon as practicable to the Purchasing Agent a requisition and a copy of the delivery receipt together with written explanation of the circumstances of the emergency. Use of the City's Emergency Procurement Approval Request and Authorization Form is encouraged, see Appendix.
- F. Cooperative Procurement.** The City may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies, agencies or institutions for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods and services. Any public body which enters into a cooperative procurement agreement with the City shall comply with the policies and procedures herein. Except for contracts for professional services, a public body may purchase from another public body's contract even if it did not participate in the request for proposal or request to bid, if the request specified that the procurement was being conducted on behalf of other public bodies.

**G. Construction with State funds.** No contract for the construction of any building or for an addition to or improvement of an existing building for which state funds of \$30,000 in the aggregate or for the sum of all phases of a contract or project; either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive bidding or competitive negotiation as provided under VPPA, subsection D of § 2.2-4303. The procedures for advertising for bids and letting of the contract shall conform, mutatis mutandi<sup>7</sup>, to this section. No person or firm shall be eligible neither to bid on construction or any such implementation contract nor to have the same awarded to him or it that has been engaged as architect or engineer for the same project.

**H. Exemptions from competitive procedures.**

- 1. State contracts, Sheltered workshops and GSA Contracts.** The City may enter into contracts without competition for the purchase of goods or services which are performed or produced by:
  - a. State Contracts or the State Warehouse
  - b. Sheltered workshops
  - c. U.S. General Services Administration (GSA) contracts or a contract awarded by any other agency of the U.S. Government
  
- 2. Legal services.** The City Attorney may enter into contracts, without competition, for legal services: and for expert witnesses and other services associated with litigation or regulatory proceedings. The provisions of Chapter 5 2.2-500 et seq.) of the Code of Virginia are included by reference in these regulations, mutatis mutandis.
  
- 3. Special police operations.** The City may enter into contracts for purchases for special police work without competitive sealed bidding or competitive negotiation when the Chief of Police certifies to the City Manager that the items are needed for undercover police operations.
  
- 4. Sole Source** Upon a determination that only one source is practicably available, the

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<sup>7</sup> Mutatis mutandis - with the necessary changes in points of detail, meaning that matters or things are generally the same, but to be altered when necessary as to names and the like.

requesting department head shall certify in writing the request for sole source procurement. Use of the City's Sole Source Procurement Approval Request Form is encouraged, see Appendix. After the Purchasing Agents approval of the sole source procurement, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The Sole Source Procurement Award shall be posted for public inspection.

5. **Extension of term of contract.** The City may extend the term of an existing contract for services to allow completion of any work undertaken but not completed during the original term of the contract.
  6. **Public Auction.** Upon a determination made in advance by the local governing body and set forth in writing that the purchase of goods, products or commodities from a public auction sale is in the best interests of the public; such items may be purchased at the auction. The writing shall document the basis for this determination.
  7. **Insurance procured through agent or broker.** Upon a determination made in advance by the public body and set forth in writing that competitive negotiation is either not practicable or not fiscally advantageous to the public, insurance may be procured through a licensed agent or broker selected by competitive negotiation. The writing shall document the basis for this determination.
- I. **Modification of contract.** The City may modify a contract to change the scope or work. Modifications which involve a change in contract price or the contract time are subject to procedures and approvals as specified herein.
  - J. **Contract Pricing Arrangements.** Subject to the limitations of this manual, any type of contract which is appropriate to the procurement and which will promote the best interest of the City may be used; provided that the use of a cost-plus-a-percentage-of-cost contract or a cost-plus-a-percentage-of-construction-cost contract are prohibited. A cost reimbursement contract may be used only when a determination is made in writing that such contract is likely to be less costly to the City than any other type or that it is impracticable to obtain the

supply, service, or construction item required except under such a contract.

- K. Multi-term Contracts.** 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 interests of the City provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are made available for the first fiscal year at the time of contracting.
  
- L. Public-Private Education Facilities and Infrastructure Act (PPEA).** Qualifying projects may be procured under the provisions of the City's Procedures Regarding Requests made Pursuant to the Public-Private Education Facilities and Infrastructure Act.

## CHAPTER V – DISPOSAL OF SURPLUS PROPERTY

- A. **Authority.** Unless otherwise directed by City Council, the Purchasing Agent at the direction of the City Manager shall sell, trade, or otherwise dispose of all materials, supplies, equipment, or other personal property recorded as a fixed asset if it has become excess to its requirements, obsolete, and/or unusable by the using department, or any other City department. Sale, transfer, or other disposal of any single item realizing with a then current book or fair market value of more than \$1,000 shall require prior approval of disposition by the City Manager.

Materials, supplies, equipment or other personal property which are not recorded as a fixed asset and have a current book or fair market value of less than \$1,000 may be disposed of at the end of their useful life at the discretion of the department head of the using agency.

- B. **Reporting of Surplus Personal Property and Equipment.** All using departments shall, as requested by the Purchasing Agent, report on the form prescribed by the Purchasing Agent any and all items of surplus supplies, materials, equipment or other personal property to which the using department has no further need, including cannibalization and trade-in of any equipment items. The Purchasing Agent shall report final disposition to the Director of Finance.
- C. **Disposal of Surplus Property.** Unless otherwise directed by City Council, methods for disposal of surplus property shall be limited to:
1. **Cannibalization.** At the discretion of the department head of the using agency, obsolete, worn-out, inactive, or uneconomical operating equipment may be used for parts for the repair of other equipment.
  2. **Trade-in.** At the discretion of the department head of the using agency, obsolete, worn-out, inactive, or uneconomical operating equipment may be traded-in on the purchase of equipment of the same commodity class which has been approved through the budgetary process.
  3. **Transfers.** Items may be transferred to another agency within the City with or

without the transfer of funds. Items may be transferred to other political subdivisions and schools at fifty percent of the item's fair market value; no-cost transfers are not authorized.

4. **Sales.** All sales of property pursuant to this section shall be sold on the basis of: (1) competitive bids or quotations as governed by small dollar procedures; or (2) public auction. The Purchasing Agent shall use whichever method he believes will raise the highest revenue for the City. Public notice shall be given for any sale of surplus property including a posting on the bid board maintained by the Purchasing Division for a minimum of three business days; additional public notice requirements shall be in accordance with provisions of Chapter III C.2 of this manual.

In the event that no offer is received in response to methods (1) and (2) of this section, within thirty days thereafter, the Purchasing Agent may accept any subsequent offer to purchase said surplus property deemed to be in the City's best interest.

5. **Donation.** With the approval of City Council, any surplus property which remains unsold may be donated to any non-profit or historical organization.
6. **Scrap.** Should no additional offers be received or direction for donation by City Council be given within thirty days, the Purchasing Agent may declare the surplus void of any value to the City and notify the department to dispose of the property as scrap at an appropriate landfill facility.

## CHAPTER VI – ETHICS IN PUBLIC CONTRACTING

- A. **Purpose.** The provisions of this chapter supplement, but do not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (Section 2.2-3100), the Virginia Governmental Frauds Act (Section 18.2-498.1 et. Seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions of this chapter apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Virginia Conflict of Interests Act.
- B. **Proscribed Participation by Public Employees in Procurement Transactions.** No employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the City 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.
- C. **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 or minimal value, present or promised,

unless consideration of substantially equal or greater value is exchanged. The City may recover the value of anything conveyed in violation of this section.

- D. 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 public body unless the employee, or former employee, provides written notification to the public body, or a public official if designated by the public body, or both, prior to commencement of employment by that bidder, offeror or contractor.
- E. 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.
- F. Kickbacks.**
1. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, present or promised, unless consideration of substantially equal or greater value is exchanged.
  2. No subcontractor or supplier shall make, or offer to make, kickbacks as described in this section.
  3. No person shall demand or receive any payment, loan, subscription, advance, and deposit of money, services or anything of value in return for an agreement not to compete on a public contract.
  4. If a subcontractor or a supplier makes a kickback or other prohibited payment as described in this section, the amount thereof shall be conclusively presumed to have

been included in the price of the subcontract or order and ultimately borne by the City and will be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

**G. Purchase of Building Materials, Etc., From Architect or Engineering Prohibited.**

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the City shall be sold by or purchased from any person employed as an independent contractor by the City to furnish architectural or engineering services, but not construction, for such building or structure, or from any partnership, association, or corporation in which such architect or engineer has a pecuniary interest.

**H. Penalty for Violation.** Willful violation of any provision of this chapter shall constitute a Class I misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

## CHAPTER VII – REMEDIES

### A. Ineligibility

1. Any bidder, offeror or contractor refused permission to, or disqualified from participation 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 by filing a written rebuttal per standards of Chapter VII, Section I, or instituting legal action as provided in Chapter VII, Section H.
2. 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.

### B. Appeal of denial of withdrawal of bid

1. A decision denying withdrawal of bid under the provisions of VPPA 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by instituting legal action.
2. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of VPPA 2.2-4330 prior to appealing, shall deliver to the public body a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next low bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.
3. 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.

**C. Determination of nonresponsibility**

1. Any bidder who, despite being the apparent low bidder, is determined not to be a responsible bidder for a particular contract shall be notified in writing. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days by filing a written rebuttal per standards of the VPPA 2.2-4365 or instituting legal action as provided in the VPPA 2.2-4364.
2. If, upon appeal, it is determined that the decision of the public body 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 is a responsible bidder for the contract in question. If it is determined that the decision of the public body was arbitrary or capricious, the relief shall be as set forth in the VPPA Subsection A of 2.2-4364.
3. A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this chapter, and may not protest the award or proposed award under the provisions of the VPPA 2.2-4360.
4. Nothing contained in this chapter shall be construed to require a public body, when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

**D. Protest of award or decision to award**

1. Any bidder or offeror who desires to protest the award or decision to award a contract shall submit such protest in writing to the public body, or an official designated by the public body, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Any potential bidder or offeror on a contract negotiated on a sole source or emergency basis who desires to protest the award or decision to award such contract shall submit such protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in the VPPA 2.2-4303.

However, if the protest of any actual or potential bidder or offeror depends in whole or in part upon information contained in public records pertaining to the procurement transactions which are subject to inspection under VPPA 2.2-4342 then the time within which the protest must be submitted shall expire ten days after those records are available for inspection VPPA 2.2-4342 by such bidder or offeror under VPPA 2.2-4342 or at such later time as provided in this chapter. 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 public body or designated official shall issue a decision in writing within ten days 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 for in the VPPA 2.2-4364.

2. 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 public body 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 public body 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.
3. Where a public body, an official designated by that public body, or an appeals board 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 6 (2.2-4367), the public body, designated official or appeals board may enjoin the award of the contract to a particular bidder.

**E. 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 chapter shall not be affected by the fact that a protest or appeal

has been filed.

**F. Stay of award during protest**

An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest as provided in VPPA 2.2-4360, 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.

**G. Contractual disputes**

1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than sixty days after final payment or as allowed by the specific contract; however, written notice of the contractor's intention to file such claim shall 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 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.
2. The City shall give consideration of contractual claims and provide a written decision within thirty days, or as allowed by the specific contract, of receipt of claim.
3. A contractor may not institute legal action as provided herein in Chapter VII, Section H, prior to receipt of the public body's decision on the claim, unless the public body fails to render such decision within the time specified in the contract.
4. The decision of the public body shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by the public body by instituting legal action as provided herein in VPPA 2.2-4364.

**H. Legal actions**

1. A bidder or offeror, actual or prospective, who is refused permission or disqualified from participation in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring action in the

appropriate circuit 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 VPPA, Subsection B of 2.2-4317.

2. A bidder denied withdrawal of a bid under the VPPA 2.2-4358 may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the bidder establishes that the decision of the public body was clearly erroneous.
3. A bidder, offeror or contractor, or a potential bidder or offeror on a contract negotiated on a sole source or emergency basis in the manner provided in VPPA 2.2-4303 whose protest of an award or decision to award under VPPA 2.2-4360 is denied, may bring an action in the appropriate circuit 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, statutes, regulations or the terms and conditions of the Invitation to Bid or Request for Proposals.
4. If injunctive relief is granted, the court, upon request of the public body, shall require the posting of reasonable security to protect the public body.
5. A contractor may bring an action involving a contract dispute with a public body in the appropriate circuit court.
6. A bidder, offeror or contractor need not utilize rebuttal procedures meeting the standards of VPPA 2.2-4365 if available, but if those procedures are invoked by the bidder, offeror or contractor, the procedures shall be exhausted prior to instituting legal action concerning the same procurement transaction unless the public body agrees otherwise.
7. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

**I. Rebuttal procedure**

1. Any bidder, offeror or contractor may file a written rebuttal with the public body, or an official designated by the public body, to refute a decision from ineligibility, disqualifications and determinations of nonresponsibility, and appeals from decisions on disputes arising during the performance of a contract, or any of these. The written rebuttal must be received by the official designated by the public body within ten days of the issuance of the decision notice and must disprove the decision to be false or erroneous not by mere denial, but by affirmative evidence to the contrary. The public body shall issue a written decision containing findings of fact. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (i) fraudulent, arbitrary or capricious; (ii) so grossly erroneous as to imply bad faith; or (iii) in the case of denial of prequalification, such findings were not based upon the criteria for denial of prequalification set forth in the solicitation. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.
  
2. Any party to this administrative procedure, including the public body, shall be entitled to institute judicial review if such action is brought within thirty days of receipt of the written decision.

**J. Alternative dispute resolution**

Public bodies are authorized to submit disputes arising from contracts entered into pursuant to this Chapter to arbitration and to utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the public body are subject to 2.2-514 of the Code of Virginia.