

**HARRISONBURG REDEVELOPMENT
AND HOUSING AUTHORITY**

PURCHASING AND CONTRACTING POLICY

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**HARRISONBURG REDEVELOPMENT
AND HOUSING AUTHORITY**

PURCHASING AND CONTRACTING POLICY

**ARTICLE A
GENERAL PROVISIONS**

§ 4-3-1 Preamble.

The Harrisonburg Redevelopment and Housing Authority's (the "Authority") purchasing and contracting policy shall be as follows:

§ 4-3-2 Purpose.

The purpose of this policy is to increase public confidence in purchasing by this Authority, to encourage competition in public purchasing among vendors or contractors, to administer fairly and equitably purchasing policies among bidders and to obtain high quality goods and services at the lowest possible price.

§ 4-3-3 Application.

(a) This policy applies to contracts for the procurement of goods, services, insurance and construction entered into by this Authority involving every expenditure for public purchasing irrespective of its source.

(b) When a procurement transaction involves the expenditure of federal assistance or contract funds, the receipt of which is conditioned on compliance with mandatory requirements in federal laws or regulations not in conformance with the provisions of the Virginia Public Procurement Act and this Purchasing and Contracting Policy, the Authority may comply with such federal requirements, notwithstanding contrary provisions of state law or this policy, only upon the written determination of the commissioners that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provisions of state law and the Purchasing and Contracting Policy which is in conflict with the conditions of the grant or contract.

§ 4-3-4 Effective Date of Policy.

This policy shall become effective February 21, 1990, and shall replace all purchasing and contracting policies previously adopted. The provisions of this policy shall not apply to those contracts entered into prior to February 21, 1990, which shall continue to be governed by the procurement policies and regulations of the Authority in effect at the time those contracts were executed.

§ 4-3-5 Severability.

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

§ 4-3-6 Definitions.

- (1) Authority. The Harrisonburg Redevelopment and Housing Authority.
- (2) Brand Name Specification. A specification limited to one or more items by manufacturers' names or catalog numbers.
- (3) Brand Name or 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 Authority requirements and which provides for the submission of equivalent products.
- (4) Business. Any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture or any other private legal entity.
- (5) Change Order (Unilateral). A written order signed and unilaterally issued by the Purchasing Agent directing the contractor to make changes which the "changes" clause of the contract authorizes the Purchasing Agent to order without the consent of the contractor.
- (6) Confidential Information. Any information which is available to an employee only because of the employee's status as an employee of this Authority and is not a matter of public knowledge or available to the public on request.
- (7) Construction. Building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property.
- (8) 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.
- (9) Contract. All types of Authority agreements, regardless of what they may be called, for the procurement of goods, services, insurance or construction.
- (10) Contract Modification. Any written alteration in specifications, 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.

- (11) Contractor. Any person having a contract with the Authority or an agency thereof.
- (12) Cost Analysis. The evaluation of cost data for the purpose of arriving at costs actually incurred or estimates of costs to be incurred, prices to be paid, and costs to be reimbursed.
- (13) Costs Data. Factual information concerning the cost of labor, material, overhead, and other cost elements which are expected to be incurred or which have been actually incurred by the contractor in performing the contract.
- (14) Cost-Reimbursement Contract. A contract under which a contractor is reimbursed for costs which are allowable and allocable in accordance with the contract terms and the provisions of this policy, and a fee or profit, if any.
- (15) Design-Build Contract. A contract under which a contractor agrees to both design and build the structure or other item specified in the contract.
- (16) Direct or Indirect Participation. Involvement in any procurement transaction through decision, approval, disapproval, recommendation, preparation of any part of a purchase request, influencing the content of any specification or procurement standard, rendering of advice, investigation, auditing, or in any other advisory capacity.
- (17) Disadvantaged Business. A small business which is owned or controlled by a majority of persons, not limited to members of minority groups, who have been deprived of the opportunity to develop and maintain a competitive position in the economy because of social disadvantages.
- (18) Employee. An individual drawing a salary or wages from the Authority whether elected or not; any noncompensated individual performing personal services for the Authority or any department, agency, commission, council, board or any other entity established by the executive or legislative branch of the Authority and noncompensated individual serving as an elected official of the Authority.
- (19) Executive Director. The chief administrative officer of the Authority.
- (20) Goods. All material, equipment, supplies, printing and automated data processing hardware and software.
- (21) Governing Body. The commissioners of the Authority who are appointed as provided by law.
- (22) Immediate Family. A spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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

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

(25) Invitation to Bid (also Invitation for Bids). All documents, whether attached or incorporated by reference, utilized for soliciting sealed bids. No confidential or proprietary data shall be solicited in any Invitation to Bid.

(26) Nominal Value. A sum which is no more than Two Hundred Fifty Dollars (\$250.00).

(27) Nonprofessional Services. Any services not specifically defined hereafter as professional services.

(28) Official Responsibility. Administrative or operating authority, whether intermediate or final, to initiate, approve, disapprove or otherwise affect a procurement transaction, or any claim resulting therefrom.

(29) Pecuniary Interest Arising From the Procurement. A material financial interest as defined in the Virginia Conflict of Interests Act (§ 2.1-348, *et seq.*).

(30) Person. Any business, individual, union, committee, club, other organization, or group of individuals.

(31) Price Analysis. The evaluation of price data, without analysis of the separate cost components and profit as in cost analysis, which may assist in arriving at prices to be paid and costs to be reimbursed.

(32) Pricing Data. Factual information concerning prices for items substantially similar to those being procured. Prices in this definition refer to offered or proposed selling prices, historical selling prices and current selling prices. The definition refers to data relevant to both prime and subcontract prices.

(33) Procurement Act means the Virginia Public Procurement Act, § 2.2-4300; Chapter 43, Title 2.2, 1950 Code of Virginia, as amended from time to time.

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

(35) Professional Services. Work performed by an independent contractor within the scope of the practice of accounting, architecture, land surveying, landscape, architecture, law, medicine, optometry or professional engineering.

(36) Public Body. Any legislative, executive or judicial body, agency, office, department, authority, post, commission, committee, institution, board or political subdivision created by law to exercise some sovereign power or to perform some governmental duty and empowered by law to undertake the activities described in this policy.

(37) Public Employee. Any person employed by a public body, including elected officials or appointed members of governing bodies.

(38) Purchasing Agent. The executive director or other individuals designated by the executive director as the Purchasing Agent for the Authority.

(39) Qualified Products List. An approved list of goods, services, or construction items described by model or catalog number, which, prior to competitive solicitation, the Authority has determined will meet the applicable specification requirements.

(40) Request for Proposal (RFP). A written public notification soliciting proposals for professional, nonprofessional, or contractor services. An RFP generally describes the services sought, the unique capabilities or qualifications needed to perform the work, factors to be used to evaluate the proposals and the conditions for negotiating the prices and terms with the offerors. All documents, whether attached or incorporated by reference, utilized for soliciting proposals.

In design-build and construction management procurement, an RFP is the second step of a two-step, competitive negotiation process in which a written request to submit both technical and cost proposals is issued to those persons who have been prequalified.

(41) Request for Qualifications (RFQ). A written public notification inviting interested qualified persons to apply for prequalification. In design-build and construction management procurement, an RFQ is first step of a two-step, competitive negotiation process.

(42) Responsible Bidder or Offeror. A person who has the capability, in all respects, to perform fully the contract, assure good faith performance, and who has been prequalified, if required.

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

(44) 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.

(45) Sheltered Workshop. A 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.

(46) Small Business. A United States business which is independently owned and which is not dominant in its field of operation or an affiliate or subsidiary of a business dominate in its field of operation.

(47) Specification. Any description of the physical or functional characteristics, or of the nature of a good service or construction item. It may include a description of any requirement for inspecting, testing, or preparing a good, service or construction item for delivery.

ARTICLE B OFFICE OF THE PURCHASING AGENT

§ 4-3-7 Establishment and Appointment.

(a) There is hereby created a purchasing system to operate under the direction and supervision of the executive director.

(b) The executive director shall be the Authority's Purchasing Agent.

§ 4-3-8 Purchasing Agent's Authority.

The Purchasing Agent is authorized to procure goods, services, insurance and construction in accordance with this policy.

§ 4-3-9 Duties.

In accordance with this policy, the Purchasing Agent shall: (1) purchase or supervise the purchasing of all goods, services, insurance and construction needed by the Authority; (2) exercise direct supervision over the Authority's central stores and general supervision over all other inventories of goods belonging to the Authority; and (3) establish and maintain programs for specifications, development, contract administration, and inspection and acceptance, in cooperation with the public bodies using the goods, services, and construction.

§ 4-3-10 Operational Procedures.

Consistent with this policy, the Purchasing Agent may adopt operational procedures relating to the execution of the duties assigned.

§ 4-3-11 Delegation.

The Purchasing Agent may delegate authority to purchase certain supplies, services or construction items to other employees of the Authority if such delegation is deemed necessary by the Purchasing Agent for the effective procurement of those items.

§ 4-3-12 Unauthorized Purchases.

Except as herein provided, no official, elected or appointed, or any employee shall purchase or contract for any goods, services, insurance or construction within the purview of this policy. Any purchase order or contract made contrary to the provisions hereof is not approved and the Authority shall not be bound thereby.

ARTICLE C
COOPERATIVE PROCUREMENT

§ 4-3-13 Conditions for Use.

The Authority may participate in, sponsor, conduct or administer a cooperative procurement agreement with one or more other public bodies for the purpose of combining requirements to increase efficiency or reduce administrative expenses. Except for contracts for architectural and engineering services, the Authority may purchase from another public body's contract even if the Authority did not participate in the request for proposal or invitation to bid, if the request for proposal or invitation to bid specified that the procurement was being conducted on behalf of other public bodies.

Any public body which enters into a cooperative procurement agreement with the Authority shall comply with the policies and procedures herein, except that if the Authority enters into a cooperative procurement agreement with a county, city or town which has alternative policies and procedures adopted pursuant to subdivisions (9) or (10) of § 2.2-4343 of the Procurement Act, the Authority shall comply with those policies and procedures.

ARTICLE D
CONTRACT FORMATION AND
METHODS OF SOURCE SELECTION

§ 4-3-14 Competitive Sealed Bidding.

(a) Conditions for Use. All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction shall be awarded after competitive sealed bidding or competitive negotiation as provided in this section unless otherwise authorized by law, except that competitive sealed bidding shall not be used to procure professional services.

(b) Public Access to Procurement Information. Except as provided herein, all proceedings, records, contracts and other public records relating to procurement transactions shall be open to the inspection of any citizen, or any interested person, firm or corporation, in accordance with the Virginia Freedom of Information Act as contained in Title 2.2 of the Code of Virginia of 1950, as amended. Cost estimates relating to a proposed transaction prepared by or for the Authority shall not be open to public inspection. Any bidder or offeror, upon request, shall be afforded the opportunity to inspect bid and proposal records within a reasonable time after the opening of all bids but prior to award, unless the Authority rejects all bids and reopens the contract. Otherwise, bid and proposal records shall be open to public inspection only after award of the contract. Any inspection of procurement transaction records under this section shall be subject to reasonable restrictions to ensure the security and integrity of the records. Trade secrets or proprietary information submitted by a bidder, offeror or contractor in connection with a procurement transaction shall not be subject to public disclosure under the Virginia Freedom of Information Act; 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.

(c) Required Contract Provisions. Every contract of over \$10,000 shall include the provisions in 1 and 2 below:

1. *Employment Discrimination Prohibited.* During the performance of this contract, the contractor shall (i) not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or other basis prohibited by state law relating to discrimination in employment, except where any such factor is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor; (ii) post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor is an equal opportunity employer; and (iv) include the provisions of the foregoing clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

Notices, advertisements and solicitations placed in accordance with federal law, rule or regulation shall be deemed sufficient for the purpose of meeting the requirements of clause (iii) above.

2. *Drug-free workplace.* During the performance of this contract, the contractor shall (i) provide a drug-free workplace for the contractor's employees; (ii) post in conspicuous places, available to employees and applicants for employment, a statement notifying employees that the unlawful manufacture, sale, distribution, dispensation, possession, or use of a controlled substance or marijuana is prohibited in the contractor's workplace and specifying the actions that will be taken against employees for violations of such prohibition; (iii) state in all solicitations or advertisements for employees placed by or on behalf of the contractor that the contractor maintains a drug-free workplace; and (iv) include the provisions of the foregoing

clauses in every subcontract or purchase order of over \$10,000, so that the provisions will be binding upon each subcontractor or vendor.

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

§ 4-3-15 Prequalification of Bidders.

(a) The Purchasing Agent is authorized to prequalify bidders prior to any solicitation of bids, whether for goods, services, insurance or construction, by requiring prospective bidders to submit such information as the purchase agent shall deem appropriate, including samples, financial reports, and references; provided, however, that opportunity to prequalify shall be given to any prospective bidder who has not been suspended or debarred under this policy. The Purchasing Agent shall request of prospective contractors only such information as is appropriate for an objective evaluation of all prospective contractors pursuant to the criteria set forth in the RFQ.

(b) Within a reasonable time after review of all qualification submittals, but no less than 30 days prior to the deadline for submission of bids or proposals, each contractor which has applied for prequalification shall be notified in writing whether they been prequalified. If an offeror is denied prequalification, the notice shall include the reasons for denial and the factual basis of those reasons. Notices of refusal of prequalification shall be made a part of the record in each case. The decision of the Purchasing Agent shall be final.

(c) In considering any request for prequalification, the Purchasing Agent shall determine whether there is reason to believe that the bidder possesses the management, financial soundness, and history of performance which indicate apparent ability to successfully complete the plans and specifications of the Invitation for Bids. The Purchasing Agent may employ standard forms designed to elicit necessary information, or may design other forms for that purpose. Any forms used shall allow the prospective contractor seeking prequalification to request, by checking the appropriate box, that all information voluntarily submitted by the contractor pursuant to this subsection shall be considered a trade secret or proprietary information subject to the provisions of subsection D of § 2.2-4342 of the Procurement Act.

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

(e) Failure of a bidder to prequalify with respect to a given procurement shall not bar the bidder from seeking prequalification as to future procurements, or from bidding on procurements which do not require prequalification.

(f) Prequalification may be denied to any contractor only if the Purchasing Agent finds one of the following:

1. The contractor does not have sufficient financial ability to perform the contract that would result from such procurement. If a bond is required to ensure performance of a contract, evidence that the contractor can acquire a surety bond from a corporation included on the United States Treasury's list of acceptable surety corporations in the amount and type required by the Authority shall be sufficient to establish the financial ability of the contractor to perform the contract resulting from such procurement;

2. The contractor does not have appropriate experience to perform the construction project in question;

3. The contractor or any officer, director or owner thereof has had judgments entered against him within the past ten years for the breach of contracts for governmental or nongovernmental construction, including, but not limited to, design-build or construction management;

4. The contractor has been in substantial noncompliance with the terms and conditions of prior construction contracts with a public body without good cause. If the Authority has not contracted with a contractor in any prior construction contracts, the Authority may deny prequalification if the contractor has been in substantial noncompliance with the terms and conditions of comparable construction contracts with another public body without good cause. This provision shall not be used to deny prequalification unless the facts underlying each substantial noncompliance were documented in writing in the prior construction project file and such information relating thereto was given to the contractor at that time, with the opportunity to respond;

5. The contractor or any officer, director, owner, project manager, procurement manager or chief financial official thereof has been convicted within the past ten years of a crime related to governmental or nongovernmental construction or contracting, including, but not limited to, a violation of (i) Article L of this Purchasing and Contracting Policy; (ii) Article 6 (§ 2.2-4367 *et seq.*) of the Procurement Act, (iii) the Virginia Governmental Frauds Act (Virginia Code, § 18.2-498.1 *et seq.*), (iv) Chapter 4.2 (§ 59.1-68.6 *et seq.*) of Title 59.1 of the Code of Virginia, or (iv) any substantially similar law of the United States or another state;

6. The contractor or any officer, director or owner thereof is currently debarred pursuant to an established debarment procedure from bidding or contracting by any public body, including agencies of other states or the federal government; and

7. The contractor failed to provide to the Authority in a timely manner any information requested by the public body relevant to subdivisions 1 through 6 of this subsection.

§ 4-3-15.1 Invitation to Bid.

An Invitation to Bid shall contain or incorporate by reference the specifications and contractual terms and conditions applicable to the procurement, state where bid documents and specifications may be obtained and identify the time and place for opening bids. Unless the Purchasing Agent has provided for prequalification of bidders pursuant to § 4-3-15 above, the Invitation to Bid shall include a statement of any requisite qualifications of potential contractors.

§ 4-3-16 Notice of Invitation to Bid.

(a) Notice inviting bids shall be (i) posted in a designated public area or (ii) published in a newspaper of general circulation in the City of Harrisonburg, Virginia at least ten (10) days preceding the last day set for receipt of bids. Public notice may also be published on the Virginia Department of General Services' central electronic procurement website and other appropriate websites. In addition, the bids may be solicited directly from potential contractors, subject to the requirements of § 4-3-17, or through notices published in trade journals.

(b) The notice of Invitation to Bid shall include a general description of the goods or services to be purchased, the location where bid documents and specifications may be secured, and the time and place for opening bids.

(c) No public notice shall be required when the Purchasing Agent purchases from another public body's contract pursuant to Article C hereof.

§ 4-3-17 Small Business and Minority Participation.

(a) Whenever direct solicitations are made, the Purchasing Agent shall include businesses selected from a list made available by the Virginia Department of Minority Business Enterprise.

(b) The Purchasing Agent shall place qualified small and minority businesses and women's business enterprises on solicitation lists used by the Authority. The Purchasing Agent shall use the services and assistance of the Small Business Administration and the Minority Business Development Agency of the United States Department of Commerce, the Virginia Department of Minority Enterprise and other public and private agencies in obtaining the names of qualified small and minority businesses and women's businesses so that their bids may be solicited whenever they are potential sources of goods and services for the Authority.

(c) The Purchasing Agent shall also, when he deems it practicable and economically feasible, divide the total bid requirements into smaller tasks or quantities so as to permit maximum participation by small and minority business and women's business enterprises.

§ 4-3-18 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's name; it conveys the general style, type, character, and quality of the article desired, and any article which the Purchasing Agent, 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.

§ 4-3-19 Comments on Specifications.

For complex equipment, supplies or repair, pre-bid conferences with prospective bidders are desirable after draft specifications have been prepared. Such conferences help to detect unclear provisions and tend to widen competition by removing unnecessarily restrictive language. Conferences on purchasing bids will be called by the Purchasing Agent and, if necessary, attended by the Authority's attorney or other attorney retained by the Authority.

§ 4-3-20 Reserved

§ 4-3-21 Rejection of Bids.

(a) An Invitation to Bid, a Request for Proposal, any other solicitation, or any and all bids or proposals, may be canceled or rejected. The reasons for cancellation or rejection shall be made part of the contract file.

(b) The Purchasing Agent may waive informalities in bids.

§ 4-3-22 Bid Openings.

Sealed bids shall be opened publicly in the presence of one or more witnesses at the time and place designated in the Invitation for Bids. The amount of each bid, and such other relevant information as the Purchasing Agent deems appropriate, together with the name of each bidder shall be recorded. The record and each bid shall be open to public inspection.

§ 4-3-23 Withdrawal of Bid Due to Error.

(a) A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn.

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

(c) One of the following procedures for withdrawal of a bid shall be selected by the Purchasing Agent and stated in the notice of Invitation to Bid:

1. The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one (1) day after the date fixed for submission of bids. The work papers shall be delivered by the bidder in person or by registered mail at or prior to the time fixed for the opening of bids. The bids shall be opened one day following the time fixed by the Purchasing Agent for the submission of bids. Thereafter, the bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the Purchasing Agent until the two-hour period has elapsed. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein; or

2. the bidder shall give notice in writing of his claim of right to withdraw his bid within two (2) business days after the conclusion of the bid opening procedure and shall submit original work papers with such notice.

(d) Procedures for the withdrawal of bids for other than construction contracts may be established by the Purchasing Agent.

(e) 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 to another bidder in which the ownership of the withdrawing bidder is more than five percent (5%).

(f) If a bid is withdrawn under the authority of this section, the lowest remaining bid shall be deemed to be the low bid.

(g) 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.

(h) If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, it shall notify the bidder in writing stating the reasons for its decision.

§ 4-3-24 Evaluation of Bids.

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.

§ 4-3-25 Award of Contract.

(a) A contract shall be awarded 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.

(b) Unless cancelled or rejected, a responsible 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 Purchasing Agent may negotiate with the apparent low bidder to obtain a contract price within available funds.

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

§ 4-3-26 Tie Bids.

(a) In the case of a tie bid, preference shall be given to goods, services and construction to be provided by local bidders.

(b) If two or more local bidders submit tie bids, the tie bidders shall be invited to resubmit written bids below the original bid, and award shall be made to the bidder with the lowest bid price.

(c) In the event that the tie bid cannot be resolved by the foregoing provisions, the tie shall be decided by lot.

§ 4-3-27 Multistep Sealed Bidding.

When it is considered impractical to initially prepare a purchase description to support an award based on price, an Invitation for Bids may be issued requesting the submission of unpriced offers to bidders whose offers have been determined to be technically acceptable under the criteria set forth in the first solicitation.

§ 4-3-28 Contract Pricing Arrangements.

Except as prohibited herein, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited. Except in case of emergency

affecting the public health, safety or welfare, no contract shall be awarded on the basis of cost plus a percentage of cost (“cost-plus”). If a cost-plus contract is to be used in an emergency situation, a written determination of the basis of the emergency and for the selection of the particular contractor shall be included in the contract file. A policy or contract of insurance or prepaid coverage having a premium computed on the basis of claims paid or incurred, plus the insurance carrier’s administrative costs and retention stated in whole or part as a percentage of such claims, shall not be prohibited by this section.

§ 4-3-29 Multi-Term Contracts.

(a) 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 Authority provided the term of the contract and conditions of renewal or extension, if any, are included in the solicitation and funds are available for the first fiscal period at the time of contracting. Payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefor.

(b) When funds are not appropriated or otherwise made available to support continuation of performance in a subsequent fiscal period, the contract shall be canceled.

§ 4-3-30 Contract Modification.

Any contract award, change order, or contract modification under which the submission and certification of cost or pricing data are required shall contain a provision stating that the price to the Authority, including profit or fee, shall be adjusted to exclude any significant sums by which the Authority finds that such price was increased because the contractor-furnished cost of pricing data was inaccurate, incomplete, or not current as of the date agreed upon between the Authority and the contractor.

§ 4-3-31 Retainage on Construction Contracts.

(a) In any public contract for construction which provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent (95%) of the earned sum when payment is due, with not more than five percent (5%) being retained to assure faithful performance of the contract. All amounts withheld may be included in the final payment.

(b) Any subcontract for a public project which provides for similar progress payments shall be subject to the same limitations.

ARTICLE E
BOND REQUIREMENTS

§ 4-3-32 Performance and Payment Bonds.

Upon the award of any public construction contract exceeding \$100,000 to any prime contractor, such contractor shall furnish to the Authority the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. "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.

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.

Bonds shall be made payable to the Authority.

Each of the bonds shall be filed with the Authority or a designated office or official thereof.

Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts equal to or less than \$100,000.

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

§ 4-3-33 Action on Performance Bond.

No action against the surety on a performance bond 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 or breach of warranty, if the action be for such.

§ 4-3-34 Actions on Payment Bonds.

(a) Subject to the provisions of subsection (b) hereof, any claimant who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefor before the expiration of 90 days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

(b) Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond 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. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond but who has no contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainages with respect to labor performance 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.

§ 4-3-35 Alternative Forms of Security.

(a) In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check or cash escrow in the face amount required for the bond.

(b) If approved by the Authority attorney, a bidder may furnish a personal bond, property bond, or bank or savings institution's letter of credit on certain designated funds in the face amount required for the bid bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the Authority equivalent to the corporate surety's bond.

ARTICLE F
COMPETITIVE NEGOTIATION

§ 4-3-36 Definition.

Competitive negotiation and competitive proposals are methods of procurement which includes a written Request for Proposal, public notice of the Request for Proposal and individual discussions between the Authority and offerors. Competitive negotiation incorporates Sections 4-3-14(b), 14(c), 17, 18, 19, 21, 28 and 29 of this policy, in addition to the provisions in this Article F.

§ 4-3-37 Conditions for Use.

Competitive negotiation may be used for the procurement of goods, services, or insurance upon a determination, made in advance by the Purchasing Agent and set forth in writing, that competitive sealed bidding is either not practicable or not fiscally advantageous to the public. The writing shall document the basis for this determination.

Professional services shall be procured by competitive negotiation.

Competitive negotiation may be used for the procurement of construction 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:

1. for the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million;
2. for a fixed price design-build basis or construction management basis under Article F-1 when the contract is not expected to cost more than \$1 million;
3. for any draining, dredging, excavation, grading or similar work upon real property;
4. as otherwise provided in Article F-1.

§ 4-3-38 Request for Proposals.

A Request for Proposals shall be in writing and indicate 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.

§ 4-3-39 Public Notice.

Notice of the Request for Proposal shall be (i) posted in a public area normally used for posting of public notices, and (ii) published in one or more newspapers of general circulation in the area in which the contract is to be performed at least ten (10) days preceding the last day set for receipt of proposals. Public notice may also be published on the Department of General Services' central electronic procurement website and other appropriate websites. In addition, the proposals may be solicited directly from potential contractors, subject to the requirements of Section 4-3-17, or through notices published in trade journals.

§ 4-3-40 Evaluation Factors and Award.

Selection shall be made of two or more offerors deemed to be fully qualified and best suited among those submitting proposals, on the basis of the factors involved in the Request for Proposal, including price if so stated in the Request for Proposal. Negotiations shall then be conducted with each of the offerors so selected. Price shall be considered, but need not be the sole determining factor. After negotiations have been conducted with each offeror so selected, the Purchasing Agent shall select the offeror which, in its opinion, has made the best proposal, and shall award the contract to that offeror. Should the Purchasing Agent determine in writing and in his or her 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.

§ 4-3-41 Contracting for Professional Services by Competitive Negotiation.

The Purchasing Agent shall engage in individual discussions with two (2) or more offerors deemed fully qualified, responsible and suitable on the basis of initial responses and with emphasis on professional competence, to provide the required services. Repetitive informal interviews shall be permissible. Such offerors shall be encouraged to elaborate on their qualifications and performance data or staff expertise pertinent to the proposed project as well as alternative concepts. The Request for Proposal shall not, however, request that offerors furnish estimates of man-hours or cost for services. These discussions may encompass nonbinding estimates of total project costs, including where appropriate, design, construction and life cycle costs. Methods to be utilized in arriving at price for services may also be discussed. Proprietary information from competing offerors shall not be disclosed to the public or to competitors. At the conclusion of discussion, outlined herein, on the basis of evaluation factors published in the Request for Proposal and all information developed in the selection process to this point, the Purchasing Agent shall select in the order of preference two or more offerors whose professional qualifications and proposed services are deemed most meritorious. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the Authority can be negotiated at a price considered fair and reasonable, the award shall be made to that offeror. Otherwise, negotiations with the offeror ranked first shall be formally terminated and negotiations conducted with the offeror ranked second, and so on until such a contract can be negotiated at a fair and reasonable price. If the Request for Proposal included the terms and conditions for multiple awards, the Purchasing Agent may award contracts to more than one

offeror. Should the Purchasing Agent determine in writing and in his sole discretion that only one offeror is fully qualified, or that one offeror is clearly more highly qualified and suitable than the others under consideration, a contract may be negotiated and awarded to that offeror.

ARTICLE F-1
DESIGN-BUILD and CONSTRUCTION MANAGEMENT CONTRACTS

§ 4-3-41.1 Approval of Use; Exceptions.

The Authority may enter into contracts for construction on a fixed price or not-to-exceed price design-build or construction management basis provided the Authority complies with the requirements of this Article F-1 and has obtained the approval of the Virginia Design-Build/Construction Management Review Board (the “Review Board”); provided, however, projects entailing the construction, alteration, repair, renovation or demolition of buildings when the contract is not expected to cost more than \$1 million are exempt from approval by the Review Board.

§ 4-3-41.2 General Requirements.

(a) Professional Advisor. Prior to electing to use a design-build or construction management contract for a specific construction project, the Purchasing Agent shall procure a licensed architect or professional engineer (the “Professional Advisor”) with professional competence appropriate to the project who shall advise the Purchasing Agent regarding the use of design-build or construction management for the project and who shall assist the Purchasing Agent with the preparation of the Request for Qualifications and Request for Proposal and the evaluation thereof.

(b) Eligibility Requirements. Prior to issuing a Request for Proposal for any design-build or construction management contract, the Purchasing Agent shall document in writing that as to the particular project:

1. a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract;
2. there is a benefit to the Authority by using a design-build or construction management contract; and
3. procurement by competitive sealed bidding is not practical or fiscally advantageous.

(c) Evaluation Committee. An Evaluation Committee of not less than three (3) members shall be appointed by the Purchasing Agent to review and evaluate submittals. To the extent possible, the Evaluation Committee shall include one (1) licensed professional architect or professional engineer. The Professional Advisor may be a member of the Evaluation Committee. Members of the Evaluation Committee may be employees of the Authority or City of

Harrisonburg, but may not be officers, directors, owners or employees of or otherwise affiliated with any offeror or potential offeror.

§ 4-3-41.3 Design-Build Procurement Procedure.

Design-build contracts shall be procured using the following two-step competitive negotiation process:

(a) Selection of Qualified Offerors.

1. Request for Qualifications (RFQ). The Purchasing Agent shall issue a Request for Qualifications (“RFQ”) inviting potential offerors to submit their qualifications as both “designer” and “builder” of the construction. The Professional Advisor shall assist the Purchasing Agent in preparing the RFP. The RFQ shall describe in general terms the particular construction, specifying all factors which will be used in evaluating potential offerors’ qualifications. The RFQ shall also contain or incorporate by reference other applicable contractual terms and conditions, including any unique capabilities or qualifications required for the project. The RFQ shall request only such information as is appropriate for an objective evaluation of all potential offerors pursuant to the criteria in the RFQ.

The RFQ shall be published at least 10 days prior to the deadline for qualification submittals by posting in a public area normally used for posting of public notices and in a newspaper of general circulation in the area in which the contract is to be performed. The intent of publication is to provide reasonable notice to the maximum number of potential offerors that can be reasonably anticipated to submit qualifications in response to the RFQ.

2. Review. The Evaluation Committee shall evaluate the qualification submittals based on the criteria set forth in the RFQ. Additional information submitted by potential offerors may, but need not be considered. The Evaluation Committee shall select and prequalify at least two (2), but no more than five (5) offerors it deems most suitable for the project.

Within a reasonable time after review of all qualification submittals, but no less than 30 days prior to the deadline for submission of proposals, all potential offerors shall be notified in writing whether they been prequalified. If an offeror is denied prequalification, the notice shall include the reasons for denial and the factual basis of those reasons.

3. Disqualification. Potential offerors may be denied prequalification only upon those grounds specified in subsection (f) of Section 4-3-15.

(b) Selection of Contractor.

1. Request for Proposals. The Purchasing Agent shall issue a Request for Proposals (“RFP”) to the prequalified offerors selected by the Evaluation Committee. The Professional Advisor shall assist the Purchasing Agent in preparing the RFP. The RFP shall

request offerors to submit separate sealed Technical Proposals and Cost Proposals. Cost Proposals shall be secured and kept sealed until evaluation of all Technical Proposals is completed.

The RFP shall include and define the criteria of the specific construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications. The RFP may also define such other requirements as the Purchasing Agent deems appropriate for that particular construction project. In addition, the RFP shall define the criteria to be used by the Evaluation Committee to evaluate each proposal.

Qualified offerors may comment on the specifications or other provisions of the RFP prior to the deadline for submission. Any comments made prior to the deadline for proposal submission will be considered by the Evaluation Committee when reviewing the Technical Proposals.

2. Review of Technical Proposals. The Evaluation Committee shall evaluate each of the Technical Proposals based on the criteria set forth in the RFP. As a part of the evaluation process, the Evaluation Committee shall grant each of the offerors an equal opportunity for direct and private communication with the Evaluation Committee. Each offeror shall be allotted the same fixed amount of time. In its conversations with offerors, the Evaluation Committee shall exercise care to discuss the same owner information with all offerors. In addition, the Evaluation Committee shall not disclose any trade secret or proprietary information for which the offeror has invoked protection pursuant to § 2.2-4342(F) of the Procurement Act.

Based upon its review of each offeror's Technical Proposal, the Evaluation Committee shall determine whether any changes to the RFP should be made to clarify errors, omissions or ambiguities in the RFP or to incorporate project improvements or additional details, or both, identified by the Evaluation Committee during its review. If such changes are required, an addendum shall be provided to each offeror.

Based on any revisions to the Technical Proposals, the Evaluation Committee and an offeror may negotiate additive or deductive modifications, or both, to the offeror's Cost Proposal. In addition, an offeror may submit sealed additive or deductive modifications, or both, to its original sealed Cost Proposal which are not based upon revisions to the Technical Proposals.

3. Review of Cost Proposal. At the conclusion of this process, the Evaluation Committee shall publicly open, read aloud, and tabulate the Cost Proposals. The Evaluation Committee shall add to or deduct from the appropriate Cost Proposal any cost adjustments contained in amendments submitted by an offeror.

4. Selection of Contractor. The Evaluation Committee shall make its recommendation on the selection of the design-builder to the Purchasing Agent based on its evaluation and negotiations. Unless otherwise specified in the RFP, award of the design-build

contract shall be made to the offeror which submits an acceptable Technical Proposal at the lowest cost.

**ARTICLE G
EXCEPTIONS TO REQUIREMENTS
FOR COMPETITIVE PROCUREMENT**

§ 4-3-42 Sole Source Procurement.

Upon a determination in writing that there is only one source practicably available for that which is to be procured, a contract may be negotiated and awarded to that source without competitive sealed bidding or competitive negotiation. The writing shall document the cost analysis and the basis for this determination. The determination shall be posted in a designated public area of the authority offices.

§ 4-3-43 Emergency Purchases.

(a) In case of emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practicable under the circumstances. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the contract file. The determination shall be posted in a designated public area of the authority offices.

(b) An emergency shall be deemed to exist when a breakdown in machinery or equipment and/or a threatened termination of essential services or a dangerous condition develops, or when circumstances arise causing curtailment or diminution of an essential service or where materials or services are needed to prevent loss of life or property.

§ 4-3-44 Small Purchases.

The Purchasing Agent may, in his discretion, make any contracts for purchases not requiring sealed bids or competitive negotiation for a single or term contract for goods and services, other than professional services if the aggregate or sum of all phases is not expected to exceed Fifty Thousand Dollars (\$50,000) provided that if the purchases are expected to exceed Thirty Thousand Dollars (\$30,000), the Purchasing Agent shall make written informal solicitation of a minimum of four (4) bidders or offerers. If the amount is not expected to exceed Thirty Thousand Dollars (\$30,000), the purchase may be made by the Purchasing Agent on the basis of any one of the following requirements:

(a) *Pricelists; Price Quotes.* The cost of the items purchased be the lowest of the supplier's current price list in the office of the Purchasing Agent. The Purchasing Agent shall attempt to obtain at least three current price lists from suppliers prior to making purchases under this provision, or the Purchasing Agent shall, at his option, obtain either verbal or written price quotations from at least two suppliers which price quotations may be used in lieu of current price lists filed in the office of the Purchasing Agent. A price list obtained within 12 months of the

purchase or verbal or written quotations obtained within 30 days of the purchase shall be considered current.

(b) *Common Pricing.* It is known by the Purchasing Agent that all competitors have substantially the same price for the items to be purchased.

(c) *Reorder.* The purchase which does not exceed Thirty Thousand Dollars (\$30,000) is a reorder of commodities purchased on a previous bid or part thereof obtained within 12 months prior to the proposed purchase.

(d) *Nominal Value.* The contract or purchase is of nominal value as that term is defined herein.

(e) *Two Quotes.* The Purchasing Agent obtains a written or oral price quotation for goods or services from at least two (2) providers.

(f) *Impracticability.* In the opinion of the Purchasing Agent, it is not practicable to obtain bids regarding the contracts or purchases.

The Purchasing Agent may also in his discretion make single or term contracts for professional services if the aggregate amount or the sum of all phases is not expected to exceed Thirty Thousand Dollars (\$30,000), provided that such purchases are made on the basis of one of the requirements listed in paragraphs (a) through (f) above.

ARTICLE H DEBARMENT

§ 4-3-47 Authority to Debar or Suspend.

After reasonable notice to the person involved and reasonable opportunity for that person to be heard, the governing body or Purchasing Agent after consulting with the Authority's attorney is authorized to debar a person for cause from consideration for award of contracts. The debarment shall not be for a period of more than three years. After consultation with the Authority's attorney, the governing body or Purchasing Agent is authorized to suspend a person from consideration for award of contracts if there is probable cause to believe that the person has engaged in any activity which might lead to debarment. The suspension shall not be for a period exceeding three months. The cases for debarment include:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract,
2. Conviction under state and federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other

offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a Authority contractor.

3. Conviction under state or federal antitrust statutes arising out of the submission of bids or proposals.

4. Violation of contract provisions, as set forth below, of a character which is regarded by the governing body or Purchasing Agent to be so serious as to justify debarment action:

a. deliberate failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or

b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts; provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for debarment.

5. Any other cause the governing body or Purchasing Agent determines to be so serious and compelling as to affect responsibility as a Authority contractor including debarment by another governmental entity for any cause in this policy; and for violation of the ethical standards set forth in this policy.

§ 4-3-48 Decision to Debar or Suspend.

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

§ 4-3-49 Notice of Decision.

A copy of the decision required by § 4-3-48 shall be mailed or otherwise furnished immediately to the debarred or suspended person.

§ 4-3-50 Finality of Decision.

A decision under § 4-3-48 shall be final and conclusive, unless the debarred or suspended person within ten (10) days after receipt of the decision commences an action in court in accordance with applicable law.

**ARTICLE I
APPEALS AND REMEDIES**

§ 4-3-51 Ineligibility of Bidder, Offeror or Contractor.

(a) Any bidder, offeror, or contractor refused permission to participate, or disqualified from participating in, public contracts shall be notified in writing. Such notice shall state the reasons for the action taken. This decision shall be final unless the bidder, offeror, or contractor appeals within thirty days by instituting legal action as provided in § 4-3-58 of this policy.

(b) If, upon appeal, it is determined that the action taken was arbitrary or capricious, or not in accordance with the applicable laws or regulations, the sole relief shall be restoration of eligibility.

§ 4-3-52 Appeal of Denial of Withdrawal of Bid.

(a) A decision denying withdrawal of bid under the provisions of § 4-3-23 shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in § 4-3-58 of this policy.

(b) If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 4-3-23 prior to appealing shall deliver to the Purchasing Agent a certified check or cash bond in the amount of the difference between the bid sought to be withdrawn and the next lowest bid. Such security shall be released only upon a final determination that the bidder was entitled to withdraw the bid.

(c) 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.

§ 4-3-53 Determination of Nonresponsibility.

(a) 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 (10) days by instituting legal action as provided in § 4-3-58 of this policy.

(b) If, upon appeal, it is determined that the decision of the Purchasing Agent was arbitrary or capricious, and the award of the contract in question has not been made, the sole relief shall be a finding that the bidder is a responsible bidder for the contract in question. If it is determined that the decision of the Purchasing Agent was arbitrary or capricious and the contract has been awarded, the relief shall be as set forth in § 4-3-54.

(c) A bidder contesting a determination that he is not a responsible bidder for a particular contract shall proceed under this section, and may not protest the award or proposed award under § 4-3-54 of this policy.

(d) Nothing contained in this section shall be construed to require the Authority when procuring by competitive negotiation, to furnish a statement of the reasons why a particular proposal was not deemed to be the most advantageous.

§ 4-3-54 Protest of Award or Decision to Award.

(a) Any bidder or offeror may protest the award or decision to award a contract by submitting such protest in writing to the governing body or Purchasing Agent no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. No protest shall lie for a claim that the selected bidder or offeror is not a responsible bidder or offeror. The written protest shall include the basis for the protest and the relief sought. The governing body or Purchasing Agent shall issue a decision in writing within ten (10) days stating the reasons for the action taken. This decision shall be final unless the bidder or offeror appeals within ten (10) days of the written decision by instituting legal action as provided in § 4-3-58 of this policy.

(b) If prior to an award it is determined that the decision to award is arbitrary or capricious, then the sole relief shall be a finding to that effect. The Purchasing Agent shall cancel the proposed award or revise it to comply with the law. If, after an award, it is determined that an award of a contract was arbitrary or capricious, then the sole relief shall be as hereinafter provided. Where the award has been made but performance has not begun, the performance of the contract may be enjoined. Where the award has been made and performance has begun, the governing body or Purchasing Agent 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.

(c) Where the governing body or Purchasing Agent 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 the Ethics in Public Contracting Article, the governing body or Purchasing Agent may enjoin the award of the contract to a particular bidder.

§ 4-3-55 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.

§ 4-3-56 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, 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.

§ 4-3-57.1 Contractual Disputes.

(a) Contractual claims, whether for money or other relief, shall be submitted to the Executive Director in writing no later than sixty (60) days after final payment; 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.

(b) A procedure for consideration of contractual claims shall be included in each contract. Such procedure, which may be incorporated into the contract by reference, shall establish a time limit for a final decision in writing by the Authority.

(c) A contractor may not invoke administrative procedures or institute appeal as provided in § 4-3-57.2 or legal action as provided in § 4-3-58 prior to receipt of the Authority's decision on the claim, unless the Authority fails to render such decision within the time specified in the contract.

(d) The decision of the Authority shall be final and conclusive unless the contractor appeals within six months of the date of the final decision on the claim by invoking administrative procedures as provided in § 4-3-57.2, or in the alternative by instituting legal action as provided in § 4-3-58 of this policy.

§ 4-3-57.2 Administrative Appeals Procedure.

(a) Any contractor may protest or appeal a decision on disputes arising during the performance of a contract.

(b) Any protest or appeal pursuant to this section shall be in accordance with the following administrative procedures:

1. Any contractor shall submit a written protest or letter of appeal to the Executive Director of the Authority within the time constraints as set forth in the Authority's Procurement Policy. The written protest or appeal shall include the basis for the protest or appeal and the relief sought, and whether the contractor wishes to have a hearing with respect to the protest or appeal.

2. If no hearing is requested, the Executive Director or his designee, shall render a written decision to the contractor within ten (10) days of receipt of the written protest or letter of appeal.

3. If a hearing is requested, it shall be held within in ten (10) days of receipt of the written protest or letter of appeal, and a final decision shall be rendered within ten (10) days of the hearing. During the hearing, the protesting party shall have the opportunity to present pertinent information and to cross-exam adverse witnesses. The hearing shall be an informal administrative proceeding rather than a judicial-type trial, and it will be conducted by a disinterested person, who may be an employee of the Authority appointed by the Executive Director of the Authority.

4. The findings of facts shall be final and conclusive and shall not be set aside unless the same are fraudulent or arbitrary or capricious, or so grossly erroneous as to imply bad faith. No determination of an issue of law shall be final if appropriate legal action is instituted in a timely manner.

5. Any party to the administrative procedure shall be entitled to institute judicial review if such action is brought within 30 days of receipt of the written decision.

§ 4-3-58 Legal Actions.

(a) A bidder or offeror, actual or prospective, who is refused permission to participate or is disqualified from participating in bidding or competitive negotiation, or who is determined not to be a responsible bidder or offeror for a particular contract, may bring an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petition establishes that the decision was arbitrary or capricious.

(b) A bidder denied withdrawal of a bid under § 4-3-52 of this policy 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 Authority was clearly erroneous.

(c) A bidder, offeror or contractor 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 applicable law, regulations or the terms and conditions of the Invitation to Bid or Request for Proposal.

(d) If injunctive relief is granted, the court, upon request of the Authority, shall require the posting of reasonable security to protect the Authority.

(e) A contractor may bring an action involving a contract dispute with the Authority in the appropriate circuit court.

(f) Nothing herein shall be construed to prevent the Authority from instituting legal action against a contractor.

**ARTICLE J
RECORDS**

§ 4-3-59 The Authority shall maintain such written records as required by this contracting policy and applicable law. Such records as well as all contract documents shall be maintained for at least three years after the Authority makes final payment and all other pending matters are closed involving a procurement transaction.

**ARTICLE K
DISCRIMINATION**

§ 4-3-60 Discrimination Prohibited.

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

**ARTICLE L
ETHICS IN PUBLIC CONTRACTING**

§ 4-3-61 Purpose.

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the Virginia Conflict of Interests Act (§ 2.1-348, *et seq.*), the Virginia Governmental Frauds Act (§ 18.2-498.1, *et seq.*) and Articles 2 and 3 of Chapter 10 of Title 18.2. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Virginia Conflict of Interests Act.

§ 4-3-62 Proscribed Participation by Public Employees in Procurement Transactions.

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

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
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 (5%);
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 immediately family is negotiating, or has an arrangement concerning prospective employment with a bidder, offeror or contractor.

§ 4-3-63 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 Authority may recover the value of anything conveyed in violation of this section.

§ 4-3-64 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 Authority unless the employee, or former employee, provides written notification to the governing body or Purchasing Agent or both prior to commencement of employment by that bidder, offeror or contractor.

§ 4-3-65 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 for more than nominal value, present or promised, unless consideration of substantially equal or greater value is exchanged.

§ 4-3-66 Kickbacks.

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

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

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

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

§ 4-3-67 Purchase of Building Materials, etc. from Architect or Engineer Prohibited.

Except in cases of emergency, no building materials, supplies or equipment for any building or structure constructed by or for the Authority shall be sold by or purchased from any person employed as an independent contractor by the Authority 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.

§ 4-3-68 Penalty for Violation.

Willful violation of any provision of this policy shall constitute a Class 1 misdemeanor under § 2.2-4377 of the Code of Virginia. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.