



INTERDEPARTMENTAL
MEMO

DATE: December 26, 2018
TO: Robert S. Cowell, Jr., City Manager
FROM: Simone Knowles, Purchasing Manager
SUBJECT: Fourth Revision of City of Roanoke Procurement Manual dated October 1, 2018

The Procurement Manual is published under the authority of Chapter 23.2, Procurement, of the *Code of City of Roanoke, Virginia*, and establishes the policies and procedures to be followed by City departments in fulfilling procurement and related logistical responsibilities within their delegated limits. The third revision of the Procurement Manual applies to procurements in process or initiated on or after October 1, 2017.

The effective date of this fourth revision of the Procurement Manual applies to procurements in process or initiated on or after January 1, 2019. It supersedes all previous editions and changes thereto.

Approved:



Robert S. Cowell, Jr., City Manager

12/28/18

Date

JANUARY 1, 2019 - FOURTH REVISION

PROCUREMENT MANUAL



**CITY OF ROANOKE, VIRGINIA
Department of General Services
Purchasing Division
Noel C. Taylor Municipal Building
215 Church Avenue, S.W., Room 202
Roanoke, Virginia 24011**

PROCUREMENT MANUAL
City of Roanoke, VA
August 1, 2008 – First Revision
February 1, 2017 - Second Revision
October 1, 2017- Third Revision

INTRODUCTION

The *Procurement Manual* is published under the authority of Chapter 23.2 Procurement of the *Code of City of Roanoke, Virginia*, and establishes the policies and procedures to be followed by City departments in fulfilling procurement and related logistical responsibilities within their delegated limits. The first revision of the *Procurement Manual* applies to procurements in process or initiated on or after August 1, 2008. This second revision of the *Procurement Manual* applied to procurements in process or initiated on or after February 1, 2017. The third revision of the *Procurement Manual* applies to procurements in process or initiated on or after October 1, 2017. It supersedes all previous editions and changes thereto.

Publication of this – Third Revision was approved by Robert S. Cowell, Jr. City Manager, on October 16, 2017, to be effective October 1, 2017.

Regulatory issues have been distinguished from policies and procedures. For the purposes of this Manual, the basic distinction between “regulatory” requirements and “policies and procedures” is that the regulatory requirements have their basis in the *Code of the City of Roanoke* and *Code of Virginia*. Policies and procedures are administrative implementation intended to inject consistency and clarity in understanding and applying the regulatory requirements. In addition, they represent what is widely viewed in the purchasing profession as the application of sound, generally accepted good purchasing practices. Violations of policies and procedures contained in this Manual will be handled in an administrative manner.

Every effort has been made to identify regulatory requirements. Users will note in the text of each chapter, references are made to appropriate sections of the *Code of the City of Roanoke* and *Code of Virginia*. This will assist in identifying and distinguishing regulatory requirements from administrative requirements, i.e., policies and procedures. **Text references may represent synopses or abbreviated portions of the applicable code. Precise language should be obtained by referring to the applicable portion of the Code of the City of Roanoke or Code of Virginia.**

At all times, when procuring goods and/or services of any kind, in any amount, City employees are required to adhere to proper procurement order. Proper purchasing order is as follows:

1. Pre-encumbrance document (Requisition-RQS) processed in the City of Roanoke’s financial system (if applicable)
2. Award Document (Contract Purchase Order-CT, Purchase Order-PO, Decentralized Purchase Order-PD) processed through the City of Roanoke’s financial system after procurement method has been completed
3. Department Manager approves the Award document
4. Purchasing Division approves the Award document
5. Award document hard copy is provided to Department

6. Department provides Award document to vendor and places Order for Items/Services
7. Department receives items/services and invoice from Vendor
8. Department inspects and accepts Items/Services
9. Department processes Receiver (RC) in the City of Roanoke’s financial system
10. Department includes Award document number and RC number on invoice
11. Department scans invoice to the Department of Finance
12. Department of Finance sends payment to vendor

Throughout this Manual, every effort has been made to reduce the mandatory requirements, which are usually indicated by the words “shall”, “must”, “will”, etc., to permit user option and flexibility by use of words such as “may”, “should” and “recommended”. Care has been taken to carefully draw the appropriate distinctions.

Three principal references are found in this Manual: The *Code of Virginia*, especially the *Virginia Public Procurement Act (VPPA)*, *Code of the City of Roanoke*, and other sections within the Procurement Manual. References are usually presented in the following format:

Code of Virginia State Code refers to	<i>Code of Virginia, 1950, as amended</i>
VPPA refers to	Virginia Public Procurement Act – Code of Virginia §2.2-4300 <u>et seq.</u>
City Code refers to	Code of the City of Roanoke 1979, as amended §23.2-1 <u>et seq.</u>
Procurement Manual or Manual refers to	Procurement Manual for the City of Roanoke, VA

Appendix A contains the current City Code sections for procurement.

The Purchasing Division of the Department of General Services (DGS) will periodically issue revisions to this Manual which will be effective upon issuance.

END OF INTRODUCTION

1 PROCUREMENT AUTHORITY AND RESPONSIBILITY

1.0 General.

The Council for the City of Roanoke adopted *Chapter 23.2, Procurement, of the Code of the City of Roanoke* to provide for increased public confidence in the procedures followed in the procurement process; to ensure the fair and equitable treatment of all persons who deal with the procurement system of the City; to provide increased economy in City procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the City; to foster broad based competition within the free enterprise system; to provide safeguards for the maintenance of a procurement system of quality and integrity; and to promote uniformity of procurement policies and procedures among the departments of the City. Code of the City of Roanoke, Chapter 23.2-1.

Chapter 23.2 is applicable to all Council-appointed officers, constitutional officers, divisions, departments, offices, boards, agencies, and commissions of the City except the school board and school division. Code of the City of Roanoke §23.2-2(a)

The *Virginia Public Procurement Act (VPPA)* applies to all City purchases, except for those instances where alternative policies and procedures have been adopted and set out in accordance with Chapter 23.2, *Procurement*, of the Code of the City of Roanoke.

1.1 Department of General Services/Purchasing Division Authority and Responsibility.

Department of General Services/Purchasing Division is the centralized purchasing organization for materials, supplies, equipment, printing, and services required by any City department. All such purchases made for any department of the City shall be made in accordance with the City Charter, Code of the City of Roanoke, Code of Virginia, and such rules and regulations as approved by the City Manager as are set out in this Manual.

DGS/Purchasing Division is responsible for:

- a. Making recommendations to the City Manager for adopting, amending or repealing regulations set out in this Manual;
- b. Standardizing materials, equipment, and supplies purchased by or for any department of the City through the use of term contracts;
- c. Assisting departments in developing specifications, obtaining bids and proposals, evaluating responses, recommending awards of appropriate bids and proposals;
- d. Issuing solicitation documents required by law and this Manual;
- e. Issuing advertisements required by law and this Manual;
- f. Reviewing, approving, and processing all requisitions and purchase order requests for

necessary equipment, materials, supplies and/or services as set out in this Manual;

- g. Maintaining procurement files required by law and this Manual;
- h. Maintaining a central repository for all completed contract documents; and
- i. Maintaining registration and any purchasing related aspects of the Vendor Self Service System.

1.2 Department Purchasing Authority.

Department/Division heads have the ultimate responsibility to ensure that procurements do not violate or circumvent the law, appropriations, regulations, or the provisions of this Manual. Department heads must identify to the Purchasing Division and Department of Finance the individual responsible for the day to day entry of transactions in the purchasing system and those having delegated authority to approve purchasing transactions.

- a. **Goods and Services.** City departments are authorized to procure goods and other than professional services, not including construction, valued up to the amount of the single quote threshold with the use of the purchasing card or decentralized purchase order. For amounts over the single quote threshold, departments are to provide a requisition to the Purchasing Division for processing. The Department shall forward all required documentation to the Purchasing Division.
- b. **Validity of Requirements.** It is the responsibility of the individual City department to provide a clear description and/or specifications of the goods or services being purchased. City departments shall also verify that goods and services are authorized, applicable to that department's mission and needs, and have been properly funded. This includes any approvals required by law, regulation or policy.
- c. **Authority to Approve Procurement Documents.**
 - 1. **Designations.** Departments shall designate in writing to the Department of Finance and the Purchasing Division those persons authorized to approve procurement documents.
 - 2. **Designated authority is required for the following Purchasing documents:** decentralized purchase orders (PD), purchase orders (PO), purchase requisitions (RQS), contracts for goods and services (CT), delivery orders (DO) and written determinations to support the use of emergency and sole source procedures.
- d. **Federal/State Funding and/or Grant Responsibilities.** Departments expending grant funds are responsible for compliance with the grant's procurement requirements, in addition to the requirements set forth VPPA and this Manual. Departments must inform the Purchasing Division of all funding sources at the time of the request for solicitation and are responsible for the inclusion of any mandatory provisions required by any grant or funding sources.

1.3 Types of Procurement Subject to VPPA.

Under §2.2-4303, the VPPA applies to the following four types of procurement:

- a. Purchase or lease of goods.
- b. Purchase of services.
- c. Purchase of insurance.
- d. Purchase of construction.

The VPPA does not cover purchases from other governmental sources or agencies, or the purchase or lease of real property.

1.4 Competitive Sealed Bidding. (See Manual Chapter 6)

- a. Invitation to Bid.

Competitive sealed bidding is defined in §§2.2-4301 and 2.2-4302.1, VPPA, and is used for the procurement of most goods and nearly all construction. Competitive sealed bidding is initiated using an Invitation to Bid (ITB), containing or incorporating by reference the specifications and contractual terms and conditions applicable to the procurement. Public notice of an ITB will be made by posting on the City's Vendor Self Service System (VSS) at <https://VSS.roanokeva.gov> and in a designated public area prior to the date set for receipt of the bids. Public notice of an ITB may also be posted on the City's website at www.roanokeva.gov/purchasing, and/or may be published in a newspaper of general circulation. In addition, bids may be solicited directly from potential contractors. All departments are encouraged to find additional businesses made available by the Department of Small Business and Supplier Diversity.

- b. Lowest Responsive and Responsible Bidder.

The VPPA requires that the bid is awarded to the lowest responsive and responsible bidder. These terms are defined in §2.2-4301, VPPA.

1. **Responsive Bidder.** Section 2.2-4301 of the VPPA defines a "responsive" bidder as a "person who has submitted a bid that conforms in all material respects to the Invitation to Bid." Although "material" is not defined, §2.2-4319(B) of the VPPA allows localities to waive "informalities" in bids. "Informality" is defined in §2.2-4301 of the VPPA as a minor defect or variation of a bid from the exact requirements of the ITB which does not affect the price, quality, quantity or delivery schedule for the goods, services, or construction being procured.
2. **Responsible Bidder.** The low bidder must also be "responsible." Section 2.2-4301 of the VPPA defines a "responsible" bidder as a "person who has the capability, in all respects, to perform fully the contract requirements and the moral and business integrity and reliability that will assure good faith performance."

1.5 Competitive Negotiation. (See Purchasing Manual Chapter 7)

Competitive negotiation is defined in §2.2-4301 and described in §2.2-4302.2 of the VPPA and is normally used for service contracts where price is not the most important consideration. Professional services can only be procured by competitive negotiation. "Professional Services" are defined as 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 also include the services of an economist procured by the State Corporation Commission. See §2.2-4301, VPPA.

Competitive negotiation is initiated by the issuance of a Request for Proposal (RFP). As opposed to an ITB, notice of an RFP must be both published and posted prior to receipt of proposals. Public notice of an RFP will be made by publishing in a newspaper of general circulation, posting on the City's Vendor Self Service System at <https://VSS.roanokeva.gov> and in a designated public area prior to the date set for receipt of the proposals. Public notice of an RFP may also be posted on the City's website at www.roanokeva.gov/purchasing. In addition, proposals may be solicited directly from potential contractors. All departments are encouraged to find additional businesses made available by the Department of Small Business and Supplier Diversity.

1.6 Design-build and Construction Management Contracts. (See Purchasing Manual Chapter 8) (Ordinance No. 39922-050414)

"Design-build Contract" is defined as 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, or other item specified in the contract. (§ 2.2-4379)

"Construction Management Contract" is defined as 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. (§ 2.2-4379).

1.7 Exceptions and/or Exemptions from Competitive Procurement. (See Purchasing Manual Chapter 9)

The VPPA provides certain exemptions from its competitive procurement provisions, including:

- a. Purchases pursuant to a small purchase procedure. Currently, the City is authorized to establish such procedures for single or term procurements. (See **Purchasing Manual Chapter 5**)
- b. Sole source procurements. (See **Purchasing Manual Chapter 9**)
- c. Emergency procurements. (See **Purchasing Manual Chapter 9**)
- d. Joint and Cooperative Procurements. (See **Purchasing Manual Chapter 9**)
- e. Other Exceptions to Competitive Procurement. (See **Purchasing Manual Chapter 9**)

- f. Used Equipment. (See **Purchasing Manual** Chapter 9)

1.8 Computer Equipment and/or Software.

Any purchase of computer equipment and/or software must have prior written approval by the Department of Technology. Written approval is not required for purchase of supplies such as electronic media, labels, paper, etc.

END OF CHAPTER

2 SOURCES OF SUPPLY

2.0 General.

This chapter discusses mandatory and non-mandatory sources of supply. All departments are required to use the mandatory sources under the conditions outlined in each subsection of paragraph 2.1. The non-mandatory sources identified in Section 2.2 are recommended for the products/services indicated and departments are encouraged to use them. The remaining sections of this chapter offer guidance on use of supplier source lists, catalogs and seeking assistance from vendors.

2.1 Mandatory Sources.

- a. **Term Contracts/Master Agreements.** To obtain more favorable prices through volume purchasing and to reduce lead-time and administrative cost and effort, the Purchasing Division may establish mandatory use term contracts or master agreements for goods or services. Written notices of contract awards are issued notifying participants (departments or organizational elements within) of the existence of such contracts or agreements. In accordance with the terms and conditions, purchase orders and/or delivery orders may be issued in any amount for any goods or services on a term contract or master agreement available to that participant. If an item is available on such a contract/agreement, participants may not use their own purchasing authority to purchase from another source unless the purchase is exempt by contract terms.

Term contracts/master agreements are for the benefit of the City and its departments. Unless expressly written, contracts do not apply to City employees or other individuals. Ordering from City contracts by individuals directly or by using City purchase orders and/or delivery orders with subsequent reimbursement to the City is prohibited.

- b. **Department of Technology (DOT).** For the purchase of telecommunications services, software and equipment (computers, monitors, tablets, etc.), departments must request approval from DOT prior to contacting the Purchasing Division. Written approval is not required for purchase of supplies such as electronic media, labels, paper, etc.
- c. **Fleet Management.** For the purchase or lease of motor vehicles, departments must request approval from Fleet Management prior to contacting the Purchasing Division.

2.2 Non-mandatory Sources.

- a. **Optional Use Term Contracts/Master Agreements.** Optional use term contracts/master agreements may be established by the Purchasing Division. This type of contract/agreement may be appropriate because of the unique nature of the commodity or service being procured and when the demand encompasses many departments. An example would be office supplies that generally are ordered in low dollar increments by users at the lowest organizational level and when local storage and distribution costs exceed any bulk purchase savings. Optional use

contracts/agreements may also be appropriate when erratic or rapidly dropping prices are encountered such as in the personal computer and related peripheral equipment industries. Market conditions in these limited applications create an incentive for the contractors to retain business by publishing revised price lists against which fixed discount rates can be applied throughout the contract's/agreement's term.

- b. **Surplus Property.** The Purchasing Division has responsibility for administering the surplus property policy for City-owned personal property. This policy is an optional use source of supply and should always be considered prior to initiating a purchase action. Substantial sums of money can be saved for goods that are often in "useable" condition. To avoid unnecessary purchases of new materials or equipment, the department should ensure that assets being procured are first screened against available assets from within their own department and from other departments by contacting the Purchasing Division at 853-2871.
- c. **Employment Services Organizations.** City departments may purchase selected goods and services from employment services organizations without competition if the goods or services:
 - 1. are of acceptable quality; and
 - 2. can be supplied within the time required.

Purchase of goods from employment services organizations should be accomplished by utilizing an appropriate purchasing document.

2.3 Vendor Self Service System/Source Lists.

Care should be taken to solicit sources capable of providing, as a regular part of their business, the goods or services needed. The maintenance and use of appropriate and current source lists are essential to competitive procurement. Personnel at all levels should make a concerted effort to identify responsible vendors as sources of supply for goods and services by, at a minimum, conducting a commodity search (COMM) and vendor search (VENDCOMM) in the City Financial System. Special emphasis should be placed on including local vendors, small, minority-owned, women-owned, and service disabled veteran-owned businesses on all solicitation mailing lists. Department source lists may also be furnished to the Purchasing Division for its use.

2.4 Suppliers' Catalogs.

Suppliers' catalogs will be made available if delivered to the Purchasing Division. Caution must be exercised when using suppliers' catalogs to be sure that information is current.

2.5 Contact with Vendors.

Suppliers' and manufacturers' representatives are valuable sources of information. Vendor visits should be arranged in a manner that will assure a full, courteous, and mutually beneficial exchange of information. Such assistance from vendor representatives must be considered normal sales efforts and does not entitle a vendor to any preference. Department heads should caution personnel that commitments cannot be made which would lead a supplier to believe they

will subsequently receive an order. **If department personnel receive vendor assistance in preparing a specification, a written notification must accompany the requisition to the Purchasing Division describing the assistance and noting whether any compensation was involved. No vendor receiving compensation for assisting in the development of specifications shall be permitted to submit a response to the solicitation, unless it would restrict competition. Such determination shall be made by the Purchasing Division.** Under no circumstances shall a bidder or offeror be permitted to evaluate or assist in evaluating competitors' bids or offers.

2.6 Other Sources of Supply.

Sources of supply can be identified through a variety of methods. Some methods include Purchasing Division's Vendor Self Service System/source lists (**Purchasing Manual 2.3**), trade journals, trade shows and exhibitions, Yellow Pages, and internet search engines. The Internet provides a good source of possible vendor and product information. State agencies and organizations such as the Department of Economic Development, Department of Small Business and Supplier Diversity, Procurement Technical Assistance Program (PTAC) and local Chambers of Commerce are also possible vendor information sources.

END OF CHAPTER

3 ETHICS IN PUBLIC CONTRACTING

3.0 General.

The laws of this Commonwealth dictate a higher standard of conduct for procurement officials than for public employees generally because of the trust and responsibility exercised by public officials conducting procurement transactions, and because of the expectation by the public that this trust and responsibility be exercised properly. Procurement officials and vendors must be cognizant of these laws which include the *VPPA*, the *State and Local Government Conflict of Interests Act*, and the *Governmental Frauds Act*. All City employees having official responsibility for procurement transactions shall conduct business with vendors in a manner above reproach in every respect. Transactions relating to the expenditure of public funds require the highest degree of public trust.

Article 6, Ethics in Public Contracting, VPPA (§2.2-4367, et seq.), and the City's policy on discretionary expenditures are set out in this chapter.

3.1 Purpose. (§2.2-4367)

The provisions of Article 6, Ethics in Public Contracting, supplement, but shall not supersede, other provisions of law including, but not limited to, the State and Local Government Conflict of Interests Act (§2.2-3100, et seq.), the Virginia Governmental Frauds Act (§18.2-498.1, et seq.), and Articles 2 (§18.2-438, et seq.) and 3 (§18.2-446, et seq.) of Chapter 10 of Title 18.2.

The provisions of this article shall apply notwithstanding the fact that the conduct described may not constitute a violation of the State and Local Government Conflict of Interests Act.

3.2 Definitions. (§ 2.2-4368)

As used in Article 6, Ethics in Public Contracting, VPPA:

"Immediate family" means a spouse, children, parents, brothers and sisters, and any other person living in the same household as the employee.

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

"Pecuniary interest arising from the procurement" means a personal interest in a contract as defined in the State and Local Government Conflict of Interests Act (§ 2.2-3100, et seq.)

"Procurement transaction" means 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.

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

3.3 Proscribed participation by public employees in procurement transactions. (§ 2.2-4369)

Except as may be specifically allowed by subdivisions B 1, 2, and 3. of § 2.2-3112, no public employee having official responsibility for a procurement transaction shall participate in that transaction on behalf of the public body when the employee knows that:

- a. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
- b. 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;
- c. 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
- d. 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.

3.4 Disclosure of subsequent employment. (§ 2.2-4370)

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.

3.5 Prohibition on solicitation or acceptance of gifts, gifts by bidders, offerors, contractor or subcontractors prohibited (§ 2.2-4371)

- a. 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 public body may recover the value of anything conveyed in violation of this subsection.
- b. 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.

3.6 Kickbacks. (§ 2.2-4372)

- a. No contractor or subcontractor shall demand or receive from any of his suppliers or his subcontractors, as an inducement for the award of a subcontract or order, any payment, loan, subscription, advance, deposit of money, services or anything, 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 public body and shall be recoverable from both the maker and recipient. Recovery from one offending party shall not preclude recovery from other offending parties.

3.7 Participation in bid preparation; limitation on submitting bid for same procurement (§ 2.2-4373)

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

3.8 Proscription of Preparation of quotes, bids, and proposals by Department Personnel.

Department personnel, including end users, **shall not** be involved in preparing quotes, bids, and proposals, offering to place sealed bids/proposals in a sealed envelope, accepting sealed bids/proposals, and/or submitting sealed bids/proposals to the Purchasing Division, on the Bidders'/Offerors' behalf.

3.9 Purchase of materials from architect or engineer prohibited. (§ 2.2-4374)

- a. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person employed as an independent contractor by the public body to furnish architectural

or engineering services, but not construction, for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest as defined in §2.2-3101.

- b. No building materials, supplies or equipment for any building or structure constructed by or for a public body shall be sold by or purchased from any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in the building or structure to the independent contractor employed by the public body to furnish architectural or engineering services in which such person has a personal interest as defined in §2.2-3101.
- c. The provisions of subsections A and B shall not apply in cases of emergency or for transportation-related projects conducted by the Department of Transportation or the Virginia Port Authority.

3.10 Certification of compliance required; penalty for false statements. (§ 2.2-4375)

- a. Public bodies may require public employees having official responsibility for procurement transactions in which they participated to annually submit for such transactions a written certification that they complied with the provisions of this article.
- b. Any public employee required to submit a certification as provided in subsection A who knowingly makes a false statement in the certification shall be punished as provided in § 2.2-4377.

3.11 Misrepresentations prohibited. (§ 2.2-4376)

No public employee having official responsibility for a procurement transaction shall knowingly falsify, conceal, or misrepresent a material fact; knowingly make any false, fictitious or fraudulent statements or representations; or make or use any false writing or document knowing it to contain any false, fictitious or fraudulent statement or entry.

3.12 Penalty for violation. (§ 2.2-4377)

Any person convicted of a willful violation of any provision of this article shall be guilty of a Class 1 misdemeanor. Upon conviction, any public employee, in addition to any other fine or penalty provided by law, shall forfeit his employment.

3.13 Discretionary Expenditures.

It is the policy of the City that procurements be consistent with the values expressed in the City's Vision Statement. Public funds are to be expended for public purposes, and not primarily for the sole benefit of individual employees or offices. Any rebates, refunds, or exchanges for goods/services purchased by the City, accrue back to the City and not to the employee. By way of example, City funds **should not** be used for certain types of expenditures, including:

- a. Holiday greeting cards for internal City use.
- b. Individual retirement parties or gifts (unless a part of the City/department regular program for recognizing City service, e.g., plaques, badges)
- c. Coffee, soft drinks or refreshments for casual office use for City employees.

Under no circumstances may City funds be expended for goods and services that do not have a clear business purpose or are personal in nature.

Department heads authorized to approve expenditures should carefully consider the use of City funds when approving purchases or expenditures that may be perceived as beneficial to employees without a corresponding benefit to citizens or the organization. Examples of such purchases where oversight is needed to avoid the appearance of misuse are listed below:

- a. Employee meals purchased locally, but not covered under the travel policy.
- b. T-shirts, golf shirts, hats, etc. with the City name or logo should only be purchased when the need exists for proper identification or the job function is enhanced.
- c. Number and appropriateness of professional organizations to which employees belong at City expense.
- d. Car rentals vs. using airport shuttles, etc.
- e. Newspapers, magazine subscriptions and other publications paid for by the City.

Requests for payment and/or reimbursement must be accompanied by appropriate documentation (i.e.; original receipts with an explanation of the business purposes identifying who, what, where, when, and why). City employees are responsible for ensuring that they are adhering to the City's Purchasing Card Policy and Administrative Procedures, Chapter 6 – Business and Training Expense Guidelines.

All employees who request or approve a discretionary expenditure shall be responsible for reviewing the expenditure for compliance with the Purchasing Manual. Employees may be held personally responsible and required to reimburse the City for expenditures incurred by the City in violation of this manual and/or City policy.

When approving these or similar expenditures, a determination should be made that the expenditure supports the department's mission and the City's Vision Statement. All expenditures should be undertaken in such a manner that they can withstand future public scrutiny, and shall be fully explained and documented. Additionally, all City activities should be administered within the spirit of the City's values:

HONESTY, RESPECT, RESPONSIBILITY, TEAMWORK, DIVERSITY AND INCLUSION

END OF CHAPTER

4 SMALL AND MINORITY AND WOMEN-OWNED BUSINESSES

Adopted on October 3, 2016 by City Council on
Resolution No. 40665-100316

Revised Plan for Participation in Public Procurement Transactions Subject to the Virginia Public Procurement Act of Small, Minority-owned, Women-owned, and Service Disabled Veteran-owned Businesses

1. POLICY STATEMENT

It is the policy of the City of Roanoke to encourage participation by small businesses (“SB”), minority-owned businesses (“MB”), women-owned businesses (“WB”), and service disabled veteran-owned businesses (“SDVB”) in all aspects of City contracting opportunities. In order to demonstrate the City’s commitment to this policy, the provisions of this Plan shall apply to any contracts for goods or services with nongovernmental entities and covered by the Virginia Public Procurement Act.

2. DEFINITIONS

As used in this Plan, the following definitions shall apply:

Virginia Public Procurement Act (“VPPA”) means the provisions and requirements set forth in Sections 2.2-4300, et. seq., Code of Virginia (1950), as amended.

Small business (“SB”) means a business independently owned and controlled by one or more individuals who are citizens of the United States or legal resident aliens, and together with affiliates, has 250 or fewer employees, or annual gross receipts of \$10 million or less averaged over the previous three years. One or more of the individual owners shall control both the management and daily business operations of the small business.

Minority-owned business (“MB”) means a business that is at least 51% owned by one or more minority individuals who are citizens of the United States or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more minority individuals who are citizens of the United States or legal residence aliens, and both the management and daily business operations are controlled by one or more individuals who are minority individuals. Minority individual means an individual who is a citizen of the United States or a legal resident alien and who is African American, Asian American, Hispanic American, or Native American, as these terms are further defined and described in Section 2.2-4310 (E) of the VPPA.

Women-owned business (“WB”) means a business that is at least 51% owned by one or more women who are citizens of the United States or legal resident aliens, or in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest is owned by one or more women who are citizens of the United States or

legal resident aliens, and both the management and daily business operations are controlled by one or more women.

Service disabled veteran-owned business (“SDVB”) means a business that is at least 51% owned by one or more service disabled veterans or, in the case of a corporation, partnership, or limited liability company or other entity, at least 51% of the equity ownership interest in the corporation, partnership, or limited liability company or other entity is owned by one or more individuals who are service disabled veterans and both management and daily business operations are controlled by one or more individuals who are service disabled veterans. Service disabled veteran means a veteran who (i) served on active duty in the United States military ground, naval, or air service, (ii) was discharged or released under conditions other than dishonorable, and (iii) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

3. EMPLOYMENT DISCRIMINATION BY CONTRACTOR PROHIBITED

Every procurement contract subject to the VPPA and of over ten thousand dollars (\$10,000.00) to which the City is a party shall contain the provisions of subparagraphs (a) and (b) herein:

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

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state law relating to discrimination in employment, except where there is a bona fide occupational qualification reasonably necessary to the normal operation of the contractor. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
2. 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.
3. Notices, advertisement and solicitations placed in accordance with federal law, rule, or regulation shall be deemed sufficient for the purpose of meeting the requirements of this section.

(b) The contractor will include the provisions of the foregoing subparagraphs (a) (1), (2), and (3) in every subcontract or purchase order of over ten thousand dollars (\$10,000), with regard to the contract with the City, so that the provisions will be binding upon each subcontractor or vendor.

4. VENDOR SELF SERVICE (“VSS”)

The City’s Purchasing Division manages the City’s VSS system, which allows businesses to register to do business with the City of Roanoke and receive notification of business opportunities via email. Businesses can register online through the City web site by the

commodity description of the services they provide, and inform the City of any SB, MB, WB, and SDVB status for which they are certified.

The Purchasing Division will serve as the primary contact for businesses to request information, instruction, and training in the VSS system.

5. ALL PUBLIC PROCUREMENT CONTRACTS

In procuring goods and services for the City, all City employees shall follow the guidelines and mandates contained in the VPPA and in the City's Purchasing Division's Procurement Manual with regard to solicitation of SB, MB, WB, and SDVB.

When bids or proposals are solicited from potential contractors, solicitations shall include, when possible, appropriate businesses from the VSS system, specifically those businesses registered with the selection of email notification flagged, including, but not limited to, the list from the Virginia Department of Small Business and Supplier Diversity.

All solicitation, addenda, and award actions over \$30,000 shall be posted on the City of Roanoke's web site <http://www.roanokeva.gov>.

Requests for Proposals estimated to be over \$100,000 shall be advertised in both The Roanoke Times and The Roanoke Tribune whenever possible and practicable. Such solicitation notices may also be advertised on Roanoke Valley Television (RVTV-3).

6. FEDERAL, STATE OR OTHER GRANT REQUIREMENTS

In addition to the provisions of this Plan, when the City is using funds subject to federal, state or other grant requirements with regard to SB, MB, WB, and/or SDVB, the City's Department managing the specific solicitation will take all necessary affirmative steps to ensure that the requirements of the grant or program are met.

7. DEBARMENT

Any offeror or bidder, or any principal thereof or person associated therewith, found to have engaged in substantial and intentional misrepresentation concerning either good faith SB, MB, WB, and/or SDVB participation efforts or its status as a SB, MB, WB, or SDVB shall be debarred in accordance with the VPPA and City policies from any City contracting for a period of two (2) years. This debarment shall also extend to any successor firm substantially controlled or managed, whether directly or indirectly, by any debarred individual or entity. This determination shall be made by the City Manager or a designee as set forth above. A debarment shall be reported in writing to City Council.

8. PARTICIPATION INFORMATION

The City Purchasing Division will, upon request, provide reporting of SB, MB, WB, and SDVB business participation data from the Purchasing Division business system(s).

END OF CHAPTER

5 SMALL PURCHASES

5.0 General.

The VPPA permits a public body to establish small purchase procedures, if adopted in writing, not requiring the use of competitive sealed bidding or competitive negotiation for single or term contracts for professional services if the aggregate or sum of all phases is not expected to exceed \$80,000 and for goods and services other than professional services if the aggregate or sum of all phases is not expected to exceed \$100,000; and transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000; however, such small purchase procedures shall provide for competition wherever practicable (§2.2-4303(G), VPPA). The following small purchase procedures have been established by Purchasing Division for use by City departments when acquiring professional services not over \$80,000 or goods and services other than professional services not over \$100,000. Procurements made pursuant to these procedures may not require public openings of bids/proposals or newspaper advertising. **Department/Division heads have the ultimate responsibility to ensure that procurements do not violate or circumvent the law, appropriations, regulations, or the provisions of this Manual.**

5.1A(1) Obtaining/Using a Prequalified Vendor List (for Professional Services \$80,000 or less).

If the aggregate or sum of all phases of work is not expected to exceed \$80,000, the following procedure may be used to establish a prequalified vendor list for professional services:

:

- a. Advertise/post notice at least once every two years requesting prequalifications from vendors interested in providing professional services to the City on small projects where the fee will be \$80,000 or less.
- b. The Request for Prequalifications (RFPQ) should be similar to an RFP which lists information desired, the general types of work to be procured using these procedures, etc.
- c. Require vendors' responses to RFPQ documenting their qualifications for the type of small projects for which they seek to be considered. Statements of prequalifications (RFPQ responses) shall be accepted at any time to allow new vendors to be considered for work and to allow vendors to update their prequalification forms to show current information. **All RFPQ responses shall be submitted to the Purchasing Division.**
- d. The Purchasing Division shall sort RFPQ responses/interest packages, establish a listing of responding vendors by qualification or discipline/capability, and file RFPQ responses by category for use in selecting vendors for interview.

The Purchasing Division shall designate, in writing, the person, persons or committee authorized to make the selections for professional services. Such persons shall be knowledgeable of the

procedures for procurement of professional services conforming to this **Manual** and the VPPA.

When the department desires to select a vendor for professional services using these procedures, the department shall:

- a. If the total cost will be \$30,000 or less, this 'small purchase' procedure will allow the department to select and interview one prequalified vendor from the list on a rotating basis. 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 vendor. Otherwise, negotiations with that vendor shall be formally terminated and negotiations conducted with the next vendor on the list, and so on until a satisfactory contract can be negotiated at a fair and reasonable price.
- b. If the total cost will be greater than \$30,000 and not more than \$80,000, the department shall be provided not less than three random vendors from the available list for interviews. The random selection will prevent the same vendors from competing against each other repeatedly. A vendor who has been selected for a project may not be solicited for interview again until all vendors on the list have had an opportunity for an interview. Most vendors that employ a licensed professional in the applicable discipline(s) will be qualified to provide the service. Therefore, the department must establish selection criteria to select a vendor who is best suited for the work.
- c. Conduct telephone or personal interviews with vendor representatives to determine current personnel qualifications, location relative to the work, expertise, workload, capability to meet the proposed schedule, past performance on similar projects and ability to provide the service within budgeted costs.
- d. Rank the order of vendors and negotiate fee for service using competitive negotiation procedures. Forward **all** documentation to Purchasing, and maintain a copy for the department files. The Department will make a recommendation for award to the Purchasing Manager.

If a department chooses not to use a qualified vendor list, they must contact the Purchasing Division for issuance of an RFP.

5.1A(2) Obtaining/Using a Prequalified Vendor List (for Other Than Professional Services \$100,000 or less).

If the aggregate or sum of all phases of work is not expected to exceed \$100,000, the following procedure may be used by the department, with prior written approval of the Purchasing Manager, to establish a prequalified vendor list for other than professional services:

- a. Advertise/post notice at least once every two years requesting prequalifications from vendors interested in providing other than professional services to the department on small projects where the fee will be \$100,000 or less.
- b. The Request for Prequalifications (RFPQ) should be similar to an RFP which lists information desired, the general types of work to be procured using these procedures, etc.

- c. Require vendors' responses to RFPQ documenting their prequalifications for the type of small projects for which they seek to be considered. Statements of prequalifications (RFPQ responses) shall be accepted at any time to allow new vendors to be considered for work and to allow vendors to update their prequalification forms to show current information. **All RFPQ responses shall be submitted to the Purchasing Division.**
- d. Departments using this procedure shall sort RFPQ responses/interest packages, establish a listing of responding vendors by qualification or discipline/capability, and file RFPQ responses by category for use in selecting vendors for interview. A copy of the list, including updates, shall be sent to the Purchasing Division on at least a quarterly basis.

The department head shall designate, in writing, the person, persons or committee authorized to make the selections for other than professional services. Such persons shall be knowledgeable of the procedures for procurement of other than professional services conforming to this **Manual** and the VPPA.

When the department desires to select a vendor for other than professional services using these procedures, the department shall:

- a. If the total cost will be \$30,000 or less, this 'small purchase' procedure will allow the department to select and interview one prequalified vendor from the list on a rotating basis. 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 vendor. Otherwise, negotiations with that vendor shall be formally terminated and negotiations conducted with the next vendor on the list, and so on until a satisfactory contract can be negotiated at a fair and reasonable price.
- b. If the total cost will be greater than \$30,000 and not more than \$80,000, the department shall select at random not less than three vendors from the list for interviews. The random selection will prevent the same vendors from competing against each other repeatedly. A vendor who has been selected for a project may not be solicited for interview again until all vendors on the list have had an opportunity for an interview. If three vendors are not available from the prequalified list, contact Purchasing for recommendations. The department must establish selection criteria to select a vendor who is best suited for the work.
- c. Conduct telephone or personal interviews with vendor representatives to determine current personnel qualifications, location relative to the work, expertise, workload, capability to meet the proposed schedule, past performance on similar projects and ability to provide the service within budgeted costs.
- d. Rank the order of vendors and negotiate fee for service using competitive negotiation procedures. Forward all documentation to Purchasing, and maintain a copy for the department files. The department will make a recommendation for award to the City Manager or the Purchasing Manager.
- e. A report listing all vendors selected and any resulting awards for each project shall be sent to the Purchasing Division on at least a quarterly basis.

If a department chooses not to use a prequalified vendor list, they **must** contact the Purchasing Division for issuance of a solicitation.

5.1B Small Letter RFP

If the total cost will be \$80,000 or less for Professional Services and \$100,000 or less for Other than Professional Services, and the department is NOT using firms from the Prequalified Vendor List from Sections 5.1A (1 & 2), the following procedure may be used. The department shall contact the Purchasing Division to determine if the Small Letter RFP method can be used prior to the solicitation information being forwarded.

- a. The determination to use this method shall be made on a case by case basis. The determining factors to use this method will include several factors. **The department must have a budget appropriated prior to work beginning on the RFP.**
- b. The RFP shall include the details and/or qualifications needed for the vendor to perform the service.
- c. This method will not be used for large construction projects, or any project requiring the submittal of drawings, or bonds.
- d. Advertisement in a newspaper of general circulation may not be required, but the RFP shall be advertised on the City's electronic procurement web site. The standard proposal submission due date is a minimum of twenty-one (21) days from the public advertisement date of the RFP; however, **in no case** shall the minimum proposal submission due date be less than ten (10) days from the advertisement date of the RFP.
- e. Department will send a vendor list to Purchasing for notification to register in VSS. Department will provide contact information for at least four possible sources when available; if possible, expanding to include a minimum of two MB/WB/SB/SDVB.
- f. The department will include the Purchasing Division in the evaluation process, review of responses received for Small Letter RFPs, ranking of vendors and negotiations of the service and the fees.
- g. Care should be taken by the department to ensure that all points negotiated are properly documented and become part of the contract.
- h. The department shall submit the recommendation of award to the Purchasing Manager or Purchasing Manager's designee. The Purchasing Manager or designee shall make the award, which will result in a contract incorporating the requirements, and terms and conditions as negotiated.
- i. The Purchasing Division will issue all public notices related to the solicitation and award.
- j. Resultant Contracts will be processed and administered according to the City's standard procedures.

5.2 Small Purchases of Goods and Other Than Professional Services. (\$100,000 or Less)

Varying degrees of competition are required for small purchases of goods and other than professional services depending on the dollar amount. The Purchasing Division shall determine the required method of procurement and type of resulting contract document. Departments may facilitate the procurement of most goods costing \$100,000 or less.

5.3 Single Quote. (\$0 to \$5,000)

- a. Where the department's estimated cost of goods and other than professional services, not including construction, is \$5,000 or less, purchases may be made upon receipt of one written or telephone quotation. A record of the quotation must be kept. When using purchasing cards, quotes should be obtained whenever possible; however, this may not always be practical in pick-up or over-the-counter sales situations.
- b. Departments should seek additional competition whenever there is reason to believe a quotation is not a fair and reasonable price (See **Purchasing Manual** 12.9 for Price Reasonableness Determination).
- c. Prior to the commencement of services, the department must issue a decentralized purchase order (PD) to the contractor.
- d. Whenever work is to be performed on City owned or leased property or facilities a certificate of insurance must be furnished by the department to Risk Management prior to commencement of work and at any time during contract performance. (See Purchasing Manual 12.13 for Insurance).

5.4 Unsealed Bidding For Goods and Other than Professional Services-Request For Quote (RFQ). (Over \$5,000 up to and including \$100,000)

Departments must follow the steps below to solicit unsealed bids by e-mail or facsimile using a written description of requested goods and/or services.

- a. Submit a requisition (RQS) to the Purchasing Division using the Purchasing Division electronic procurement site.
- b. Prepare a written solicitation package for an unsealed RFQ, using the preapproved Purchasing Division RFQ Form that includes the item description or brief scope of work, terms and conditions, and a Quote Form.
- c. The RFQ package must be approved by the Purchasing Division prior to posting notice or soliciting directly from vendors.

- d. Solicit at least four sources when available by fax, or e-mail. If possible, it is strongly encouraged to expand to include a minimum of two MB/WB/SB/SDVB. **If fewer than the required number of sources are solicited, the reasons shall be documented and the solicitation shall be posted on the Purchasing Division electronic procurement site.** Notice of solicitations for goods and/or services costing \$30,000 or more shall be posted on the Purchasing Division electronic procurement site.
- e. The standard quotation submission due date is a minimum of three business days (24 business hours) from the issuance date and time of the solicitation. The maximum quotation submission due date shall be no more than nine (9) calendar days from the issuance date.
- f. Quotes may be opened, recorded, and tabulated upon receipt; however, to be considered, quotes should be received at the stipulated location by the date and hour specified. **No person shall make public or disclose any bidding information until after the date and hour set for the receipt of quotes.**
- g. Evaluate and award to the lowest responsive and responsible bidder. If the solicitation was posted on the Purchasing Division electronic procurement site, the notice of award shall also be posted on the same site.

5.5 Unsealed Proposals for Goods and/or Other than Professional Services- Request for Unsealed Proposals (RFUP). (Over \$5,000 up to and including \$100,000)

Departments must follow the steps below to solicit unsealed proposals by e-mail or facsimile using a written description of requested goods and/or services.

- a. Submit a requisition (RQS) to the Purchasing Division using the Purchasing Division electronic procurement site.
- b. Prepare a written solicitation package for a RFUP, using the preapproved Purchasing Division RFUP Template. The solicitation should include a cover sheet, a general description of what is being sought, the factors and weights to be used in evaluation, the terms and conditions including unique capabilities or qualifications that will be required.
- c. The RFUP package must be approved by the Purchasing Division prior to posting notice or soliciting directly from vendors.
- d. Solicit at least four sources when available by fax, or e-mail. If possible, it is strongly encouraged to expand to include a minimum of two MB/WB/SB/SDVB. **If fewer than the required number of sources are solicited, the reasons shall be documented and the solicitation shall be posted on the Purchasing Division electronic procurement site.** Notice of solicitations for goods and/or services costing \$30,000 or more shall be posted on the Purchasing Division electronic procurement site.
- e. The standard proposal submission due date is a minimum of three business days (24

business hours) from the issuance date and time of the solicitation. The maximum proposal submission due date shall be no more than twenty-one (21) calendar days from the issuance date.

- f. Proposals may be opened, recorded, and tabulated upon receipt; however, to be considered, proposals should be received at the stipulated location by the date and hour specified. **No person shall make public or disclose any proposal information until after the date and hour set for the receipt of proposals.**
- g. In lieu of an evaluation committee, the end user may solely evaluate the proposals and conduct interviews, if needed. Upon completion of the evaluation, negotiations may be conducted by the department with the offeror(s) selected and award to the offeror who submitted the proposal that best furthers the interest of the city. If the solicitation was posted on the Purchasing Division electronic procurement site, the notice of award shall also be posted on the same site

5.6 Small Purchase Procedures for Non Transportation-Related Construction (\$100,000 or less)

“Construction” is defined as building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. See §2.2-4301, VPPA.

Non transportation-related construction, or repair or replacement in kind, or remodeling or renovation work which is valued at less than the small purchase threshold may be procured by using the procedures outlined in this Section, or by using the standard Competitive Sealed Bid procedures in Chapter 6.

Departments must follow the steps below to solicit unsealed bids by e-mail or facsimile using a written description of requested services.

- a. Submit a requisition (RQS) to the Purchasing Division using the Purchasing Division electronic procurement site.
- b. Prepare a written solicitation package for an unsealed RFQ, using the preapproved Purchasing Division RFQ Form that includes the item description or brief scope of work, any necessary plans and specifications, terms and conditions, and a Quote Form. Bonds or Securities are not required but may be specified.
- c. The RFQ package must be approved by the Purchasing Division prior to posting notice or soliciting directly from vendors.
- d. Solicit at least four sources when available by fax, or e-mail. If possible, it is strongly encouraged to expand to include a minimum of two MB/WB/SB/SDVB. **If fewer than the required number of sources are solicited, the reasons shall be documented and the solicitation shall be posted on the Purchasing Division electronic procurement site.** Notice of solicitations for goods and/or services costing \$30,000 or

more shall be posted on the Purchasing Division electronic procurement site.

- e. The standard quotation submission due date is a minimum of three business days (24 business hours) from the issuance date and time of the solicitation. The maximum quotation submission due date shall be no more than nine (9) calendar days from the issuance date.
- f. Quotes may be opened, recorded, and tabulated upon receipt; however, to be considered, quotes should be received at the stipulated location by the date and hour specified. **No person shall make public or disclose any bidding information until after the date and hour set for the receipt of quotes.**
- g. Evaluate and award to the lowest responsive and responsible bidder. If the solicitation was posted on the Purchasing Division electronic procurement site, the notice of award shall also be posted on the same site.

5.7 Small Purchase Procedures for Transportation-Related Construction (\$25,000 or less)

Transportation-related construction work for which the stated budget is \$25,000 or less may be procured by using the procedures outlined in this Section, or by using the standard Competitive Sealed Bid procedures in Chapter 6. "Transportation-related" means any road, bridge, tunnel, overpass, ferry, airport, mass transit facility, vehicle parking facility, port facility, or similar commercial facility used for the transportation of persons or goods.

Departments must follow the steps below to solicit unsealed bids by e-mail or facsimile using a written description of requested services.

- a. Submit a requisition (RQS) to the Purchasing Division using the Purchasing Division electronic procurement site.
- b. Prepare a written solicitation package for an unsealed RFQ, using the preapproved Purchasing Division RFQ Form that includes the item description or brief scope of work, any necessary plans and specifications, terms and conditions, and a Quote Form. Bonds or Securities are not required but may be specified.
- c. The RFQ package must be approved by the Purchasing Division prior to posting notice or soliciting directly from vendors.
- d. Solicit at least four sources when available by fax, or e-mail. If possible, it is strongly encouraged to expand to include a minimum of two MB/WB/SB/SDVB. **If fewer than the required number of sources are solicited, the reasons shall be documented and the solicitation shall be posted on the Purchasing Division electronic procurement site.**
- e. The standard quotation submission due date is a minimum of three business days (24

business hours) from the issuance date and time of the solicitation. The maximum quotation submission due date shall be no more than nine (9) calendar days from the issuance date.

- f. Quotes may be opened, recorded, and tabulated upon receipt; however, to be considered, quotes should be received at the stipulated location by the date and hour specified. **No person shall make public or disclose any bidding information until after the date and hour set for the receipt of quotes.**
- g. Evaluate and award to the lowest responsive and responsible bidder. If the solicitation was posted on the Purchasing Division electronic procurement site, the notice of award shall also be posted on the same site.

5.8 Purchasing Cards for Small Purchases.

In an effort to streamline purchasing and invoice processing steps and reduce paperwork, the City has a contract allowing departments to use purchasing cards for payment up to \$5,000 for the purchase of goods, services, maintenance, repair, and operating supplies. Departments are strongly encouraged to participate. Information may be obtained by calling the Purchasing Division at 853-2871. For additional information please see the P-card Policies and Procedures on the ePortal page under the Reference & Info tab.

5.9 Online Purchases.

Departments may purchase goods and services online by using the purchasing card for payment up to \$5,000 in accordance with the procedures for using p-cards.

Security requirements – In order to procure goods or services through the Internet, the vendor must have a current Secure Socket Layer (SSL) site for collecting p-card information. **It is the department's responsibility to ensure the vendor meets the SSL requirement before placing an order and using the purchasing card as a method of payment.** To ensure the vendor has an SSL, the Address Window/Bar must start with https://. The https:// may not be seen until the payment information is requested.

END OF CHAPTER

6 COMPETITIVE SEALED BIDDING

6.0 General.

Competitive sealed bidding is the required method for procuring construction and preferred method for acquiring goods and other than professional services for public use when the estimated cost is over the small purchase threshold. The definition of “competitive sealed bidding” is set out in §2.2-4302.1, VPPA.

6.1 Competitive Sealed Bidding.

The goods or services to be procured when using this method must be specifically and sufficiently described so that bids submitted by potential contractors can be evaluated against the description in the Invitation to Bid (ITB) and an award made to the lowest responsive and responsible bidder. When the terms and conditions of multiple awards are so provided in the ITB, awards may be made to more than one bidder. Competitive sealed bidding includes the issuance of a written ITB containing the specifications or scope of work and the contractual terms and conditions applicable to the procurement. The terms and conditions of the solicitation must include how the City will publicly post the notice of the award or make the announcement of the decision to award the contract. The requirements set forth in the ITB may include special qualifications required of potential contractors, life-cycle costing, value analysis, and any other criteria such as testing, quality, workmanship, delivery and suitability for a particular purpose which may help in determining acceptability. An ITB must describe the requirements accurately and completely. **Unnecessarily restrictive specifications or terms and conditions that unduly limit competition must be avoided.** In addition to the public notice, bids may be solicited directly from potential bidders. Any such direct solicitations may include MB/WB/SB/SDV businesses selected from a list made available by the Virginia Department of Small Business and Supplier Diversity. In the competitive sealed bid process, bids are publicly opened and read aloud. The bids are evaluated based upon the requirements set forth in the ITB, and an award is made to the lowest responsive and responsible bidder (if multiple awards are so provided in the solicitation, awards may be made to the lowest responsive and responsible bidders). Solicitations may include criteria, factors and basis for the consideration of award and the process for such consideration shall be as stated in the ITB.

6.2 Preparation and Issuance of ITBs.

- a. **Request for Solicitation.** Department contacts Purchasing Division to request an ITB. Department must supply a requisition or notice showing that funding for the goods/project is secured or will be secured prior to contract award.
- b. **Format.** Establish a due date and time that will allow sufficient time for potential bidders to seek clarification and for the issuance of an addendum, if necessary. The due date shall not be less than ten (10) calendar days from the date of public notice.

- c. **Scope.** Specify in detail the materials, equipment, and supplies to be furnished or the scope of work to be performed by the contractor, including or incorporating by reference the specifications, drawings and contractual terms and conditions applicable to the procurement.
- d. **Verify.** Verify that all requirements applicable to the procurement have been met.
- e. **Conferences/Site visits.** If applicable, pre-bid conferences and/or site visits shall be mentioned in the ITB. If attendance at such a conference or site visit is a prerequisite for bidding, the public notice period shall be long enough to provide adequate opportunity for potential bidders to obtain a copy of the ITB and attend. The standard number of days from posting should be ten (10) calendar days (**Purchasing Manual 12.3f**). Mandatory pre-bid conferences scheduled during a period of suspended City business operations should be rescheduled by the Purchasing Division to a date and time which will permit proper notification to all potentially interested participants. The sealed bid opening date should be no less than ten (10) days after the scheduled pre-bid.
- f. **Notice** Public notice of the ITB shall be posted on the City's electronic procurement site at least 10 days prior to the date set for receipt of bids.
- g. **Sources.** For an ITB, Purchasing may directly solicit potential vendors. It is the policy of the City of Roanoke to maximize participation by minority-owned, women-owned, small, and service disabled veteran- owned businesses in all aspects of City contracting opportunities.
- h. **Addenda.** Changes in the requirements of the solicitation affecting price, quantity, quality, or delivery shall be made by written addendum. When an addendum is issued that requires additional time for the vendor to prepare a solicitation response, the due date for receipt of bids should not be less than ten (10) calendar days after the issue date of the addendum. Signed acknowledgment of addenda must be returned to the Purchasing Division prior to the bid opening. Failure to acknowledge the addenda may be grounds for declaring the bid non-responsive.

6.3 Sealed Bids - Receipt, Opening, Evaluation, and Award.

- a. **Receipt.** Sealed bids shall be received until the date and time specified in the ITB. Bids are publicly opened and read aloud. Faxed or e-mailed bids are not acceptable. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, or if it is not working, such time shall be determined by the Purchasing official who is to open the bids.

When bids are received, the bids shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The bid receipt time deadline must strictly comply with the date and time stated in the ITB. The Purchasing Official shall be responsible for deciding when the receipt deadline has arrived and should announce

wording to the effect that, "Bids for solicitation number are now closed. No further bids will be accepted." It is the responsibility of the bidder to have the bid at the specified location before the appointed time so it can be stamped before the time deadline.

(1) **Sealed Bids.** Sealed bids must be held unopened in a secure area until the date and time established for opening in the solicitation. At that time, they shall be publicly opened, and only the following information read aloud:

- a. bidders' names;
- b. unit prices, lump sum, or lot prices, as may be applicable;
- c. discount terms offered, if discount terms are to be considered in making the award; and
- d. brand name and model numbers, if requested by the attendees.

(2) **Late Bids.** Bids received after the date and time specified for receipt in the ITB, shall be marked late and shall not be considered. Bidder will be notified of late bid receipt and the bid will be destroyed unless the bidder requests their return at no expense to the City. A copy of the bid envelope with a time stamp or notation should be placed in the Purchasing Division file.

b. **Opening.** After bid opening, bids are evaluated by the requesting department according to the criteria and/or evaluation procedure described in the ITB to determine which one is the apparent low bidder. The requesting department will make a recommendation for award to the Purchasing Division.

c. **Award.** The Purchasing Division verifies that the bidder recommended for award has met all of the requirements set forth in the ITB and the contract is awarded or issuance of a purchase order pursuant to Section 6.9.

6.4 Withdrawal of Bids Before Opening.

A bid may be withdrawn by a bidder if the Purchasing Division receives such a request in writing before the opening date and time. The request must be signed by a person authorized to represent the person or firm that submitted the bid. Such bid may be altered as set forth below and resubmitted in a sealed envelope or container before the opening date and hour, or another sealed bid may be submitted before that time.

6.5 Alterations to Bids Before Opening.

Prior to submission of a bid, alterations may be made to information provided by the bidder, but they must be initialed by the person signing the bid or proposal. The proper procedure is to draw a single line through the information to be changed and insert the desired information and initial the change. Erasures, strikeovers, or the use of correction fluid on the bid form that affect unit price, quantity, quality, or delivery may result in the rejection of the line item or items involved in

the bid. No changes may be made to the bid by notation on the outside of the envelope, and any such notations will not be considered except for identification purposes.

6.6 Mistakes in Bids Other Than Construction.

- a. **Correction.** Except as herein provided, no plea or claim of mistake shall be available to a bidder for recovery of any deposit or security required to be paid or posted or as a defense in any legal proceeding for the failure, neglect or refusal of the bidder to (1) execute a contract that has been awarded by the City, (2) accept a purchase order issued by the City to a bidder in response to a bid submitted by such bidder, or (3) perform in accordance with the terms, specifications and conditions of a contract.

- b. **Mistakes Discovered After Opening But Before Award.**
 - (1) **Informality.** An informality is a minor defect or variation of a bid from the exact requirements of the ITB, which does not affect the price, quality, quantity, or delivery schedule for the goods, services, or construction being procured (*Code of Virginia*, § 2.2-4301). The City may, in its sole discretion, waive such informalities or permit the bidder to correct them, whichever procedure is in the best interest of the City. Examples include, but are not limited to the failure of a bidder to:
 - (a) Return the number of signed bids required by the solicitation.
 - (b) Sign the face of the bid in the space provided, but only if the unsigned bid is accompanied by other signed documents indicating the bidder's intent to be bound.
 - (c) Acknowledge receipt of an addendum to the solicitation.
 - (2) **Judgment Errors.** Bids may not be withdrawn if the mistakes are attributable to errors in judgment, nor may such mistakes be corrected.
 - (3) **Nonjudgmental Mistakes.**
 - (a) Mistakes Where the Intended Correct Bid is Evident. If the mistake and the intended correct bid are clearly evident to the City, in the bid document, the bid may be corrected by the City, in its sole discretion, to the intended correct bid and may not be withdrawn. Examples of mistakes that may be clearly evident in the bid document are typographical errors, errors in extending unit prices, transposition errors, and arithmetical errors.
 - (b) Mistakes Where the Intended Correct Bid is Not Evident. If the mistake is clearly evident and the intended correct bid is not clearly evident to the City, in the bid document, a bidder may be permitted by the City, in its sole discretion, to withdraw a low bid.
 - (c) Mistakes Discovered After Award. Bids containing mistakes shall not be corrected or withdrawn after award of a contract or issuance of a purchase order. No plea or claim of mistake in a bid or resulting contract shall be available as a

defense in any legal proceeding brought upon a contract or purchase order awarded to a bidder as a result of the breach or nonperformance of such contract or purchase order.

6.7 Withdrawal of Construction Bids After Opening.

Bids that have been appropriately opened cannot be changed, adjusted, corrected or modified by the bidder in any way other than complete withdrawal. The City's procedures for withdrawal of bids is that set forth in Code of Virginia § 2.2-4330 allowing withdrawal of a bid due to an error.

A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his or her bid from consideration if the bid price 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 because of 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. 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.

6.8 Procedures for Withdrawal of Bids After Opening

Whether construction or other than construction, the bidder shall submit to the Purchasing Division his or her original work papers, documents, and materials used in the preparation of the bid within two (2) business days after conclusion of the bid opening. The work papers shall be delivered by the bidder in person, by overnight courier, or by registered mail. Such work papers, documents and materials may be considered as trade secrets or proprietary information subject to the conditions of the *Code of Virginia*, § 2.2-4342F. Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.

- a. If a bid is withdrawn, the lowest remaining responsive bid shall be deemed to be the apparent low bid.
- b. 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.
- c. If the City denies the request for withdrawal of a bid under the provisions of this section, the Purchasing Division shall notify the bidder in writing stating the reasons for the decision and award the contract to such bidder at the bid price, provided such bidder is a responsive and responsible bidder.

No bid may be withdrawn 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.

6.9 Bid Evaluation.

As soon as practical after the opening, the bids should be evaluated and an award made to the lowest responsive and responsible bidder.

To be considered for an award, a bid must comply in all material respects with the Invitation to Bid. Responsiveness relates to compliance with the provisions of the solicitation, including specifications and terms and conditions. Failure to comply with the requirements set forth in the Invitation to Bid may result in a bid being declared non-responsive, e.g., failure to sign a bid, failure to return the required bid documents, substitution of vendor's terms, deletion of terms and conditions stated in the Invitation to Bid, failure to offer a product or service that meets the requirements of the Invitation to Bid, etc. A bidder who fails to provide prices for all categories of labor in the pricing schedule of a time and materials service contract, where required, may be considered non-responsive. This is true whether the price was left blank or the bidder entered a figure of \$0. Bidders who provide multiple prices for performing a service where a single price was solicited may also be considered non-responsive.

If a bid is found to be non-responsive, a notation as to why it is non-responsive shall be made and included in the procurement file.

In determining a responsible bidder, a number of factors, including but not limited to the following, are considered. The bidder should:

- a. Usually be a dealer, supplier, or when required in the solicitation an authorized dealer of the goods or services offered;
- b. Have the ability to comply with the required delivery or performance schedule, taking into consideration other business commitments;
- c. Have a satisfactory record of performance;
- d. Have a satisfactory record of integrity; and
- e. Have the necessary facilities, organization, experience, technical skills, and financial resources to fulfill the terms of the purchase order or contract.

If the City determines that the apparent low bidder is not responsible, it shall proceed as set forth in §2.2-4359 of the VPPA:

1. Prior to the issuance of a written determination of nonresponsibility, the City Manager or designee shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The City Manager or designee shall issue a written determination of responsibility based on all information in the possession of the City, including any rebuttal information, within five business days of the date the City received the rebuttal information. At the same time, the City Manager or designee shall notify, with return receipt requested, the bidder in writing of its determination.
3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by bringing an action as provided in §2.2-4364 in the Circuit Court of the City of Roanoke challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the City to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

6.10. Alternate Bids.

An alternate bid is a bid submitted in knowing variance from the specifications and must be clearly distinguished as an alternate by the bidder. Frequently, alternate bids incorporate the latest in technology and can result in substantial savings, not only in monetary terms, but also in system-wide operational efficiencies. The Purchasing Division may not accept alternate bids; however, they may reject all bids and rebid the item with a revised specification that may incorporate features of the alternate.

6.11 Negotiation with the Lowest Responsive and Responsible Bidder.

If the bid from the lowest responsive and responsible bidder exceeds available funds, the department may negotiate with the apparent low bidder to obtain a contract price within available funds if the solicitation contains substantially the following language:

“The City reserves the right to negotiate with the apparent lowest responsive and responsible bidder pursuant to §2.2-4318 of the Code of Virginia, to obtain a contract price within the funds available if such low bid exceeds the available funds. The conditions and procedures under which such negotiation may be undertaken are that the appropriate City officials shall determine that the lowest responsive and responsible bid exceeds available funds and **notify such bidder in writing of the City’s desire to negotiate with the apparent low bidder. Thereafter, negotiations may be held to obtain a contract within available funds involving discussions of reduction of quantity, or other cost saving mechanisms.** Any such negotiated contract shall be subject to final approval of the City, in the sole discretion of the City” (§ 2.2-4318, VPPA).

If such bidder decides to negotiate under those circumstances, the decision must be documented in writing in advance of the negotiations. Otherwise, unless canceled or rejected, a responsive bid

from the lowest responsible bidder shall be accepted as submitted. "Available funds" are generally considered those budgeted by the department for the requirement and designated as such prior to the issuance of the ITB. The purpose of this provision is not to force a bidder to take a lower price but rather to negotiate an acceptable change in requirements, including a price agreeable to both parties. Negotiations might include an extended delivery date, reduced quantity, different accessories, etc., with a corresponding reduction in price.

END OF CHAPTER

7 COMPETITIVE NEGOTIATION

7.0 General.

The VPPA requires the use of competitive negotiation for the procurement of all professional services (§2.2-4303(B), VPPA). Competitive negotiation may be the procurement method used for goods and other than professional services. (§2.2-4303(C), VPPA). The definition of competitive negotiation is set out in §2.2.4302.2, VPPA.

7.1 Competitive Negotiation for Professional Services.

Competitive negotiation for professional services includes the following steps:

- a. The first step is to determine that the needed services satisfy the definition of professional services. Note: if the estimated cost of the professional service is under the small purchase threshold, the small purchase procedures of Chapter 5 may be used to obtain such professional service.
- b. A written RFP is issued to describe in general terms that which is to be procured.
 1. The RFP must specify and list any specific items to be addressed by the offerors and the factors that will be used in evaluating the proposals, and it must contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the contractors. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one offeror. The RFP must state the manner in which public notice of the award or the announcement of the decision to award shall be given by the public body. The RFP must state whether numerical or weighted scoring system is used in the evaluation criteria.
 2. Mandatory requirements should be kept to a minimum and refer only to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of “shall” or “must” indicates a mandatory requirement. Specify any optional information desired.
 3. The requesting department shall communicate to Purchasing the information on what services are being requested, such as the scope of work and/or technical specifications to be provided by the Offeror, the location, the anticipated time period for which the services must be provided, the background information, any special qualifications that may be required of the Offerors, and the need for a pre-proposal meeting.
 4. Establish a proposal submission due date and time which provides sufficient time for potential offerors to develop a proposal. The standard proposal submission due date is a minimum time period of thirty (30) days from the public

notice date of the RFP; however, in **no case** shall the minimum proposal submission date be less than ten (10) days from the public notice date of the RFP.

5. For architectural or engineering services, the public body shall not request or require offerors to list any exceptions to proposed contractual terms and conditions, unless such terms and conditions are required by statute, regulation, ordinance, or standards developed pursuant to § 2.2-1132, until after the qualified offerors are ranked for negotiations.
- c. Solicitations requiring advertisement should be forwarded to the Purchasing Division. An RFP expected to be over the small purchase threshold shall be advertised in the Roanoke Times, posted in the lobby of the Noel C. Taylor Municipal Building South, and may be posted on the electronic procurement website. The RFP should also be advertised in the Roanoke Tribune. The advertisement should be a brief statement providing notice of the solicitation.

It is the policy of the City of Roanoke to maximize participation by minority-owned, women-owned, small business, and service disabled veteran-owned businesses in all aspects of City contracting opportunities. The City will make a reasonable effort to seek such participation.

- d. The department head, or designee, should select an evaluation panel of individuals knowledgeable in the service area.
 - a. The Purchasing Division, or designee, will provide the evaluation panel specific instructions of what their charge is, including any weight to be given to the evaluation factors.
 - f. **Conferences/Site visits.** If applicable, pre-proposal conferences and/or site visits shall be mentioned in the RFP and may be included in advertisement. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period shall be long enough to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend, the standard number of days from posting should ten (10) calendar days (Purchasing Manual 12.3f). Mandatory pre-proposal conferences scheduled during a period of suspended City business operations should be rescheduled by the Purchasing Division to a date and time which will permit proper notification to all potentially interested participants. The sealed proposal opening date should be no less than twenty (20) days after the scheduled pre-proposal.
 - g. **Addenda.** Any changes in the requirements of the solicitation must be made by written addendum. When an addendum is issued that requires additional time for the offeror to prepare a solicitation response, the due date for receipt of proposals should not be less than ten (10) calendar days after the issue date of the addendum. Signed acknowledgment of addenda must be returned to the Purchasing Division prior to or with the proposal. Failure to acknowledge the addenda may be grounds for declaring the proposal non-responsive.

- h. **Receipt.** Sealed proposals shall be received until the date and time specified in the RFP. Faxed or e-mailed proposals are not acceptable. The time of receipt shall be determined by the time clock stamp in the Purchasing Office, or if it is not working, such time shall be determined by the Purchasing official who is to open the proposals.

When proposals are received, the proposals shall be date stamped and the time noted or stamped on the envelope showing the time of receipt. The proposal receipt time deadline must strictly comply with the date and time stated in the RFP. The Purchasing Official shall be responsible for deciding when the receipt deadline has arrived and should announce wording to the effect that, "Proposals for solicitation number are now closed. No further proposals will be accepted." It is the responsibility of the Offeror to have the RFP at the specified location before the appointed time so it can be stamped before the time deadline.

- (1) **Sealed Proposals.** Sealed proposals must be held unopened in a secure area until the date and time established for opening in the solicitation. At that time they may be publicly opened, and only the Offerors' names will be read aloud.
 - (2) **Late Proposals.** Proposals received after the date and time specified for receipt in the RFP, shall not be considered. Late **sealed** proposals shall not be accepted and shall be marked "late". Offeror will be notified of late proposal receipt and the proposal will be destroyed unless the Offeror requests their return at no expense to the City. A copy of the proposal envelope and/or package with a time stamp or notation should be placed in the Purchasing Division file.
- i. The proposals are evaluated by the buyer and/or an evaluation team. As an option, evaluators may request presentations or discussions with offerors, as necessary, to clarify material in the offerors proposals, to help determine those fully qualified and best suited. Proposals are evaluated on the basis of the criteria set forth in the RFP, using the evaluation criteria previously determined. All RFP responses are to be evaluated. Proposals not meeting requirements should be scored lower. Only bids in response to an ITB may be determined to be nonresponsive. Offerors may be given an opportunity to correct a deficiency in their proposals, within an appropriate period of time, as determined by the purchasing office. Offerors who fail to submit required documentation or meet mandatory requirements, in such time, for evaluation purposes may be eliminated from further consideration. Two or more offerors, if there be that many, determined to be fully qualified and best suited are then selected for negotiation. Price is considered, but need not be the sole determining factor.
 - j. The evaluation panel is to engage in individual discussions with two or more offerors, if there be that many 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. Such discussions may also include nonbinding estimates of total project costs, including but not limited to, where appropriate, design, construction and life-cycle costs. Nonbinding methods to be utilized in arriving at a price for services may also be discussed. During discussions and/or negotiations, properly identified confidential and/or proprietary information from offerors shall not be disclosed to the public or to competitors unless required by law or a court.

- k. At the conclusion of discussions, on the basis of evaluation factors published in the RFP and all information developed in the selection process to this point, the evaluation panel shall select, in the order of preference, two or more offerors, if there be that many, whose professional qualifications and proposed services are deemed most meritorious.

During the evaluation phase it may be determined that only one offeror is fully qualified, or that one offeror is clearly more highly qualified than the others under consideration. A written determination shall be prepared and retained in the solicitation file to document the meaningful and convincing facts supporting the decision for selecting only one offeror and negotiating with that offeror. The determination shall be signed by the evaluation panel and department head or his/her designee.

- l. Negotiations shall then be conducted, beginning with the offeror ranked first. If a contract satisfactory and advantageous to the public body 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. and pursuant to contractual terms and conditions acceptable to the public body. At any time during the negotiations, the department head and Purchasing Manager may terminate all negotiations, reject all proposals, and re-advertise the RFP. The reason for such termination should be made a part of the file. The City of Roanoke is not required to furnish a statement of the reasons why the RFP was cancelled and/or why a particular proposal was not deemed to be the most advantageous.
- m. The City Manager or City Manager's designee will make the award, which will result in a contract incorporating the requirements, and terms and conditions of the contract as negotiated. Care should be taken by the department to ensure that all points negotiated are properly documented and become part of the contract.
- n. The Purchasing Division will issue all public notices related to the solicitation.

7.2 Competitive Negotiation for Goods and Other than Professional Services.

Competitive negotiation has the advantage of flexibility for describing in general terms what is being sought and the factors to be used in evaluating responses. It offers the opportunity, through negotiation, to change the content of an offer and pricing after opening. Negotiation is the dialogue that occurs to achieve mutually satisfactory objectives and benefits and to reconcile differences. This discussion provides the means for both the buyer and seller to reach agreement on a contract's content, terms, and conditions. In the course of negotiation, both parties should be able to reach a mutually acceptable agreement. Competitive negotiation is not "horse trading," "haggling," or an auction. Competitive negotiation, properly carried out, requires skill and extensive preparation on the part of the negotiators to achieve specific procurement objectives.

This method of procurement includes the following steps:

- a. A written RFP is issued to describe in general terms that which is to be procured.
 1. The RFP must specify and list any specific items to be addressed by the Offerors and the factors that will be used in evaluating the proposals, and it must contain other applicable contractual terms and conditions, including any unique capabilities or qualifications required of the Offeror, or a sample contract. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror. The terms or conditions of the RFP must state the manner in which public notice of the award or the announcement of the decision to award will be made.
 2. Mandatory requirements should be kept to a minimum and refer to those areas that are required by law or regulation or are such that they cannot be waived and are not subject to negotiation. The use of "shall" or "must" indicates a mandatory requirement. Specify any optional information desired. The factors for use in evaluation shall be stated in the RFP. Price may be one of the factors considered, but need not be the determining one.
 3. In the case of a proposal for information technology, as defined in § 2.2-2006, a public body shall not require an offeror to state in a proposal any exception to any liability provisions contained in the Request for Proposal.
 4. In writing the scope of work and/or technical specifications for an RFP, use the term "contractor" to describe the person/firm that is to perform the requirements of the contract after award. Use the term "Offeror" to describe who is to submit a response to the RFP. The requesting department shall communicate to Purchasing the information on what services or goods are being requested, such as the scope of work and/or technical specifications to be provided, the location, the anticipated time period for which the services must be provided, the background information, any special qualifications that may be required of the Offerors, and if there will be a pre-proposal meeting.
 5. Establish a proposal submission due date and time which provides sufficient time for potential offerors to develop a proposal. The standard proposal submission due date is a minimum time period of thirty (30) days from the public notice date of the RFP; however, in **no case** shall the minimum proposal submission date be less than ten

(10) days from the public notice date of the RFP.

6. For the purchase of material, equipment, supplies or other than professional services estimated to cost more than the small purchase threshold, Purchasing may directly solicit potential vendors. It is the policy of the City of Roanoke to maximize participation by minority-owned, women-owned, small, and service disabled veteran- owned businesses in all aspects of City contracting opportunities.
- b. Solicitations requiring advertisement must be forwarded to the Purchasing Division. Solicitations over the small purchase threshold shall be advertised in the Roanoke Times, posted in the lobby of the Noel C. Taylor Municipal Building, and posted on the City's electronic procurement web site. The RFP may also be advertised in the Roanoke Tribune. The advertisement should be a brief statement about opening date time and how to receive a copy of the solicitation.
- c. Proposals may be publicly opened. The only information that may be read aloud and made available to the Offerors and general public is the names of the individuals or the names of firms submitting proposals, unless otherwise provided in the RFP.
- d. **Conferences/Site visits.** If applicable, pre-proposal conferences and/or site visits shall be mentioned in the RFP and may be included in advertisement. If attendance at such a conference or site visit is a prerequisite for submitting a proposal, the public notice period shall be long enough to provide adequate opportunity for potential offerors to obtain a copy of the RFP and attend, the standard number of days from posting should ten (10) calendar days (Purchasing Manual 12.3f). Mandatory pre-proposal conferences scheduled during a period of suspended City business operations should be rescheduled by the Purchasing Division to a date and time which will permit proper notification to all potentially interested participants. The sealed proposal opening date should be no less than twenty (20) days after the scheduled pre-proposal.
- f. All proposals are to be evaluated by an evaluation panel. Offerors who fail to submit required documentation or meet mandatory requirements may be eliminated from further consideration. As an option, evaluators may request presentations or discussions with Offerors, as necessary, to clarify material in the Offerors proposals, and/or to help determine those fully qualified and best suited. Proposals are evaluated on the basis of the criteria set forth in the RFP, using the scoring weights previously determined, if any. Two or more Offerors if there be that many determined to be fully qualified and best suited, are then selected for negotiation. Price may be considered, but need not be the sole determining factor.

During the evaluation phase it may be determined that only one Offeror is fully qualified, or that one Offeror is CLEARLY more highly qualified than the others under consideration. A written determination shall be prepared and retained in the contract file to document the meaningful and convincing facts supporting the decision for selecting only one Offeror and negotiating with that Offeror. The determination shall be signed by the department head or his/her designee.

- g. Negotiations are then conducted with each of the Offerors so selected. Negotiation allows

modification of proposals, including, but not limited to, price. Offers and counter-offers may be made as many times with each Offeror as is necessary to secure a reasonable contract. After negotiations have been conducted with each of the selected Offerors, the City selects the Offeror which, in its opinion, has made the best proposal, and the contract is awarded to that Offeror. In the case of a proposal for information technology, as defined in § 2.2-2006, the offeror shall state any exception to any liability provisions contained in the Request for Proposal in writing at the beginning of negotiations, and such exceptions shall be considered during negotiation. In all cases, written confirmation shall be obtained from the Offeror on any modifications of the original proposal. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror. Once an intent to award or an award notice is posted, no further negotiations shall be conducted.

Departments are not required to furnish a statement of the reason why a particular proposal was not deemed to be the most advantageous (§2.2-4359(D), VPPA). Offerors may inspect the proposal records after evaluation and negotiations are complete, but prior to award in accordance with the VPPA, (§2.2-4342(D), VPPA).

Departments may cancel an RFP or reject proposals at any time prior to making an award (§ 2.2-4319, VPPA)

END OF CHAPTER

8 DESIGN BUILD AND CONSTRUCTION MANAGEMENT

8.0 General.

While the competitive sealed bid process remains the preferred method of construction procurement for the City, the City may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis. (§2.2-4382(A), VPPA). The definitions of design-build and construction management are set out in §2.2.4379, VPPA.

8.1 Design-Build Method of Procurement.

Design-Build for construction services includes the following steps:

- a. A design-build contract procurement method shall be a two-step competitive negotiation process. The following procedures shall govern the selection, evaluation, and award of design-build contracts:
 1. Criteria for use: Design-build contracts are intended to minimize the project risk for the owner and reduce the delivery schedule by overlapping the design phase and the construction phase of a project.
 2. Approval for use: Prior to taking any action to pursue a design-build project, the City's requesting department or division shall receive written approval of the City Manager to use the design-build procurement solicitation method. The request shall be in writing and shall justify and substantiate that the design-build method is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the City will benefit from using the design-build method. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of the design-build method shall be stated in the Request for Qualifications (RFQ). Approval of or exceptions to this procedure may be granted by the City Manager, who is the approving authority for requests to use the design-build method.
 3. Basis of award: The award of a design-build contract shall be in accordance with Va. Code §2.2-4302.2(A)(3), as it now exists or as it may be amended, and shall be based on the following: 1) an acceptable proposal deemed to be in the best interest of the City of Roanoke and 2) a determination that the Offeror's technical proposal and, if requested, the financial proposal are determined to be the "best value" for the City of Roanoke in response to the Request for Proposal (RFP) for the project.
 4. Evaluation Committee: The City shall establish an Evaluation Committee ("Committee") to be responsible for evaluating the qualifications of Offerors responding to the design-build solicitation and reviewing proposals submitted for such services.

This Committee shall consist of a minimum of three (3) and a maximum of five (5) voting members. The members of the Committee should have expertise relevant to the project, with backgrounds in such areas as project design, construction, finance, contract review, and/or project management. The Committee shall include a Virginia licensed engineer or architect. The membership of the Committee shall be determined by the City's Director of Public Works or the Director's designee.

5. Selection of Qualified Offerors (Step 1) – Request for Qualifications (RFQ).

- a) The City's Purchasing Department shall publish notice of the City's RFQ at least thirty (30) days prior to the date set for receipt of qualifications by advertising in a local newspaper of general circulation in the City of Roanoke, posting on the City's website and eVA, posting in the Noel C. Taylor Municipal Building at a location designated by the City's Purchasing Manager, and in such other manner as designated by the City's Purchasing Manager, so as to provide reasonable notice to the maximum number of Offerors that can be reasonably anticipated to submit qualifications in response to the particular RFQ. Additionally, qualifications may be solicited directly from potential Offerors. If practicable, the notice shall also be published in appropriate national trade publications.
- b) The RFQ shall provide a description of the project, the services required by the City, any unique capabilities to be required of the Offeror, and the criteria to be used in evaluating the potential Offeror's qualifications. The RFQ should request from potential Offerors only such information as is appropriate for an objective evaluation of all Offerors pursuant to such criteria. The RFQ shall establish procedures whereby comments concerning provisions in the RFQ can be received and considered prior to the time set for receipt of qualification. All Offerors shall have a licensed Class "A" contractor and an Architect or Engineer registered in the Commonwealth of Virginia as part of the Offeror's team.
- c) The Committee shall evaluate each responding Offeror's qualifications submittal and any other relevant information and shall determine which Offerors are fully qualified and suitable for the project.
- d) The RFQ evaluation shall result in a short list of two (2) to five (5) Offerors to receive an RFP. An Offeror may be denied prequalification only as specified in Virginia Code § 2.2-4317(C). However, the short list shall also be based on the RFQ criteria and a determination by the Committee of which qualified Offerors should be on the short list based on such Offeror's responses to the RFQ.
- e) At least thirty (30) days prior to the date established for the submission of proposals to the RFP, the City's Purchasing Manager shall advise each Offeror in writing as to whether that Offeror has been prequalified. In the event that an Offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons. Prequalified Offerors that

are not selected for the short list shall likewise be provided the reasons for such decision.

6. Selection of Design-Build Contractor (Step II).

- a) The City's Purchasing Manager or designee shall prepare a Request for Proposal ("RFP") that includes, but is not limited to, the following: 1) the instructions for submitting a proposal, the criteria for evaluation, the terms and conditions of the design-build contract; 2) a narrative description of the project requirements; 3) general conditions and technical specifications; and 4) facility and site plans as appropriate for the project. The RFP may also define such other requirements as the City determines appropriate for a particular project. The RFP shall include procedures whereby comments concerning specifications or other provisions contained in the RFP can be received and considered prior to the time set for receipt of proposals.
- b) The City's Purchasing Manager or designee shall send an RFP to the qualified design-build Offerors on the short list for the project and request formal proposals from each of them. Offerors will have at least ten (10) days to submit a proposal. Separately sealed technical and financial proposals may be required to be submitted to the City's Purchasing Manager. If such separate proposals are required, the Purchasing Manager will provide the technical proposals to the Committee and hold the financial proposals until the technical review has been completed.
- c) Based on criteria established in the RFP, the Committee shall evaluate each of the technical proposals. As part of the evaluation process, the Committee may grant each of the Offerors an equal opportunity for direct and private communication with the Committee. Each Offeror shall be allotted the same fixed amount of time. In its communications with Offerors, the Committee shall exercise care to discuss the same owner information with all Offerors. In addition, the Committee shall not disclose any trade secrets or proprietary information for which the Offeror has invoked protection in accordance with Virginia Code § 2.2-4342.
- d) The Committee will inform each Offeror of any adjustments necessary to make such Offeror's technical proposal fully compliant with the requirements of the RFP. In addition, the City may require that any and/or all Offerors make design adjustments necessary to incorporate project improvements and/or additional detail information identified by the Committee.
- e) Based on the adjustments made to the technical proposals, an Offeror may amend its financial proposal. In addition, an Offeror may submit cost modifications to its original sealed financial proposal, which are not based on revisions to the technical proposal.

- f) The Committee shall evaluate and rank (if technical rankings are to be considered as a criteria for an award) the technical proposals. Should the City Manager determine in writing and in his/her sole discretion that only one Offeror is fully qualified, or that one Offeror is clearly more qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror after approval of the City Manager. Otherwise, the Purchasing Manager shall open the financial proposals and apply the criteria for an award as specified in the RFP and make a recommendation to the Committee and make such financial proposals available to the Committee for its evaluation. The Committee, in its discretion, either as a whole or by a designated member or members, may then negotiate with the Offeror or Offerors the Committee selects in order to arrive at terms for a design-build contract the Committee determines the Committee can recommend to the City Manager.
- g) The Committee shall make its recommendation for the selection of a design builder to the City Manager based on its evaluations of the technical and financial proposals. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP and whose proposal is deemed to be in the best interest of the City.
- h) The City's Purchasing Manager or designee will notify all Offerors who submitted proposals which Offeror was selected for the project. The Notice of Intent to Award may be used to make this notification. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror.
- i) Upon request and in accordance with Virginia Code § 2.2-4342, documentation of the process used for the final selection shall be made available to the unsuccessful Offerors.

8.2 Construction Management Method of Procurement.

Construction Management for construction services includes the following steps:

- a. A construction management contract procurement method shall be a two-step competitive negotiation process. The following procedures shall govern the selection, evaluation, and award of construction management contracts:
 - 1. Criteria for use: Construction management contracts may be approved for use on projects where fast tracking of construction is needed to meet City program requirements or when value engineering and/or constructability analyses concurrent with design are required.
 - 2. Approval for use: Prior to taking any action to pursue a construction management project, the City's requesting department or division shall receive written approval of the City Manager to use the construction management procurement solicitation

method. The request shall be in writing and shall justify and substantiate that the construction management method is more advantageous than a competitive sealed bid construction contract with a general contractor and shall indicate how the City will benefit from using the construction management method. The request shall also include a written justification that sealed bidding is not practicable and/or fiscally advantageous. These justifications for the use of the construction management method shall be stated in the Request for Qualifications (RFQ). Approval of or exceptions to this procedure may be granted by the City Manager, who is the approving authority for requests to use the construction management method.

3. Limitation of use: The use of the construction management solicitation method shall be limited to complex projects with a total construction value for all phases in excess of Five Hundred Thousand Dollars (\$500,000). The City's Purchasing Manager or designee shall document the reasons for the City's justification for choosing the construction management approach to meet the needs of the City over procuring the project utilizing a sealed bid approach prior to the issuance of an RFQ.
4. Basis of award: The award of a construction management contract shall be in accordance with competitive negotiation for other than professional services as set forth in Virginia Code §2.2-4302.2(A)(3), as it now exists or as it may be amended, and the criteria for the award shall be submitted to the City's Purchasing Manager or designee, in advance, for approval. It is noted that cost is a critical component of the selection process. However, such award shall also be in accordance with the provisions of Virginia Code §2.2-4302.2(A)(3) as it now exists or as it may be amended.
5. Evaluation Committee: The City shall establish an Evaluation Committee ("Committee") to be responsible for evaluating the qualifications of potential Offerors responding to the construction management solicitation and reviewing proposals submitted for such services. This Committee shall consist of a minimum of three (3) and a maximum of five (5) voting members. The members of the Committee should have expertise relevant to the project, with backgrounds in such areas as project design, construction, finance, contract review, and/or project management. The Committee shall include a Virginia licensed engineer or architect. The membership of the Committee shall be determined by the City's Director of Public Works or the Director's designee.
6. Selection of Qualified Offerors (Step 1) – Request for Qualifications (RFQ)
 - a. The City's Purchasing Manager or designee shall prepare an RFQ containing the City's facility requirements, building and site criteria, site and survey data (if available), the criteria to be used to evaluate RFQ Responses, and other relevant information, including any unique capabilities or qualifications that will

be required of the contractor. All Offerors shall have a Class "A" contractor registered in the Commonwealth of Virginia as part of the project team.

- b. The City's Purchasing Department shall publish notice of the City's RFQ at least ten (10) days prior to the date set for receipt of qualifications by advertising in a local newspaper of general circulation in the City of Roanoke, posting on the City's website, posting in the Noel C. Taylor Municipal Building at a location designated by the City's Purchasing Manager, and in such other manner as designated by the City's Purchasing Manager, so as to provide reasonable notice to the maximum number of Offerors that can be reasonably anticipated to submit qualifications in response to the particular RFQ. Additionally, qualifications may be solicited directly from potential Offerors. If practicable, the notice shall also be published in appropriate national trade publications.
- c. The Committee shall evaluate each responding Offeror's qualifications submittal and any other relevant information and shall determine which Offerors are fully qualified and suitable for the project.
- d. The RFQ evaluation shall result in a short list of two (2) to five (5) Offerors to receive an RFP. An Offeror may be denied prequalification only as specified in Virginia Code § 2.2-4317(C). However, the short list shall also be based on the RFQ criteria and a determination by the Committee of which qualified Offerors should be on the short list based on such Offeror's responses to the RFQ.
- e. At least thirty (30) days prior to the date established for the submission of proposals to the RFP, the City's Purchasing Manager shall advise each Offeror in writing as to whether that Offeror has been prequalified. In the event that an Offeror is denied prequalification, the written notice shall state the reasons for the denial of prequalification and the factual basis for such reasons. Prequalified Offerors that are not selected for the short list shall likewise be provided the reasons for such decision.

7. Selection of Construction Management Contractor (Step II).

- a. The City's Purchasing Manager or designee shall prepare a Request for Proposal ("RFP") that includes, but is not limited to, the following: 1) the instructions for submitting a proposal, the criteria for evaluation, the terms and conditions of the construction management contract; 2) a narrative description of the project requirements; 3) general conditions and technical specifications; and 4) facility and site plans as appropriate for the project. The RFP may also define such other requirements as the City determines appropriate for a particular project. The RFP shall include procedures whereby comments concerning specifications or other provisions contained in the RFP can be received and considered prior to the time set for receipt of proposals.

- b. The City's Purchasing Manager or designee shall send an RFP to the qualified construction management Offerors on the short list for the project and request formal proposals from each of them. Offerors will have at least ten (10) days to submit a proposal.
- c. The Committee shall evaluate and rank proposals and conduct negotiations with two or more Offerors submitting the highest ranked proposals. Should the Committee determine that only one Offeror is fully qualified, or that one Offeror is clearly more qualified than the others under consideration, a contract may be negotiated and awarded to that Offeror.
- d. The Committee shall make its recommendation for the selection of a construction management contractor to the City Manager based on its evaluation and negotiations. The contract shall be awarded to the Offeror who is fully qualified and has been determined to have provided the best value in response to the RFP and shall be made in accordance with the requirements of Virginia Code § 2.2-4302.2(A)(3) as it now exists or as it may be amended.
- e. The City's Purchasing Manager or designee will notify all Offerors who submitted proposals which Offeror was selected for the project. The Notice of Intent to Award may be used to make this notification. When the terms and conditions of multiple awards are so provided in the RFP, awards may be made to more than one Offeror.
- f. Upon request, documentation of the process used for the final selection shall be made available to the unsuccessful Offerors, subject to the provisions of Virginia Code § 2.2-4342.

8. Required Construction Management Contract Terms:

Any guaranteed Maximum Price construction management contract entered into by the City will contain provisions requiring (1) not more than 10% of the construction work (measured by cost of the work) will be performed by the Construction Management Contractor with its own forces and (2) that the remaining 90% (or more) of the construction work will be performed by subcontractors of the Construction Management Contractor which the Construction Management Contractor must procure by publicly advertised, competitive sealed bidding to the maximum extent possible. Documentation shall be placed in the file detailing the reasons any work was not procured by publicly advertised competitive sealed bidding. The City Manager may modify these contractual requirements in whole or in part for the projects where it would be fiscally advantageous to the public to increase the amount of construction work performed by the Construction Management Contractor.

- a. Guaranteed Maximum Price (GMP): The GMP shall be established at the completion of the working drawings unless a waiver has been granted by the City Manager.

- b. One-Step Solicitation: The City Manager may approve a one-step solicitation for a project, if adequate written justification is provided by the City's Director of Public Works.

8.3 Miscellaneous Provisions.

- a. The City reserves the right and shall be entitled to cancel any RFQ and/or RFP solicitation, and/or reject any proposals or responses at any time, before a final contract is signed by the City for a particular project. Such right shall be in the sole discretion of the City Manager.
- b. The City shall not be required to issue an RFQ and/or RFP at the request of any potential Offeror. Such decision shall be in the sole discretion of the City Manager.
- c. The City shall not be responsible for any expenses or costs of any type incurred by any Offeror or potential Offeror at any stage of any solicitation, RFQ, or RFP process. Any Offeror participating, or any potential Offeror anticipating to participate, in a solicitation contemplated by the City, by submitting any documents or taking any actions in response to any solicitation shall be deemed to have agreed that such Offeror or potential Offeror is solely responsible for any and all of its costs and expenses of any type connected in any way with any such solicitation, even if such solicitation is cancelled and/or the proposals are rejected and no award is made.

END OF CHAPTER

9 EXCEPTIONS AND/OR EXEMPTIONS FROM COMPETITIVE PROCUREMENT

9.0 General.

The VPPA provides for exceptions and/or exemptions from competitive procurement, as provided herein:

- a. Purchases pursuant to a small purchase procedure. Currently, the City is authorized to establish such procedures for single or term procurements. (See Purchasing Manual Chapter 5)
- b. Sole source procurements.
- c. Emergency procurements.
- d. Joint and Cooperative Procurements.
- e. Used Equipment.
- f. Other Exceptions to Competitive Procurement.

9.1 Sole Source.

A. Definition. Section 2.2-4303(E) of the VPPA provides that:

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 basis for this determination. The public body shall issue a written notice stating that only one source was determined to be practicably available, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the City's electronic procurement website and may published in a newspaper of general circulation on the day the public body awards or announces its decision to award the contract, whichever occurs first.

In a sole source situation, competition is not practicably available. This differs from a proprietary purchase wherein the product required is restricted to the manufacturer(s) stipulated, but is available through multiple distributors and competition.

B. Department Head Approval.

A written determination approved by the department head, documenting that there is only one source (practicably) available for the required goods and/or services,

must be submitted to the Purchasing Manager, City Manager, and/or his or her designee.

A key part of the Sole Source Procurement Approval/Award is an explanation of each of the following four points:

- a. Explain why this is the only product or service that can meet the needs of the requesting department.
- b. Explain why this vendor is the only practicably available source from which to obtain this product or service.
- c. Explain why the price is considered reasonable. (See PURCHASING MANUAL 12.9 for additional guidance).
- d. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the City.

C. Sole Source Award

The approved sole source request is the Award document, resulting in a Purchase Order/Contract in the dollar amount of the awarded request. After Award, any changes in the dollar amount of the sole source will require an additional sole source request, to justify the continued practicability and reasonableness of price. The additional sole source request shall be submitted for the difference in dollar amount resulting from the change in the Work (goods and/or services).

D. Posting Requirements.

Sole source Awards shall be posted on the City's electronic procurement website and may be posted in the lobby of the Noel C. Taylor Municipal Building.

9.2 Emergency Procurement.

A. Definition. In general, an emergency is a situation that threatens to shut down a critical system or process or a situation that threatens public health, safety and/or welfare. An emergency has a serious and urgent nature that demands immediate action. Emergency procedures may be used to purchase only that which is necessary to cover the requirements of the emergency. Subsequent requirements shall be obtained using normal purchasing procedures. **The potential loss of funds at the end of a fiscal year is not considered an emergency.**

Section 2.2.4303(F) of the VPPA provides that:

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, and submitted to the Purchasing Manager regardless of the dollar amount. The fact that a department head may make the procurement without contacting the Purchasing Division does not affect the need to maintain communication through the leadership structure concerning the emergency. For an emergency outside normal business hours, the department head or designee should proceed with the emergency procurement and inform the Purchasing Manager on the next business day.

The public body shall issue a written notice stating that the contract is being awarded on an emergency basis, and identifying that which is being procured, the contractor selected, and the date on which the contract was or will be awarded. This notice shall be posted on the City's electronic procurement website on the day the public body awards or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

Section 41 of the City of Roanoke Charter provides in applicable part:

In an emergency requiring immediate action, the City Manager may make any purchase or cause any such improvements to be made or other public work to be done by direct employment of the necessary labor and purchase of the necessary material and supplies without previously advertising for or receiving bids therefore. Every such case shall be reported by the City Manager in writing to the Council at its next regular meeting with a statement of the facts constituting such emergency. Separate accounts shall be kept of all such work; provided that nothing in this or the next preceding section shall prevent the City from doing maintenance and repair work by direct labor and from maintaining a reasonable workforce for that purpose.

B. Timing of Emergency Procurements.

The timing of the emergency will determine what pre-award action may be taken:

- a. For an emergency during normal business hours, the person determining that an emergency exists should contact the Purchasing Manager or designee.
- b. For an emergency outside normal business hours, see Section 9.2(A).
- c. When emergencies occur that exceed the ability of local government to respond and additional resources are required from state or federal government, the Emergency Operations Center (EOC) is activated. The EOC provides logistical support and coordination to field operations during major emergencies.

The Virginia Department of Emergency Management (VDEM) and the Federal Emergency Management Agency (FEMA) require all purchases to follow the City's purchasing policies and procedures. Failure to follow these procedures may

jeopardize stated and federal reimbursement. Emergency purchases shall be limited to those supplies and services necessary to respond to the emergency. The Purchasing Division maintains a listing of City contracts in place for many goods and services that may be required in response to an emergency. The contract list is available on Lotus Notes under the Purchasing Heading on the Financial Tab. Hard copy lists are also maintained by the Purchasing Division, in the Municipal Building and at offsite storage.

When the Emergency Operations Center (EOC) is activated, increases to the purchasing limit for individual p-card accounts can be processed for personnel authorized to make emergency purchases through the Incident Command, City Manager or Assistant City Manager for the City of Roanoke. In order to increase individual p-card limits; one of the identified leaders as noted previously must contact the Purchasing Manager (or the Purchasing Manager's designee) directly to assist with sourcing the needed items and assisting with sourcing payment.

C. Award of Emergency Procurements.

For emergencies, efforts should be directed to finding a source and directing the contractor to proceed; however, such procurement shall be made with such competition as is practicable under the circumstances (§2.2-4303(F), VPPA). This does not relieve the department from negotiating a fair and reasonable price and subsequently documenting the procurement action. Vendor's qualifications may be checked. Insurance coverage, if applicable, should be checked along with information on warranty offered and any other data pertinent to the procurement. A department may procure materials, equipment or supplies above its delegated authority, but in any such case, the department head or designee should notify the Purchasing Manager as soon as possible, but no later than the next business day.

D. Documentation.

A written determination approved by the department head, indicating the nature of the emergency, the reason for selection of the particular contractor shall be included in the Contract file and must be submitted to the Purchasing Manager, City Manager, and/or his or her designee.

A key part of the Emergency Procurement Approval/Award is an explanation of each of the following four points to the extent practicable:

- a. Explain why this product or service can meet the needs of the requesting department.
- b. Explain why this vendor is a practicably available source from which to obtain this product or service.
- c. Explain why the price is considered reasonable.

- d. Describe the efforts that were made to conduct a noncompetitive negotiation to get the best possible price for the City.

The City Manager is required to sign every Notice of Emergency Award in amount over the signature authority amount of the Purchasing Manager to indicate that he/she has been informed of the emergency purchase. Notice of an Emergency Award over the small purchase threshold shall be publicly posted on the City's electronic procurement website and may be posted in the lobby of the Noel C. Taylor Municipal Building on the day the City awards and/or announces its decision to award the contract, whichever occurs first, or as soon thereafter as is practicable.

The department must prepare a decentralized purchase order (PD), requisition (RQS), or Contract (CT), as soon as practical. Care should be taken to include in detail any agreements, including price, that were made orally with the contractor.

E. Emergency Planning.

In many cases, procurement planning can reduce the need for using emergency procedures. Each department should prepare and keep current a list of local sources of goods and services that might be needed in an emergency. Information on rates and charges should be established and agreed upon in advance. In addition, "as needed" annual contracts for various services may be competitively bid to expedite action, ensure adequate support, and reduce the cost of meeting emergency requirements.

9.3 Joint and Cooperative Procurements.

The City may participate in, sponsor, conduct, or administer a joint procurement agreement *on behalf of or* in conjunction with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, the District of Columbia, the U.S. General Services Administration, or the Metropolitan Washington Council of Governments, for the purpose of combining requirements to increase efficiency or reduce administrative expenses in any acquisition of goods, services, or construction.

In addition, the City may purchase from another public body's contract or from the contract of the Metropolitan Washington Council of Governments and/or Virginia Sheriffs' Association even if it 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 a cooperative procurement being conducted on behalf of other public bodies, except for:

1. Contracts for architectural or engineering services,; or
2. Construction, except for the installation of artificial turf and track surfaces and

stream restoration and Stormwater management, including all associated and necessary construction and maintenance, which shall not be subject to the limitations prescribed in this subdivision. Nothing in this subdivision shall be construed to prohibit sole source or emergency procurements awarded pursuant to subsections E and F of § 2.2-4303.

9.4. Used Equipment.

1. Purchase and negotiation by City departments of used equipment, that which has been previously owned and used, offered for sale “where is, as is” and does not include demonstration or factory rebuilt items marketed through distribution outlets. Departments should contact Purchasing if interested in purchasing used equipment.
2. A requisition containing complete information describing the item must be provided to the Purchasing Division along with the price being offered by the seller in writing. Prior to preparation of any purchase order, the Purchasing Division must obtain a written statement from a person who is technically knowledgeable of the type of equipment to be purchased, normally the end user, verifying the condition of the equipment, its future usefulness, and that its purchase would be in the best interest of the City of Roanoke.
3. Upon a determination in writing that the price is fair and reasonable for used equipment meeting the department’s needs, a purchase order may be noncompetitively negotiated and awarded up to \$30,000.00. Used equipment purchases over \$30,000.00 that are available from only one source, may be purchased in accordance with Chapter 9 (Exceptions and/or Exemptions from Competitive Procurement).

9.5 Other Exceptions to Competitive Procurement.

1. Sections 2.2-4344, -4345, -4346 VPPA, permit localities to enter into contracts without competition for the purchase of goods or services for certain transactions. These sections should be reviewed for specific exemptions.
2. Section 2.2-4343(B), VPPA, provides with respect to procurements with federal funds:

Where a 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, a public body may comply with such federal requirements, notwithstanding the provisions of this chapter, only upon the written determination of the Governor, in the case of state agencies, or the governing body, in the case of political subdivisions, that acceptance of the grant or contract funds under the applicable conditions is in the public interest. Such determination shall state the specific provision of this chapter in conflict with the conditions of the grant or contract.

9.6 See Administrative Procedure 3.4, Payment Vouchers, on the City of Roanoke intranet for a list of items that are processed using payment vouchers without competition, including but not limited to the following selected categories of goods and services up to and including \$30,000:

- (1) Books, pre-printed materials, reprints and subscriptions (e.g., print or electronic), pre-recorded audio and video cassettes, compact discs, slide presentations, etc., when only available from the publisher/producer.
- (2) Academic/research consulting services.
- (3) Honoraria, entertainment services (speakers, lecturers, musicians, performing artists).
- (4) Training that is specialized, proprietary, or not typically available to the general public for which competition is generally unavailable.
- (5) Royalties and film rentals when only available from the producer or protected distributors.
- (6) Professional Organizational Membership dues.
- (7) Writer services.
- (8) Artists services (does not include graphic artists); original works of art; and original, or authentic antique period art frames (does not include newly created replacement or reproduction frames).
- (9) Photography services, e.g., for official photographs/portraits.
- (10) Contributions and donations.
- (11) Advertisements such as in newspapers, magazines, journals, radio, television, etc.
- (12) Utility charges.
- (13) Conference facilities (to include conference support and related lodging and meals) only when the use of a specific facility is directed by an outside donor, sponsor, or organization.
- (14) Accreditation fees and academic testing services.
- (15) Rare and historic manuscript, printed and photographic materials (e.g. books, ephemera, maps, manuscripts, photographs, and prints) that are one of a kind or exist in very limited supply.
- (16) Purchases for testing or evaluation (limited to purchases of quantities considered necessary for complete and adequate testing).
- (17) Government-to-Government Purchases. The purchase of goods and services from the federal government, other states and their agencies or institutions, and public bodies. Care must be exercised to be certain that the price is fair and reasonable.

END OF CHAPTER

10 PROCUREMENT REQUIREMENTS AND POLICIES

10.0 General.

This chapter sets out some of the specific requirements of the VPPA, and related policies to implement the VPPA.

10.1 Bid Invitations, Requests for Proposals and Responses.

a. **Canceling a Solicitation.** An Invitation to Bid, a Request for Proposal, or any other solicitation or any and all bids and proposals, may be canceled or rejected after written notification from the department to the Purchasing Division. Departments may only cancel solicitations within the department's procurement threshold. When canceling a written solicitation, for goods and services over \$30,000, public notice of such cancellation must be posted on the purchasing division electronic procurement website and may be posted in the lobby of the Noel C. Taylor Municipal Building. The reason for cancellation or rejection of bids shall be made a part of the contract file. A department shall not cancel or reject an Invitation to Bid, a Request for Proposal, or any other solicitation solely to avoid awarding a contract to a particular responsive and responsible bidder or offeror (§ 2.2-4319 of the VPPA). Personnel responsible for opening bids or proposals must be notified of the cancellation to prevent responses from being opened inadvertently. Purchasing Division personnel will contact participating bidders and/or offerors and will return unopened, sealed bids or proposals on canceled solicitations at the expense of the bidder/offeror or destroy the bid/proposal at the request of the bidder/offeror. If a solicitation is canceled after opening of bids/proposals, the original bid/proposal will remain a part of the procurement transaction file. Bidders or offerors should be notified in writing that the solicitation has been canceled and that duplicate proposals, if provided, will be destroyed unless the bidder or offeror requests their return at no expense to the City.

b. Public Inspection of Certain Records (Virginia Code 2.2-4342)

1. Except as provided in this section, 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 section 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 subsection B of § 2.2-4317 shall not be subject to the Virginia Freedom of Information Act (§ 2.2-3700 et seq.); however, the bidder, offeror or contractor shall (i) invoke the protections of this section prior to or upon submission of the data or other materials, (ii) identify the data or other materials to be protected, and (iii) state the reasons why protection is necessary. A bidder, offeror, or contractor shall not designate as trade secrets or proprietary information (a) an entire bid, proposal, or prequalification application; (b) any portion of a bid, proposal, or prequalification application that does not contain trade secrets or proprietary information; or (c) line item prices or total bid, proposal, or prequalification application prices.

c. **Acceptable Bid/Proposal Signatures.** The bid or proposal and all addenda returned by the bidder or offeror by facsimile must be signed. The original bid or proposal must be signed in ink and/or certified electronic signature as allowed by the solicitation. The person signing the bid or proposal must be a person authorized by the bidder or offeror to sign bids or proposals. Typewritten or stamped signatures are not acceptable. The person signing must include his or her title, and if requested, must verify his or her authority to bind the company to the contract. Failure to sign the face of the bid/proposal in the space provided may result in rejection of the bid/proposal, unless the unsigned bid/proposal is accompanied by other signed documents indicating the bidder's/offeror's intent to be bound.

10.2 Bonds.

For legal requirements for construction projects, see PURCHASING MANUAL 12.3(e)(5) Construction-Type Contracts.

Section 2.2-4338(A and B), VPPA, provides for alternatives to required bonds:

- A. In lieu of a bid, payment, or performance bond, a bidder may furnish a certified check, cashier's check, or cash escrow in the face amount required for the bond.
- B. If approved by the ...attorney for the political subdivision in the case of political subdivisions, 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, payment or performance bond. Approval shall be granted only upon a determination that the alternative form of security proffered affords protection to the public body equivalent to a corporate surety's bond.

Section 2.2-4339, VPPA, provides:

A public body may require bid, payment, or performance bonds for contracts for goods or services if provided in the Invitation to Bid or Request for Proposal.

The requesting department should make a determination, in other than construction contracts, whether any such bonds should be used in the procurement.

10.3 Contractor License Requirements.

- a. **Contractor Licensing and Registration.** State statutes and regulatory agencies require that some contractors be properly registered and licensed, or hold a permit, prior to performing specific types of services.

It is the contractor's responsibility to comply with the rules and regulations issued by state regulatory agencies.

- b. **Construction, Removal, Repair or Improvement.** If a procurement of \$1,000 or more involves construction, removal, repair or improvement of any building or structure permanently annexed to real property or any other improvement to such real property, the contractor must possess one of the following licenses issued by the State Board for Contractors for the type of work involved (*Code of Virginia*, §§54.1-1100, 54.1-1103 and 54.1-1115):

Contractor License A - If the contract is \$120,000 or more or if the contractor does \$750,000 or more in business within any 12-month period.

Contractor License B - If the contract is \$10,000 or more, but less than \$120,000 (\$1,000 for electrical, plumbing, and HVAC work) or if the contractor does between \$150,000 or more, but less than \$750,000 in business within any 12-month period.

Contractor License C - If the contract is over \$1,000 but less than \$10,000 or if the contractor does less than \$150,000 in business in any 12-month period. **Note:** Electrical, plumbing, heating, ventilation and air conditioning (HVAC) contractors shall require a master tradesman license as a condition of licensure. Call and check with the Board of Contractors for all other trades to see if a license is required.

An unlicensed vendor submitting a bid or proposal where such license is required is non-responsive and is in violation of state law. Any buyer who knowingly receives or considers a response from an unlicensed vendor when a license is required is in violation of state law (*Code of Virginia*, § 54.1-1115). Contractors must be licensed in the proper classification and specialty to perform the work required by the solicitation. If there is any question as to whether a licensed contractor is required for a specific procurement, call the State Board for Contractors for policy interpretation.

10.4 Contract Requirements – City Charter.

Section 26 of the Roanoke City Charter requires the City Attorney to endorse on all contracts and other instruments to which the City is a party “approval of form and correctness thereof.” In practice, the office accomplishes this by approving documents “as to form” and “as to execution.”

In reviewing contracts for approval as to form, the City Attorney’s office looks for the following:

- (1) Are the parties clearly identified with correct legal name of each party?
- (2) Does the contract comply with the intent of Council, the City Manager, and all interested parties as expressed by Council Reports, ordinances or other documents?
- (3) Is the contract amount to be paid clearly set out?
- (4) Are the services and/or items to be provided clearly set out?
- (5) Who is the proper City representative to execute the document?
- (6) Have funds been certified as being available by the Department of Finance.
- (7) Is there any unreasonable exposure to liability for the City, and, if so, how is this being dealt with?
- (8) Is insurance coverage or a bond necessary, and, if so, is the insurance or bond adequate?
- (9) On contracts involving the expenditure of federal or state grant money, has the Department of Planning Building and Development reviewed the contract?
- (10) Is the contract free from ambiguities and loopholes?
- (11) Is there a clearly defined method for the City to terminate the contract?

When approving a contract “as to execution,” the City Attorney’s office looks for the following:

- (1) Are all signatures present?
- (2) Did the parties executing the contract have apparent authority?
- (3) Have funds been certified as being available by the Department of Finance?
- (4) If furnished by the contractor, is the accompanying bond in order and properly executed?

(5) Has insurance coverage been approved by Risk Management?

Section 2-235 of the City Code provides that no contract, agreement, or other obligation involving the expenditure of money shall be entered into nor shall any ordinance of the council or order of any officer of the city authorizing the city's obligation for expenditure of money be effective until and unless the director of finance shall have certified that the money required for such contract, agreement, obligation, or expenditure is in the city treasury to the credit of the fund from which it is to be drawn, and not appropriated for any other purpose, which certification may be endorsed on or recited in such ordinance, endorsed upon the contract, agreement, or other instrument creating such obligation or upon such order, or may be contained in separate certification filed and preserved in the office of the city clerk; provided, however, that requirement of such certification shall not be applicable to the city's execution or issuance of bonds or notes under §§ 47, 48, and 49 of the City Charter. The sum so certified shall not thereafter be considered unencumbered, until the city is discharged from the contract, agreement, or obligation. The Department of Finance customarily uses a stamp or signature to indicate on contracts, agreements, etc. that funds have been appropriated and are available.

Prior to any contract, agreement or other obligation involving the expenditure of City funds being fully executed, Finance must certify the appropriation and availability of funds for formal solicitations. For small purchases, evidence that a procurement document has been approved in the financial system will be accepted as certification by the Department of Finance.

10.5 Multiple Awards.

When the terms and conditions of multiple awards are so provided in the Invitation to Bid or Request for Proposal for services, awards may be made to more than one bidder or offeror. Unless otherwise specified in the solicitation, Purchasing may award a multi-line item procurement in whole or in part or on an individual line item basis. In determining whether to make separate line item awards on a multi-line item solicitation, consideration should be given to the administrative costs to the department of processing individual purchase documents, and separate invoices and checks.

10.6 Prequalification.

It is sometimes necessary to prequalify products or suppliers and only solicit those who have been prequalified. In such cases, a list is maintained of specific products (QPL) or contractors (QCL) which have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance (Code of Virginia, § 2.2-4317). This qualification is performed in advance of any particular purchase program. By having a prequalification procedure, the time in the purchase cycle can be reduced. The qualification requirements must be established and potential contractors advised by letter and/or public posting sufficiently in advance of the anticipated procurement to allow for evaluation and qualification of potential contractors and/or products. A contractor whose product or service has been determined not qualified will be advised in writing.

10.7 Sales Tax.

The City of Roanoke is generally exempt from paying Virginia's sales taxes on purchases of tangible personal property for its use or consumption. Departments may receive requests for a Tax Exemption Certificate or exemption number. A properly signed certificate shall be obtained from the Purchasing Division. When it is evident on the face of the bid that taxes were improperly included, the bidder may be given the opportunity to delete them.

Virginia's Sales and Use tax does not apply to sales of tangible personal property to the City, for its use or consumption, if the purchases are pursuant to required official purchase orders to be paid for out of public funds. The tax applies when such sales are made without the required purchase orders and are not paid for out of public funds. No exemption is provided for local government employee purchases of meals or lodging whether purchases are pursuant to required official purchase orders or not. The following examples are offered to show that taxes apply to lodging and conference facilities under a variety of circumstances:

Sales and Use Taxes apply:

Example 1: A City employee takes an overnight trip. All state taxes apply to lodging and meals in this transient situation.

Example 2: A City employee registers for a conference and decides to pay for lodging and nonconference meals that were charged with a personal credit card and later get reimbursement from the department. All state taxes apply to the expenses incurred.

Example 3: A City employee registers for a conference, seminar, etc., making reservations with the facility by submitting a PO for payment. All state taxes for lodging and meals charged against the PO would apply. If an employee pays out of the pocket for meals, the tax would apply.

Example 4: The department is sponsoring a conference or seminar, sets a master account, and provides the facility with a PO. All state taxes would apply to lodging, facilities, meals, AV, and other taxable services charged to the master account.

Persons who contract with the City to perform a service and in conjunction therewith furnish some tangible personal property are deemed to be the consumers of all such property and are not entitled to exemption on the grounds that a governmental entity is a party to the contract. This is true even though title to the property provided may pass to the government and/or the contractor may be fully and directly reimbursed by the government. The same principle applies to persons who enter into contracts with the City to perform real property construction or repair.

10.8 Preference for VA products with recycle content and for VA Firms.

Section 2.2-4324, VPPA, provides:

Preference for Virginia products with recycled content and for Virginia firms. –

A. In the case of a tie bid, preference shall be given to goods produced in Virginia, goods or services or construction provided by Virginia persons, firms or corporations; otherwise the tie shall be decided by lot.

B. Whenever the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a percentage preference, a like preference shall be allowed to the lowest responsive and responsible bidder who is a resident of Virginia and is the next lowest bidder. If the lowest responsive and responsible bidder is a resident of any other state and such state under its laws allows a resident contractor of that state a price-matching preference, a like preference shall be allowed to responsive and responsible bidders who are residents of Virginia. If the lowest bidder is a resident contractor of a state with an absolute preference, the bid shall not be considered. The Department of General Services shall post and maintain an updated list on its website of all states with an absolute preference for their resident contractors and those states that allow their resident contractors a percentage preference, including the respective percentage amounts. For purposes of compliance with this section, all public bodies may rely upon the accuracy of the information posted on this website.

C. Notwithstanding the provisions of subsections A and B, in the case of a tie bid in instances where goods are being offered, and existing price preferences have already been taken into account, preference shall be given to the bidder whose goods contain the greatest amount of recycled content.

D. For the purposes of this section, a Virginia person, firm or corporation shall be deemed to be a resident of Virginia if such person, firm or corporation has been organized pursuant to Virginia law or maintains a principal place of business within Virginia.

Section 2.2.4328, VPPA, provides:

- A. The governing body of a county, city or town may, in the case of a tie bid, give preference to goods, services and construction produced in such locality or provided by persons, firms or corporations having principal places of business in the locality, if such a choice is available; otherwise the tie shall be decided by lot, unless § 2.2-4324 applies.
- B. The provisions of this section shall apply only to bids submitted pursuant to a written Invitation to Bid.

END OF CHAPTER

11 CONTRACT ADMINISTRATION

11.0 General.

Contract administration begins after award of the contract. Its purpose is to ensure that the contractor's and department's total performance is in accordance with the terms and conditions of the contractual agreement. The integrity of the public purchasing system demands that goods or services be furnished, received, invoiced and paid as specified in the contract. Contract administration includes all actions taken by the City relative to a specific contract after the award is made. For assistance with contract administration, contact the Purchasing Division at 853-2871.

After issuance of a contract award document, the department is responsible for contract administration to ensure that the services or goods are provided in accordance with the terms of the contract. Planning and proactive management of a contract are crucial to effective contract administration. All vendor noncompliance should be reported on a Complaint to City Vendor Form and, the completed Form must be submitted to the Purchasing Division for placement in the contract file.

11.1 Planning and Checklist.

Contract administration planning should occur during the development of the solicitation and award documents. All purchases should include post-award administrative efforts-with the degree determined by evaluating purchase complexity, value, delivery or performance schedule, commodity or service type, and risks to the department. A contract checklist or milestone chart should be developed for each contract that requires multiple or scheduled actions by the contractor during the contract period. This checklist or chart is developed directly from the contract by extracting specific requirements, scheduled delivery dates, start-up and a completion date, plus other related items such as performance guarantees (e.g., bonds, certificates of insurance, catalogs, copies of warranties, volume reports, as-built drawings, maintenance manuals, parts lists, maintenance, scheduled testing, etc.). A similar checklist can also be developed for the City's obligations for the contract. These actions are essential if the contract administrator is to ensure that the contractor fulfills the obligations of the contract. Successful service contract administration usually involves a team approach with specific administrative tasks delegated to end-users or others who can closely monitor contract performance. The contract administrator and end user together with the buyer should work to establish administrative requirements or tasks while developing the solicitation.

11.2 Contract Pricing Arrangements.

Section 2.2-4331, VPPA, provides:

- A. Except as prohibited in this section, public contracts may be awarded on a fixed price or cost reimbursement basis, or on any other basis that is not prohibited.
- B. Except in case of emergency affecting the public health, safety or welfare, no public

contract shall be awarded on the basis of cost plus a percentage of cost.

11.3 Limiting Indirect Costs for Research.

Commonwealth of Virginia legislative action obligates Universities to recover indirect, or overhead, costs wherever possible. Research sponsors that do not allow full indirect cost recovery rates to be applied must provide proof (such as this Administrative Procedure) that indirect cost rates are limited. If there is no proof for the lower rates, the standard indirect rates would be applied to a project's research contract.

The City of Roanoke believes that good stewardship means maximizing our limited resources; including funding research to inform data driven fiscal decisions. Research contracts should be structured in a way that makes sense from a financial perspective while also funding institutions for the cost of delivering research results efficiently. The spirit of this Administrative Procedure is to pay for expenses that are directly attributable to project outcomes and outputs as direct costs and reasonable expenses associated with general running of the institution as indirect costs. Greater specificity on each category is described below.

Definitions

1. Direct Costs are the expenses required to execute a grant that are directly attributable and can be reasonably allocated to the project. Program staff salaries, travel expenses, materials, and consultants required to execute the research are examples. Costs that would not be incurred if the research project did not exist are often indicative of direct costs.
2. Indirect Costs are general overhead and administration expenses that support the entire operations of a research institution and that may be shared across projects. Expenses that would be incurred regardless of whether the research is funded are often indicative of indirect costs. While these costs may not be directly attributable to a project, they are real and necessary to operate as an organization.
3. Indirect Cost Rate = Budgeted Indirect costs/ Budgeted Total Direct Costs (e.g. personnel, sub-awards, supplies, equipment, etc.) The indirect cost rate proposed in the research contract budget should not exceed the institution's organizational rate (when defined by the same terms.)
4. Maximum Indirect Cost Rate = the *maximum* rate allowed under this Administrative Procedure. A research institution with an actual indirect cost rate lower than the maximum rate provided below should *not* increase the contract budget to the maximum allowed. The intent is to sufficiently fund actual costs, not to generate financial surpluses for institutions.

No City of Roanoke General or Enterprise funds may be used to pay negotiated indirect cost rates on a contract, grant, or cooperative agreement (or similar arrangement) entered into between the City of Roanoke and an institution of higher education beyond the Maximum Indirect Cost Rate of twenty percent (20%) of the total cost of the contract, grant, or agreement (or similar arrangement).

11.4 Contract Administrator.

The contract administrator should be the end user of the contract or one who has a vested interest in the procurement who will be responsible for the proper adherence to all contract specifications by the contractor. Contract administration shall be determined by the department requesting the solicitation designating a specific individual or position, highlighting important aspects of the contract, and distinguishing between the administrator's authority and that which must remain a function of the Purchasing Division.

Specific delegated tasks should be outlined in the designation letter to the department which may include acceptance of goods or services, approval of invoices, scheduling and monitoring of project progress, coordination of the provision of agency or other resources when part of the contract, and favorable or critical feedback to the contractor and buyer. All continuous or term contracts shall be assigned an administrator in writing.

11.5 Procurement Records.

Complete records should be maintained for each purchase transaction, containing all the information necessary to understand the why, who, what, when, where and how of the transaction. Records are open to the public in accordance with the *Virginia Freedom of Information Act* and should be made available for review after the award has been made, subject to exceptions provided by law.

Solicitation File. The file must contain at a minimum, as applicable, the solicitation document, sources solicited, cancellation notices, bid/proposal tabulation, and the method of evaluation and award.

Contract File. Contract files should contain a completed copy of the contract, contractor performance reports submitted by the contract administrator, modifications or change orders, renewal notices, vendor complaint forms, cure letters, and any other documents relating to the contract.

11.6 Delivery of Goods.

The policy of the City is to request bids for goods F.O.B. Destination, which means the quoted price includes shipping costs. Receiving personnel or the contract administrator should have a copy of the purchase order or award document in order to be aware of the type or method of delivery the contractor is required to perform and what is to be delivered. The contractor may be required by the contract to deliver in a specific manner such as one of the following: tailgate only, at dockside only, deliver on pallets, make inside delivery by floor and room number, deliver and install and remove all debris, or deliver at only certain specified hours. Delivery instructions should be made clear in the award documents specifying any conditions or issues impacting delivery such as restrictive loading areas or limited elevator access. Delivery must be made by the date or period specified in the contract or the contractor will be considered to be in default, except for excusable delays approved by the City.

11.7 Inspection.

Departments are responsible for inspecting and accepting goods or services purchased. Inspection is the close and critical examination of goods or services delivered to determine conformance with applicable contract requirements or specifications. It includes the

determination that:

- a. Unless otherwise specifically ordered, the delivery consists of new and unused merchandise.
- b. Goods or services of the quality, quantity, grade, or standard specified in the purchase order or contract have been delivered.
- c. The design, construction, ingredients, size, kind, type, make, color, style, etc., of the commodities conform to the requirements of the purchase order or contract and where applicable, to the manufacturer's published specifications.
- d. The packaging and labeling, marking, or other means of identification meet specifications. The commodities comply with specification requirements in all essential respects, are in good condition, and delivery has been made in accordance with the terms and conditions of the purchase order or contract.

11.8 Acceptance.

Upon acceptance of goods or services the end user department is responsible for keying a receiver transaction (RC) into the City's financial system and forwarding any invoices to the Department of Finance. Proper notification of the acceptance of goods or services is necessary for timely and proper payment of invoices.

11.9 Rejection.

Rejection of goods or services is the responsibility of the receiving department whenever the goods or services do not meet contract requirements. In the event of a partial or total rejection, the department should take immediate action to notify the contractor as to the reasons for rejection and to request prompt replacement. When a rejection is made, the Purchasing Division should be immediately notified followed by completing and sending a Complaint to City Vendor Form to the Purchasing Division.

11.10 Restocking Charges.

A restocking charge may be assessed by a contractor for those deliveries rejected by a department due to no fault of the contractor. The value of these charges should be identified prior to making the decision to return. Contact Purchasing at 540-853-2871 before making a return that will result in a purchase order cancellation or change.

11.11 Overshipments/Overruns.

A department should not accept goods in excess of those specified in the purchase order or contract unless authorized by the department head.

11.12 Damaged Shipments/Latent Defects.

It is the department's responsibility to inspect deliveries promptly for shipping damage at the receiving location. Concealed damage or latent defects should be reported to the carrier and contractor within seven business days of receipt and prior to removal from the point of delivery if possible. It is difficult to determine responsibility for deliveries once the department has moved goods to another location or when the inspection has not been made in a timely manner. If latent defects are found, the contractor is responsible for replacing the defective goods within the delivery time originally stated in the solicitation and is liable for any resulting expenses incurred by the City.

11.13 Payment and Invoice Processing.

Invoice processing is to be performed in accordance with the rules and regulations set forth by the Department of Finance. To maintain good vendor relationships and a competitive environment, it is imperative that invoices be processed promptly and in accordance with the contract terms. Section 2.2-4352, VPPA requires departments to pay for the completely delivered goods or services by the required payment date. If no payment date has been established by contract, then payment is due 30 days after receipt of a proper invoice by the department or 30 days after the receipt of the goods or services, whichever is later (§ 2.2-4347,VPPA).

11.14 Modifications and Change Orders.

A public contract may include provisions for modification of the contract during performance, but no fixed-price contract may be increased by more than 25% of the original amount of the contract or \$50,000, whichever is greater, without the advance written approval of the City Council (City Charter § 42; §2.2-4309(A),VPPA). This limitation applies to the aggregate change orders in a contract. The modification of a purchase order or contract can only be authorized by the appropriate purchasing official. To change a purchase order, the department must contact the Purchasing Division. All change requests should be evaluated by the Buyer for contract validity and price reasonableness. A contractor shall not be notified that a change has been approved until that change has been authorized by the appropriate purchasing official. Contractors who deviate from the requirements of a purchase order/contract prior to receipt of an authorized change order do so at their own risk (§ 2.2-4309,VPPA).

Contract amendments and change orders extending the time of performance of contract may be authorized by the City Manager without prior Council approval, which may be obtained in the case of significant changes in the time of performance of major contracts.

Contract amendments and change orders must be executed in the same fashion as the document which they modify, and the same requirements (approval as to form and execution by the City Attorney and certification as to funding by the Director of Finance) also apply. The City Manager may delegate, in writing, the authority to enter into change orders and contract amendments.

11.15 Contract Renewal and Extension.

- a. **Renewal.** A term contract may contain a renewal clause describing the conditions under which it may be renewed for a stipulated period of time. However, no contract may be renewed and no additional consideration may be paid unless specifically provided for in the original contract. Often indices such as the applicable Consumer Price Index (CPI) or Producer Price Index (PPI) are used as a benchmark in pricing renewal options and assist in determining price reasonableness. Price increases should not be given automatically at renewal. It is the responsibility of the contractor to request a price increase, if desired, up to the amount authorized by the index referenced in the contract. The Purchasing Division, together with the end user department, may then negotiate the amount of the increase up to the indexed amount.

- b. **Extension.** The City may extend the term of an existing contract for services (or goods) to allow completion of any work undertaken but not completed during the original term of the contract. No additional consideration exceeding the contracted price may be paid to the contractor. This action should be taken in writing prior to the expiration of the current contract. (§ 2.2-4309 (B and C), VPPA)

11.16 Termination for the Convenience of the City.

Occasions may arise when a purchase order or contract may need to be terminated for the convenience of the City, provided such purchase order or contract allows for such termination. The termination date and the extent of termination must be specified in writing to the contractor. Any department considering termination for convenience of the City shall contact the Purchasing Manager and the department's Assistant City Attorney for the process to be followed for such termination.

11.17 Cancellation of Purchase Order/Termination of Contract.

Cancellation of a purchase order may only be processed by the Purchasing Division. The justification for cancellation of a purchase order must be submitted to the Purchasing Division in writing.

Termination of contracts may only be made in writing by the Purchasing Division. Any request for termination should include an explanation of the basis for the request. A contractor may request cancellation, and the City may grant relief, if the contractor is prevented from specific performance including timely delivery, by an act of war, order of legal authority, act of God, or other unavoidable causes not attributed to the contractor's fault or negligence.

11.18 Default.

A contractor is considered in default if he or she fails to perform in accordance with the terms and conditions of the contract (e.g., late delivery, nonconformance to specifications). The following factors should be considered prior to taking any action:

- a. The specific reasons for such failure.

- b. The period of time needed to obtain the goods or services from other sources compared to the time delivery or performance could be accomplished by the delinquent contractor.

If it is determined that a contractor is in default, a Complaint to City Vendor Form should be promptly filled out by the department, forwarded to the vendor and sent to the Purchasing Division. If an unacceptable contractor response is received, or the matter is not resolved, the City may issue a "Notice to Cure". A cure letter may also be issued at the same time as the Complaint to City Vendor Form. Resolution of performance issues should progressively start with the filing of the Complaint to City Vendor Form.

11.19 Vendor Performance Complaints.

Complaints and/or discrepancies on vendor performance should be reported promptly by the department to the vendor and Purchasing Division as they occur using the Complaint to City Vendor Form. Vendors are required to respond to the department and the department must send a copy of the vendor response to the Purchasing Division for inclusion in the contract file. Failure to respond within ten days, to the Complaint to City Vendor Form, may result in initiation of termination of contract procedures. These complaint reports are necessary in order to develop vendor history, evaluate vendor performance, and, if required, to take appropriate and timely action.

11.20 Notice to Cure.

A cure letter is sent by the City when a contractor has failed to perform or deliver as substantiated by a Complaint to City Vendor Form. It provides the contractor a period of time to correct or "cure" the deficiency and places the contractor on notice as to the consequences for failure to take the required corrective action. The notice must be given in writing advising the contractor that non-delivery or non-conformance is a breach of a contract and, if the deficiency is not corrected within a stated number of days, the City will terminate the contract for default and hold the contractor liable for any damages and costs. departments will consult with the City Attorney when drafting a cure letter.

11.21 Termination for Default and Re-procurement Costs.

Upon the expiration of the time period stated in the "Notice to Cure," if a satisfactory resolution has not been reached, The City may send the contractor an appropriate termination letter and take re-purchase action and consider the process of debarment (11.21). This letter states that the contract is being terminated and when the City re-purchases the goods or services any additional cost to the City will be billed to the contractor if termination is for default. Normally re-purchase should be by competitive means in order to secure a fair and reasonable price. If the re-purchase results in increased costs to the City, a letter shall be sent to the defaulted contractor demanding payment of the excess costs. If repayment has not been made by the end of the specified period of time, subsequent collection action shall be taken by the City Attorney's office, if warranted.

In some instances, a contractor will notify the City that they refuse to or cannot deliver or complete performance on a contract. In those situations, it is not necessary to follow the

procedure of using a cure notification and the City may proceed to the termination procedures. However, a Complaint to City Vendor Form should be filed in the Contract file to provide a historical file for future determinations of responsibility, etc.

11.22 Debarment and Reinstatement.

In addition to the above default procedures, action to have the defaulted contractor debarred may be initiated by the department sending a letter to the Purchasing Manager recommending debarment and providing all the pertinent facts to support that recommendation. Debarment means action taken by the City Manager to exclude individuals or firms from contracting with the City for goods or services for a specified period of time. Debarment does not relieve the contractor of responsibility for existing obligations. The purpose of debarment is to protect the City from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect City interests and the integrity of the City's procurement process by preventing individuals or firms who have displayed improper conduct from participating in City requirements for a specific period of time. See PURCHASING MANUAL Chapter 13 for grounds for debarment of vendors and procedures for reinstatement of vendors.

11.23 Multi-User and Blanket Contract Administration.

Multi-User and/or blanket Contracts are considered to be any City contract used by more than one department regardless of which department initiated the procurement of the original contract. Other departments may use such contracts depending on the terms of contract and the available funds.

Goods and/or services purchased through these contracts are purchased on an as needed basis, without guarantee of minimum purchase. Funds for these contracts are encumbered upon ordering.

Administration of multi-user and blanket contracts shall be the responsibility of the department initiating the procurement and managing the contract. Procedures for Multi-User and Blanket Contract administration include:

- a. Multi-user and blanket contracts may be found on the City's Contract database. Questions or concerns regarding availability of such contracts shall be directed to Purchasing.
- b. Additional department users shall advise the originating department of any use of the contract, to include the scope, terms, and dollar value of such use.
- c. Changes to Multi-Use contracts shall be initiated by the originating department to Purchasing. Purchasing shall provide a copy of all contract changes to authorized users.

END OF CHAPTER

12 GENERAL PROCUREMENT GUIDELINES & PLANNING

12.0 General.

This chapter contains general guidelines and suggestions when procuring goods, services, and construction. In some cases, these guidelines expand upon requirements that have their basis in the Virginia Public Procurement Act (VPPA). Their intent is to assist users in conforming to acceptable procurement principles, yet provide maximum interpretive latitude in their application.

12.1 Lead-Time.

- a. **Administrative Lead-Time.** Administrative lead-time is that period of time from when Purchasing is provided sufficient information to start the solicitation process for the goods or services requested by the user to the issuance of an award. It is important that requesting departments factor the time needed for preparing, soliciting, evaluating, and making an award in their planning.
- b. **Order/Ship Time (OST).** Order/Ship Time is the time after award required by suppliers to fill an order and ship by designated means (truck, rail, or air) to the delivery point. These times vary widely by industry. Consideration should be given to market conditions which will affect delivery. Except for the most routine of expendable supplies, e.g., off-the-shelf items, a range of 30-90 days should be estimated in determining the OST. Custom made and complex items of equipment normally take longer to obtain.

12.2 Selection of Procurement Method.

It is important to select the proper procurement method. The estimated or anticipated value of the contract must be determined first, unless the purchase is an emergency or a sole source (for emergencies or sole source, see PURCHASING MANUAL Chapter 9). For professional services under the small purchase threshold, use the small purchase procedures in PURCHASING MANUAL Chapter 5. For professional services expected to cost over the small purchase threshold, use competitive negotiation in PURCHASING MANUAL Chapter 7. For all purchases of goods or services other than professional services under the small purchase threshold, the small purchase procedures in PURCHASING MANUAL Chapter 5 shall be used. For goods or services other than professional services over the small purchase threshold, a decision should be made whether to use competitive sealed bidding or competitive negotiation. For competitive sealed bidding see PURCHASING MANUAL Chapter 6. For competitive negotiation see PURCHASING MANUAL Chapter 7.

12.3 Preparing the Written Solicitation.

- a. **General.** Solicitations should convey to the reader, in a clear, concise and logical sequence, the information necessary to answer the basic questions of who, what, why, where, when and how. Section 2.2-4343.1(D), VPPA, requires public bodies to prominently display a nondiscrimination statement concerning faith-based organizations in all Invitation to Bids (ITB), Request for Proposals (RFP), contracts, and purchase orders.

This public body does not discriminate against faith-based organizations.

- b. **Terms and Conditions.** Terms and conditions must be in writing and be concise. Generally, if there is an ambiguity in a written contract that results in a dispute, its resolution will be against the party who wrote the contract. Terms and conditions must be approved by the department's legal advisor.
- c. **Qualifications.** The solicitation shall include a statement of any requisite qualifications. Such qualifications must be verifiable and must be used in determining responsiveness of bids and in evaluating proposals.
- d. **Contract Period.** Term contracts normally cover a 12-month period or cite a specific time for completion for the project or service. A solicitation for a multi-year contract, or one that includes an option to renew the contract for an additional period, may be advantageous and should be considered. Multi-year programs are usually subject to availability of funds, and each solicitation covering a multi-year period must contain an availability of funds clause unless it is fully funded. If price adjustments are to be permitted during the contract period, the conditions under which they are authorized must be specified in the original solicitation and resulting contract. Departments should review all multi-year contracts at least annually to determine if the goods or services are still required, if prices are fair and reasonable based on the current market conditions, and if performance is satisfactory. Multi-year contracts including options to renew normally should not exceed five (5) years.
- e. **Types of Contracts.** Listed below are some various types of contracts.

(1) **Fixed Price Contracts.**

- (a) **Firm Fixed Price.** Fixed pricing agreement where firm unit or total prices are established at the issuance of a purchase order or contract award for the goods or services. A fixed price contract may result from bidding or negotiation processes where specifications are clear and costs are predictable. The use of firm fixed price contracting may be inappropriate if requirements or specifications are unclear or indefinite.
- (b) **Fixed Price with Escalation/De-escalation.** This fixed price agreement provides for price adjustments, up or down if specified contingencies occur. This type of contracting may result from bidding or negotiation processes. It is used to address fluctuations in vendor's prices due to unstable markets. The use of fixed price contracts with escalation/de-escalation reduces the

need for contractors to inflate cost of goods to offset unstable markets or economic conditions; however, in most cases the contractor should notify the City of any change in price.

- (2) **Requirements-Type Contracts.** Requirements-type contracts are agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount; rather, they are unit price based. They establish a framework under which goods/services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine its total value. Effective administration of these open-ended agreements requires that the department maintain some record of the degree of activity against these contracts. Purchase order activity must be periodically reviewed by the user department for compliance with the terms of the agreement. Contract expenditure activity should always be examined by the user department prior to the exercise of any renewal provision or re-solicitation. These contracts are generally used when conducting multi use contracts and the need for close administration becomes even greater (PURCHASING MANUAL 10.21). It is usually best to have a not to exceed amount in this type contract.

- (3) **Blanket Purchase Agreements (BPA)/Master Agreements (MA).**

Blanket Purchase Agreements and/or Master Agreements are contracts or agreements for performance over a specified period of time, when quantities are indefinite. They have no fixed total dollar amount. They establish a framework under which goods/services are provided, but it is the degree of purchase order activity against the contract that will ultimately determine its total value. Effective administration of these open-ended agreements requires that the department maintain some record of the degree of activity against these contracts. Purchase order activity must be periodically reviewed by the user department for compliance with the terms of the agreement. Contract expenditure activity should always be examined by the user department prior to the exercise of any renewal provision or re-solicitation. These contracts are generally used when conducting multi use contracts and the need for close administration becomes even greater (PURCHASING MANUAL 10.21). It is usually best to have a not to exceed amount in this type contract.

Blanket purchase agreements/master agreements are contractual relationships which may be entered into with vendors to obtain goods and/or services for various projects on an as needed basis when quantities are indefinite.

- (4) **Time and Materials Contracts (T&M).** The agreement for supplies or services is on the basis of billable hours, which include overhead, profit, and materials at cost. Details of the work are known but the scope of the work is not known. T&M contracts are suitable for maintenance, design, engineering, emergencies, etc. Competition is sought on the basis of labor-hour rate. Whenever a department uses a cost-reimbursement agreement such as T&M to acquire needed goods/services, it is essential that billed costs be analyzed (and challenged when appropriate) prior to their approval for payment. Because there is usually

no incentive for contractors to contain costs, departments have an obligation to verify the legitimacy and accuracy of any costs submitted for reimbursement. It is usually best to have a not to exceed amount in this type contract.

When a time and materials agreement is used, departments must request a detailed job estimate which should include the amount and type of contract labor with associated rates and itemized material costs to allow evaluation of the reasonableness of its cost elements before authorizing the work to be performed. If it is determined that the estimate is not reasonable or in accordance with the terms of the contract, Purchasing should be contacted on how to proceed.

- (5) **Construction-Type Contracts.** Procurement and administration of construction services requires the planning and use of special procedures. Therefore, Purchasing should be contacted if this type of contract is needed.
- (6) **Cost Plus a Percentage of Cost.** Except in the case of an emergency affecting the public health, safety or welfare, no public contract shall be awarded on the basis of cost plus a percentage of cost (§2.2-4331, VPPA). This contract permits a contractor to be paid for all costs plus a percentage of the cost. There is no incentive for the contractor to be cost conscious because the greater the cost, the greater the profit. If this type of contract is used in an emergency situation, a not to exceed amount should be used.
- (7) **Cost-Plus-A-Fixed-Fee.** A cost-plus-a-fixed-fee contract is a cost-reimbursement type contract that provides for the payment of allowable costs plus a firm fixed fee to the contractor which is negotiated prior to contract award. The fixed fee, once negotiated, does not vary with the actual cost but may be adjusted as a result of any subsequent changes which may be negotiated in the scope of work or services to be performed under the contract. The scope of work is generally vague or specifications are indefinite. It is usually best to have a not to exceed amount in this type contract.
- (8) **Incentive.** A fixed price is agreed upon with a target cost/profit, a maximum price, and a profit formula. Below target, the contractor and City share savings. Above maximum price, the contractor and/or City may assume additional costs. This is used for competitively negotiated contracts for high cost, long lead-time projects. The contractor's incentive is greater profit by improving performance to control costs.

(9) **The Public-Private Education Facilities and Infrastructure Act of 2002.** (PPEA) (See Virginia Code Sections 56-575.1 et seq.) If a department is interested in this type of contract, the department needs to contact the Purchasing Division.

(10) **Term Contracts.** Term contracts (annual or multi-year) shall be considered where the anticipated cumulative annual costs for a service exceed \$10,000 and a fixed price type contract or a unit priced requirements type contract can be awarded. In some instances, even though the annual amount is less than \$10,000, it may be advantageous to enter into a term contract and this should also be considered. Reference Section 10.21 for contract

(11) **Design-build and Construction Management Contracts.** If a department is interested in this type of contract, the department needs to contact the Purchasing Division.

(12) **Consultant/Contractor Services.** When the services of a consultant/contractor are utilized, especially when analysis and research are involved and the contractor's performance is to culminate in a written report or other document (i.e., the deliverable), it is imperative that procuring departments periodically check the contractor's performance and assure that it is progressing to the degree anticipated. A project schedule should be incorporated into the Contract. Crucial milestone or progress reports may be required to be submitted by the contractor in the solicitation which would assist in post-award administration of the contract. If performance is found not to be up to expectations, the contractor may be given a "Complaint to City Vendor" notice from the Purchasing Division with specific guidance on what must be done to adequately meet performance expectations.

b. **Pre-bid or Pre-proposal Conferences.** Conference or site visits early in the solicitation cycle provide an opportunity to emphasize and clarify critical aspects of solicitations, eliminate ambiguities or misunderstandings, and permit vendor input. Conferences/site visits should be conducted with potential bidders or offerors when issuing solicitations involving complex procurements, or when it would be helpful. Attendance at conferences or site visits may be either optional or mandatory. When mandatory attendance is stipulated in the solicitation, an attendance roster is signed by the attendees and only bids or proposals from those firms represented at the conference or visiting the site will be accepted. Departments should carefully consider whether it is absolutely necessary that bidders or offerors attend in order to understand the solicitation and submit a response to it. Such mandatory conferences and site visits can reduce competition because of vendor scheduling conflicts. In addition, no such conference or site visit should be scheduled less than ten (10) calendar days from the date the solicitation is publicly posted and/or advertised as required. Pre-bid or pre-proposal conferences should not be scheduled during a period of suspended City business operations. If a modification to the solicitation is required as a result of the conference or site visit, an addendum must be issued.

c. **Response Time.** When establishing an opening date and time, buyers should allow

for holiday mail disruptions and delayed mail deliveries as well as vendor's time required to respond to complex procurements. The sealed bid or proposal opening date should be no less than ten (10) days after the scheduled pre-bid or pre-proposal conference. If the tenth calendar day falls on a weekend or holiday, the bid or proposal due date should be no sooner than the first regular business day thereafter. The fact that the City is open on an official federal or state holiday does not affect these rules (See also PURCHASING MANUAL 6.2e, 7.1b, 7.2b).

- d. **Acceptance Period.** Bids are usually valid for a minimum of sixty (60) days unless a different period of time is specified in the solicitation or in the bid response.
- e. **Public Posting of Solicitations and Awards.** Solicitations and Awards are publicly posted through the City's electronic procurement website and in the lobby of the second floor of the Noel C. Taylor Municipal Building.

12.4 Specifications.

It is the City's policy that competition be sought to the maximum feasible degree. This can be accomplished by describing goods or services in a manner which meets the department's needs and encourages competition. Unless otherwise expressly stated in the solicitation, all supplies and equipment furnished must be new and in first class condition. Demonstration, previously rented or reconditioned items are not considered new. The following specification (descriptive) categories are listed in the preferred order of use:

- a. **Generic (Performance and Design).** Buyers should analyze incoming requirements with a view towards soliciting the requirement on a generic specification basis. Under appropriate circumstances, performance specifications (setting forth the performance requirements), design specifications (setting forth the essential characteristics of the items solicited), or a qualified products list (QPL) may be used.
- b. **Brand Name or Equal.** When it is determined to be impractical to develop a generic specification, a brand name may be used to convey the general style, type, character and quality of the article desired. Unless otherwise provided in the ITB the name of a certain brand, make or manufacturer does not restrict bidders to the specific brand or manufacturer named. 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 (§2.2-4315, VPPA).
- c. **Proprietary.** A proprietary specification restricts the acceptable products to those of one or more specified manufacturers. It is appropriate to use a proprietary specification when the desired product must be compatible with or is an integral component of existing equipment or products, or where prequalification of products is necessary to support specific needs of a program; is covered by a patent or copyright; must yield absolute continuity of results; or is one with which a user has had extensive training and experience, and the use of any other similar piece of equipment would require considerable reorientation and training. Upon solicitation, every effort must be made to obtain full competition among the distributors which carry the manufacturer's product. The determination for the use of a proprietary specification shall be made in advance, in writing, and be included in the procurement file.

- d. **Vendor Assistance in Specification Preparation.** Advice or assistance may be received from a vendor in identifying the features and characteristics needed by the department; however, no person who, for compensation, prepares an Invitation to Bid or Request for Proposal for or on behalf of a public body shall (i) submit a bid or proposal for that procurement or any portion thereof or (ii) disclose to any bidder or offeror information concerning the procurement which is not available to the public. However, a public body (City Council in the case) may permit such person to submit a bid or proposal for that procurement or any portion thereof if the public body determines that the exclusion of such person would limit the number of potential qualified bidders or offerors in a manner contrary to the best interests of the public body (§2.2-4373, VPPA). This does not prohibit departments and vendors from freely exchanging information concerning what is sought to be procured and what is offered. The name of the vendor(s) providing assistance must be submitted to the Purchasing Division with the specifications to the Purchasing Division. Such information is helpful to the buyer when identifying restrictive or proprietary features which could be challenged by other bidders or offerors causing delays and/or cancellations.

12.5 Qualified Products Lists (QPL) or Qualified Contractor's Lists (QCL).

It is sometimes necessary to pre-qualify products or suppliers and only solicit those who have been pre-qualified. In such cases, a list is maintained of specific products (QPL) or contractors (QCL) which have been evaluated and determined to be acceptable in meeting predetermined minimum acceptable levels of quality or performance (§2.2-4317, VPPA). This qualification is performed in advance of any particular purchase program. By having a prequalification procedure, the time in the purchase cycle can be reduced. The qualification requirements must be established and potential contractors advised in writing and/or public posting sufficiently in advance of the anticipated procurement to allow for evaluation and qualification of potential contractors and/or products. A contractor whose product or service has been determined not qualified will be advised in writing. Solicitations may only be issued for those products determined to be qualified and/or to those contractors determined to be qualified. Information on pre-qualified products or contractors shall be obtained by calling the Purchasing Division at 853-2871.

12.6 Prompt Payment Discounts.

Prompt payment discounts should normally not be considered in determining the lowest responsive bidder. If a bidder does offer a discount for prompt payment, this will not be considered in evaluation, but should be included on the purchase order, and the discount taken if invoices are processed and payment made within the stipulated time frame. If a department knows that it can regularly process payments within a prescribed time frame, such as 10 or 20 days, and wishes to consider cash discounts in its evaluation, then it may do so by including a statement such as "discounts for prompt payment within ___ (state number of days, e.g., 10, 20, etc.) days will be considered in determining net low bid."

12.7 Advance Payments.

Advance payments may become necessary for certain purchases. Prior to establishing contract advance payment conditions, departments must first consult the Purchasing Division for guidance and restrictions.

12.8 Commodity Codes.

Commodity codes are listed on the City's electronic procurement system. Requisitions sent to the Purchasing Division shall have a five (5) digit commodity code for each line item listed. The originating department is responsible for verifying commodity codes on all requisitions.

12.9 Price Reasonableness Determination.

When competition is restricted or lacking and/or the prices offered appear excessive, the requesting department is responsible for further analysis to determine if prices are fair and reasonable. This applies for any sole source purchase, single response purchase, contract change and contract renewal. The determination may be based on price analysis (comparison with prices previously paid, prices charged for functionally similar items, prices paid by other consumers, prices set forth in a public price list or commercial catalog, or City estimates) or through the analysis of price-to-unit variations, value analysis (make-or-buy study), or cost analysis. Advice and assistance should be obtained from the Purchasing Division. The determination must be supported by factual evidence in sufficient detail to demonstrate why the proposed price is deemed to be reasonable. If a determination is made that the prices offered are not fair and reasonable, then a decision has to be made whether to rebid seeking broader competition, revise specifications and rebid the requirement, or to negotiate a better price as may be identified through the price analysis process. A combination of these methods may be necessary. If it is a negotiated procurement, then the price should be negotiated to one that is fair and reasonable.

12.10 Order Splitting.

The placement of multiple orders within other than a reasonable time period to one or more vendors for the same, like, or related goods or services to avoid using the appropriate method of procurement or to remain within delegated purchasing authority is prohibited. Requirements should be combined when practical to obtain quantity discounts and other administrative efficiencies.

12.11 Award Documents.

The appropriate City financial system document must be issued for purchases. Every procurement transaction (except those made through the Purchasing Card Program) should originate from a decentralized purchase order

(PD), a requisition (RQS), and subsequent centralized Purchase Order (PO) or Contract (CT), City Financial System documents must be prepared and provided to suppliers upon ordering of goods or services, regardless of the dollar value. The City Financial System document should include the solicitation number, Sole Source request number, Cooperative Contract number, if applicable, and a brief description of the goods/services to be ordered. Listed below are the types of award documents and conditions under which each document should be used.

- a. **Decentralized Purchase Order.** The decentralized purchase order (PD), shall be used for one-time purchases of goods and/or services under the single quote threshold (for which there is no term contract).
- b. **Centralized Purchase Orders.** The centralized Purchase Order (PO), shall be used for one-time purchases of goods and/or services over the single quote threshold (for which there is no term contract). The Contract Purchase Order (CT) shall be used for purchases of contracted goods and/or services.
- c. **Notice of Intent to Award/Notice of Award.** The Notice of Intent to Award form, is optional, and is the suggested format used to notify the public through a public posting of the City's intent to issue an award. The notice should be date stamped and publicly posted for the ten day period allowed for protest (*Code of Virginia*, § 2.2-4360). Upon expiration of the ten-day period, the appropriate award document as discussed above may be issued. The Notice of Award form is the recommended document to notify the public of solicitation award. The City is not required to issue a Notice of Intent to Award prior to the issuance of a Notice of Award.
- d. **Contract.** A City of Roanoke Contract may be used as an award document.

12.12 Freight.

- a. **F.O.B. Destination.** It is the basic policy of the City to solicit bids for goods F.O.B. (free on board) Destination, which means that freight charges are paid by the seller who owns and assumes all risk for the goods until they are accepted at the designated delivery point. The cost of shipping the goods may be included in the quoted price or by the bidder or offeror as a separate line item.
- b. **F.O.B. Origin. This method of shipment is not recommended.** Under F.O.B. Origin, the vendor will be required to select the most economical method of shipment consistent with the required delivery date, prepay the freight charge and add it to the invoice. Regardless of the F.O.B. point, the City accepts title only when goods are received.
 - (1) Under F.O.B. Origin, the total cost for freight to destination, shipping and handling charges etc., shall be included in determining the lowest responsive and responsible bidder. In such cases, the buyer is required to obtain the actual or estimated cost of shipment and show the freight, shipping, and/or handling cost as a line item on the purchase document. Both the F.O.B. point and shipping cost must be clearly shown on

the purchase document.

- (2) Before approving an invoice for payment the department shall review it and compare it to the award document to determine if the shipping costs are accurate.

12.13 Insurance.

Whenever work is to be performed on City owned or leased property or facilities, the contractor may be required to have Workers' Compensation, Employer's Liability, Commercial General Liability and Automobile Liability, and in certain types of programs Professional Liability/Environmental/Cyber/Errors and Omissions insurance coverage. The City of Roanoke must be named as an additional insured when requiring a Contractor to obtain Commercial General Liability coverage. In some cases, Workers' Compensation Insurance and Employer's Liability Insurance may not be required. Workers' Compensation insurance is required when the contractor has three (3) or more employees. If a contractor does not have any of the above insurance coverage's Risk Management must be contacted to determine if such coverage is required. If any subcontractors are involved, subcontractors may also be required to have Workers' Compensation Insurance in accordance with §§ 2.2-4332 and 65.2-800 et seq, such insurance must be obtained prior to commencing work and be maintained during the entire term of the contract. At a minimum, the contractor must certify to the department that they possess the appropriate insurance coverage and documentation concerning the contractor's insurance shall be included in the procurement file after it has been reviewed and approved by the City's Risk Manager. Certification of insurance shall be in writing when written quotes are required. A certificate of insurance must be furnished prior to commencement of work and at any time during contract performance.

12.14 Rental/Lease, Installment Purchases.

- a. **Rental or Lease.** The procurement process for the rental or lease of any equipment will be handled in the same manner as the procurement of goods. Note, however, that hiring a contractor to provide equipment and personnel (operators) to perform a task is a contractual service subject to the guidance in 11.18 and 11.19. The following examples are offered to clarify the difference:
 - (1) Renting a bulldozer to be operated by city employees to perform grading work is an acquisition of goods. Hiring a contractor to use his bulldozer and operator to perform the same grading work is a contractual service.
 - (2) Renting 1,000 folding chairs to be picked up by city employees in city vehicles at the contractor's place of business, used and returned is an acquisition of goods. Hiring a contractor to deliver, setup, remove, and haul away the same 1,000 folding chairs is a labor intensive contractual service.

The solicitation should, at a minimum, in addition to other terms and conditions, specify:

- (1) Length of time;
- (2) Number and types of equipment;

(3) Who will provide maintenance and repair service and insurance coverage; and

(4) Inspection at time of delivery and return.

b. **Installment Purchase.** The procurement process for the installment purchase of any materials, equipment or supplies must be handled by the Purchasing Division.

12.15 Maintenance/Repair of Equipment.

a. **General.** Equipment is generally covered by warranty provisions for various periods of time. Care should be taken to assure that full advantage is taken of warranty provisions prior to contracting for maintenance or repair service. Where equipment may be covered by insurance, i.e., boiler or machinery, the department should contact the Risk Manager prior to contracting for repair.

b. Contracting for Equipment Maintenance.

(1) Contracting for equipment maintenance falls into two basic methods:

(a) **Full service maintenance.** This normally requires the contractor to provide scheduled service, preventive maintenance, necessary repair parts and additional service calls as required under an annual contract at a firm fixed price. In bidding on full service maintenance, contractors should include in their bids the cost of all contingencies that might occur during the contract period.

(b) **Maintenance/Repair.** This service is procured on an as needed basis, and is normally provided on a time and materials cost basis. Cost plus percentage of cost (markup) is prohibited (§2.2-4331, VPPA). Time and materials contracts require the receiving department to monitor actual hours expended, to promptly identify and solve problems, and to oversee contractors' performance.

(2) Solicitations for maintenance of equipment should identify the make, model, style, and the quantity of each type of equipment. Provisions may be made to add and/or delete equipment during the contract period on a prorated basis; also, for the loan of like equipment during extended periods of downtime. When maintenance is to be performed under contract on city-owned, leased, or rented property, the contractor shall be required to provide necessary insurance coverage

c. Contracting for Repair and Overhaul.

(1) **Major Scheduled Repair/Overhaul:** In situations where major equipment items are scheduled to be repaired or overhauled, it is usually impossible to determine the amount of labor and parts required without complete disassembly of the item to inspect all of its internal parts. Contracting for major repair or overhaul work on a fixed price basis without such an inspection is impractical because it forces the bidders to base their prices on an assumed worst case basis. These situations are best handled in an Invitation to Bid

requiring the work to be done in two phases. Bids are solicited for a lump sum fixed price for complete disassembly, inspection and preparation of an estimate of the costs to complete the job as the first phase. The second phase is for repair and reassembly with contractor furnished replacement parts and components, startup and operational test, all to be done on a time and materials basis. The bidders are required to bid on the basis of a labor hour rate, with an overall total (not to exceed) labor cost and parts.

- (2) **Unscheduled Repair:** Major equipment items which cannot be scheduled for repair should be handled using the appropriate existing emergency procedures. To control costs, it is important for a department to establish a fixed hourly rate and an estimated number of hours prior to allowing the contractor to proceed with the repair/overhaul.

12.16 Printing.

- a. **Ownership of Artwork, Negatives, Etc.** All artwork, negatives, dies, overlays or similar material used to print a job shall be the property of the City of Roanoke and must be delivered to the requisitioning department upon completion of the job. The contract terms for this type of work shall include the necessary language to accomplish this objective.
- b. **Copyright.** No vendor may copyright any work produced for the City of Roanoke without the written consent of the City. The copyright assignment shall be determined on a per project basis. The City Attorney and the Purchasing Manager shall be contacted regarding any copyright issues.
- c. **Official City Stationery, Letterheads, Business Cards and Envelopes.** Letterheads and Envelopes must be printed under a term contract administered by the Purchasing Division. Departments are required to enter an RQS and forward a sample to Purchasing.

12.17 Other than Professional Services.

- a. **General.** This section covers contracting for other than professional services from nongovernmental sources. The term "other than professional" services, as used in this section, means all services not within the scope of the practice of accounting, actuarial services, architecture, dentistry, land surveying, landscape architecture, law, medicine, optometry, pharmacy or professional engineering (§2.2-4301,VPPA).
- b. **Approvals Required.** Approval for certain services is required by law, regulation, directive or appropriation. Services requiring other city departments' approval or concurrence are as follows:
 - (1) Insurance - Risk Management.
 - (2) Telecommunications or Software Development - Department of Technology (DOT).
 - (3) Capital Outlay Related Services – Engineering Division.
 - (4) Banking and Bank Related Cash Management Services - Department of Finance and

City Treasurer.

(5) Environmental-Office of Environmental Management

(6) Vehicle Related Purchases-Fleet Management

c. **Individual Services.** Contracting for the services of individuals as contractors should be treated the same as any other procurement transaction. Departments desiring to contract with individuals should contact the Purchasing Division.

d. **Consultant Services.** By definition, consultants usually provide information, assistance, and guidance, usually in the form of a report or other deliverable, setting forth courses of action and recommendations based on the expertise possessed by the outside individual, firm or organization. Such information or assistance does not relieve department management of responsibility for its final decision.

(1) **Assistance through other city departments.** In recognition of this need, the City has developed the capability for providing certain technical and managerial assistance through selected central departments. City departments are strongly encouraged to make maximum use of the consultant services available from these departments before seeking such services from the private sector. Departments shall not engage outside firms to perform the following services offered by other City departments without first examining their possible use, as follows:

- **Department of Technology** - services related to automated data processing, word processing, and telecommunications.
- **Department of Management and Budget** - analysis of alternatives, program review and evaluation, cost reduction programs and productivity improvement.

(2) **Department Head Responsibility.** Department heads are responsible for assuring that the use and control of the services of private consultants is properly justified in terms of department mission, programs, priorities, and funding. Where it is determined that a department needs outside consulting services, they may be purchased on the authority of the department head, while adhering to the City's Purchasing procedures, if funds for such purposes have been appropriated to the department.

(3) **Selection.** The process of selecting an outside consultant individual, firm, or organization should be objective, unbiased, and should encourage those qualified to offer their services. When procuring other than professional services the procurement procedures provided in this Manual shall be used. The following methods are suggested for use in developing the pricing schedule and for payment of consultants:

(a) A lump sum or fixed price for the total project.

(b) Hourly rate and cost reimbursement, with a ceiling on the total contract; payment will be made only for hours used at the agreed rate and cost incurred. Items for which

cost reimbursement will be made must be specifically indicated in the solicitation and resulting contract.

(c) Daily or hourly compensation for work “when requested” during the period of the contract at agreed rates, with a ceiling on the total, including any other costs which have been determined to be allowable.

(d) An incentive fee arrangement designed to motivate the contractor to complete the project early or achieve specified economies.

12.18 Professional Services.

- a. **Responsibility.** The procurement of professional services from nongovernmental sources shall be in accordance with the applicable provisions of the VPPA. All required justifications and approvals shall be obtained and made a part of the procurement file. Other department concurrence and/or approval for selected services may be required by reasons of law, regulations, directive, or appropriation.
- b. **General.** Professional Services as defined in § 2.2-4301 of the VPPA 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, and professional engineering. In procurements involving both professional and other than professional services, the procedure used shall be determined by which service predominates in the solicitation. When the estimated cost of materials, equipment, or supplies amounts to fifty percent (50%) or more of the total expenditure, it is not considered a professional service and shall be obtained using the procedures for the procurement of goods.
- c. **Competitive Negotiation.** Competitive negotiation shall be used for the procurement of professional services over the small purchase threshold for professional services. Note that solicitations for professional services shall not request that offerors furnish estimates of man-hours or cost for services with the proposal response. However, that information may be requested at the interview stage (§2.2-4302.2, VPPA).
- d. **Small Purchases.** Small purchase procedures for the procurement of Architectural, Landscape Architectural, Land Surveying, and Professional Engineering services are contained in Chapter 5. City of Roanoke as a “Public Body” has the authority and responsibility under §2.2-4303(G), VPPA, for developing its own small purchase procedures for the other professional services identified in §2.2-4301, VPPA.

12.19 Construction.

The procurement of “construction for capital projects” is the responsibility of the Engineering Division and the Purchasing Division. Support services shall be requested of the Purchasing Division, and when necessary, the Engineering Division for those projects with an estimated capital value is over \$100,000. When a project with a value of less than \$50,000 is of such complexity or difficulty that Engineering Division support is necessary, the originating department must contact the City Engineer for consideration.

- a. **Construction** shall mean building, altering, repairing, improving or demolishing any structure, building or highway, and any draining, dredging, excavation, grading or similar work upon real property. (§2.2-4301, VPPA)

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:

1. By any public body for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property;
2. The City may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis and shall otherwise be in compliance with the provisions of this section, § 2.2-4308, and other applicable law governing design-build or construction management contracts for public bodies other than the Commonwealth. The procedures of the local governing body shall be consistent with the two-step competitive negotiation process established in § 2.2-4302.2;

A public body may establish purchase procedures, if adopted in writing, not requiring competitive sealed bids or competitive negotiation for single or term contracts for:

1. Goods and services other than professional services and non-transportation-related construction, if the aggregate or the sum of all phases is not expected to exceed \$100,000; and
2. Transportation-related construction, if the aggregate or sum of all phases is not expected to exceed \$25,000.

However, such small purchase procedures shall provide for competition wherever practicable.

Such purchase procedures may allow for single or term contracts for professional services without requiring competitive negotiation, provided the aggregate or the sum of all phases is not expected to exceed \$60,000.

Where small purchase procedures are adopted for construction, the procedures shall not waive compliance with the Uniform State Building Code.

For state public bodies, purchases under this subsection that are expected to exceed \$30,000 shall require the (a) written informal solicitation of a minimum of four bidders or offerors and (b) posting of a public notice on the Department of General Services' central electronic procurement

website or other appropriate websites. Posting on the Department of General Services' central electronic procurement website shall be required of any state public body. Local public bodies are encouraged to utilize the Department of General Services' central electronic procurement website to provide the public with centralized visibility and access to the Commonwealth's procurement opportunities.

- b. Other than professional services needed for construction or facilities maintenance, such as cost estimating, Critical Path Method scheduling, construction inspections, roofing evaluations, and nondestructive testing, should be procured in accordance with the City's purchasing procedures for other than professional services.
- c. Equipment and/or furnishings, whether built-in or free standing, not acquired as part of a general construction contract and not requiring plans and specifications prepared by an architect or engineer, will be purchased in accordance with the provisions for goods in this Manual. Systems necessary to make a new building functional, such as heating, ventilation, air conditioning, electrical, elevators, or like systems will be purchased in accordance with procedures for construction.
- d. Except in an emergency, all bids for construction services in excess of \$100,000 must be accompanied by a Bid Bond from a surety, selected by the bidder, which is legally authorized to do business in Virginia. The amount of the Bid Bond shall not exceed 5% of the amount bid (§2.2-4336, VPPA).
- e. Upon award of a construction contract exceeding \$100,000, the contractor shall furnish a Performance Bond and a Labor and Material Payment Bond, each in the sum of the contract. Each such bond shall be executed by one or more surety companies which are legally authorized to do business in Virginia. Such bonds may be requested for contracts less than \$100,000.
- f. Insurance will be required based on the type of construction service being performed. Insurance requirements will be determined by the Division of Risk Management.
- g. Solicitations for construction contracts with an estimated cost of \$1,000 or more must contain the following:

If a contract for construction, removal, repair or improvement of a building or other real property is for \$120,000 or more, or if the total value of all such contracts undertaken by bidder/offeror within any 12-month period is \$750,000 or more, the bidder/offeror is required under Title 54.1-1100, *Code of Virginia* (1950), as amended, to be licensed by the State Board of Contractors a "CLASS A CONTRACTOR." If such a contract is for \$10,000 or more but less than \$120,000 the bidder is required to be licensed as a "CLASS B CONTRACTOR." If such a contract is for \$1,000 or more but less than \$10,000, the bidder is required to be licensed as a "CLASS C CONTRACTOR." A master tradesmen license is a condition of licensure for electrical, plumbing and HVAC work. The bidder/offeror should place in the bid/proposal over its signature whichever of the following notations is appropriate, inserting its contractor license number:

Licensed Class A Virginia Contractor No. _____

Licensed Class B Virginia Contractor No. _____

Licensed Class C Virginia Contractor No. _____

If the bidder/offeror shall fail to provide this information on its bid/proposal and shall fail to promptly provide said contractor license number to the City in writing when requested to do so after the opening of bids/proposals, it shall be deemed to be in violation of § 54.1-1115 of the *Code of Virginia* (1950), as amended, and its bid/proposal may not be considered.

If a bidder/offeror shall fail to obtain the required license prior to submission of its bid/proposal, the bid/proposal shall not be considered.

12.20 Use of Contractor's Standard Contract Form.

A contractor's standard contract form should not be used. If it is not possible to award a contract without using the contractor's contract form, the contract must be reviewed and approved by the department's legal advisor. All contracts must be approved as to form by the City Attorney. The City's standard Contractors' Addendum Form may be used. If there is a conflict between the Contractor's standard contract and the City's standard Contractors' Addendum, the City's Addendum will control.

12.21 Samples.

There are situations when samples will be needed to verify quality levels or to test materials or equipment to determine conformance with the specifications stipulated in the solicitation. A request for bid samples must be clearly indicated in the ITB. Samples should be properly labeled, stored, and controlled until no longer needed. Those not destroyed during testing may be returned at the bidder/offeror's expense. If, after sixty (60) days, the samples have not been picked up and bidder/offeror fails to provide disposition instructions, samples may be offered to operating departments for use. If the items have significant reusable utility value, they should be disposed of using established surplus property disposal procedures. The solicitation file must be documented as to disposition of samples.

12.22 Vendor Advertising Prohibition.

Advertising or promotional literature stating that a City of Roanoke department has purchased or used a vendor's products or services is prohibited. Exceptions may only be granted by the City Manager after consultation with the City Attorney.

12.23 Unsolicited Proposals.

This policy applies to goods and other than professional services, and not to construction or professional services. The submission of a unique offer for new and innovative goods or services through unsolicited proposals is encouraged. However, all solicited and unsolicited proposals and all solicited and unsolicited ideas for innovation or improvement are submitted at the risk and expense of the offeror, and no obligation on the part of the City of Roanoke and no restriction on the City's use of such ideas, proposals or the information contained therein shall arise in

connection with such submission. The foregoing shall not preclude express, written commitments made by departments in formal solicitation documents within the limitations imposed by the §2.2-4342(F), VPPA, and the Virginia Freedom of Information Act. The foregoing shall also not diminish or waive any copyright, patent rights or trademark rights, which the offeror may have.

If acceptance of offers to “loan” or provide goods or services at no cost or minor cost would tend to create a need for subsequent additional acquisitions, the requirement for such goods or services and the additional needs shall be offered for competition in accordance with *the* Virginia Public Procurement Act (VPPA) and the Procurement Manual. Potential bidders or offerors shall be afforded an opportunity to participate in the resulting procurement activity.

If the offeror believes that it is the only source practicably available for goods or services required by the department and available through the unsolicited proposal, to assist the City in evaluating the unsolicited proposal, the proposal shall include a justification by the offeror as to why the company is the only source practicably available for the goods or services in question.

- a. Definition: “Unsolicited Proposal” means a proposal received that is not in response to any City initiated solicitation or program.
- b. Receipt: Unsolicited proposals shall be submitted in writing directly to Purchasing.
- c. Evaluation:
 - (1) A favorable comprehensive evaluation of an unsolicited proposal by a department does not, in itself, justify awarding a contract without providing for competition. No preference shall be given to the offeror that initially offered the unsolicited proposal.
 - (2) If it is determined by the evaluation that goods or services required by the department and offered in an unsolicited written proposal are practicably available from only one source, a buyer may negotiate and award a contract following the sole source procedures in PURCHASING MANUAL Chapter 9.

END OF CHAPTER

13 DEBARMENT

13.0 General.

The term “debarment” as used in this Manual means action taken by the City Manager to exclude individuals or firms from contracting with the City for particular types of goods or services for specified periods of time. Debarment does not relieve the vendor of responsibility for existing obligations.

13.1 Purpose.

The purpose of debarment is to protect the City from risks associated with awarding contracts to persons or firms having exhibited an inability or unwillingness to fulfill contractual requirements, and to protect City interests and the integrity of the City’s procurement process.

13.2 Reasons for Debarment.

An individual or firm may be debarred for any of the following reasons:

- A. Breach (or anticipatory breach) of contract with the City. Breach of contract may consist of abandonment of the contract or the commission of acts or conduct which demonstrates an intent wholly inconsistent with the intention to perform their contract.
- B. Sale or attempted sale to a City Department of the same or similar goods or services which are available under an existing mandatory City contract, when the contractor knew or had reason to know that the goods or services are required to be purchased under the contract, unless such sale or attempted sale occurs in response to an ITB, RFP, or unsealed solicitation that specifies such goods or services.
- C. Stating an unwillingness or inability to honor a binding bid submitted to the City. A request to withdraw a bid, which does not otherwise state an unwillingness or inability to perform, is not a cause for debarment.
- D. Failing to complete a City contract without cause within the prescribed time limit. Prescribed time limit means original contract time period plus City authorized time extensions.
- E. Conferring or offering to confer any gift, gratuity, favor, or advantage, present or future, upon any employee of the City who exercises any “official responsibility” for a “procurement transaction” as those terms are defined in the *Code of Virginia*, § 2.2-4368.

It is not necessary that the offer be accepted by the employee, or that the offer is made with intent to influence the employee in an official act. Extending to any City employee exercising official responsibility for a procurement transaction any discount or privilege not available to all City employees is considered to be offering an advantage.

F. Falsifying or misrepresenting manufacturer's specifications in order to appear responsive to a City bid solicitation.

G. Taking any action constituting a violation of the State and Local Government Conflict of Interests Act, by virtue of any officer, director, owner, or partner of the vendor also being an officer or employee of the City of Roanoke and having a "personal interest" in contract or purchase order awarded by the City.

H. Court judgment finding a violation of either federal or state anti-trust laws.

I. Conviction of any offense indicating a lack of moral or business integrity.

J. Failing to disclose a condition constituting a conflict of interest by any officer, director, owner, or partner of the vendor in a contract or purchase order awarded by the City (Code of Virginia, § 2.2-3106).

K. Any cause indicating that the individual or firm is not a responsible vendor.

L. A determination by the City that a vendor has used abusive or obscene language or a threatening manner toward City purchasing personnel during the performance of their duties or as a result of the performance of their duties.

M. Sale, under nonemergency conditions, of building materials, supplies, or equipment for any building or structure constructed by or for the City by an independent contractor employed to furnish architectural or engineering services, but not construction for such building or structure or from any partnership, association or corporation in which such architect or engineer has a personal interest (Code of Virginia, § 2.2-3101 and § 2.2-4374).

N. Sale, under nonemergency conditions, of building materials, supplies or equipment for any building or structure constructed by or for the City by any person who has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the City to furnish architectural or engineering services in which such person has a personal interest as defined in Code of Virginia, § 2.2-3101.

O. Sale of goods or services to the City when such sale is prohibited by any debarment then in effect.

P. Consent of the firm or individual being debarred.

Q. Conviction of any criminal offense involving public contracting. Examples include, but are not limited to, bribery (Code of Virginia, § 18.2-447) and knowingly making a false statement in regard to collusion on a solicitation (Code of Virginia, § 18.2-498.4). Conviction for any of the above of any officer, director, owner, partner, agent, or related business entity of a vendor shall constitute grounds for the removal of the vendor.

- R. Court judgment finding a violation of either federal or state antitrust laws.
- S. Conviction of any offenses indicating a lack of moral or business integrity.
- T. Failure to pay reprourement costs pursuant to a contract termination for default.
- U. Failure to comply with the provisions of the E-Verify program (Code of Virginia, §2.2-4308.2).

It is not necessary that there be a judicial determination of violations contained in subparagraphs a. through p. and t. for debarment to occur.

If the debarring official finds that the cause for debarment reflects on the contractor's traits or tendencies only with regard to certain goods or services, the debarment may apply only to such goods or services. Otherwise the debarment shall apply to all goods and services within the purview of the City.

13.3 Ineligibility or Disqualification of Manufacturer.

Should any manufacturer commit any of the acts described in Section 13.2, bids offering material, equipment, or supplies manufactured by that firm may be rejected even though the bid is submitted by a vendor in good standing.

13.4 Term of Debarment, Suspending Debarment.

Debarment shall be for a period of ninety (90) days to three (3) years, at the discretion of the City except as follows. The debarment for subparagraphs m.,n., and o. of paragraph 7.20 shall be for a period of three (3) years. The debarment for subparagraph p. of paragraph 7.20 shall be for a period of one year or until the reprourement costs are paid or until the contract breach is resolved, whichever is longer. EFFECTIVE 12/1/13, the debarment for subparagraph q. of paragraph 7.20 shall be for a period up to one year; such debarment shall cease upon the employer's registration and participation in the EVerify program (*Code of Virginia, §2.2-4308.2*). Debarment shall commence upon notification, or if later, upon expiration of any existing debarments.

Notwithstanding the prescribed duration of the debarment, at the discretion of the City a debarment may be lifted or suspended at any time if it is in the best interest of the City. A debarred individual or firm can apply for reinstatement at any time in writing to the debarring official citing actions taken to remedy the reason for debarment or prevent recurrence of the situation that caused the debarment action to be taken and otherwise indicating that lifting or suspension of the debarment would be in the best interest of the City. Examples of actions that the City may take into consideration include, but are not limited to:

- a. Repayment by a debarred contractor of additional costs resulting from a default action for which the contractor had previously failed to reimburse the City and was debarred.
- b. Disassociation with individuals or firms that were responsible for the debarment.

13.5 Notification.

An individual or firm being considered for debarment from contracting with the City will be notified in writing by certified mail, return receipt requested. The notice shall state the reasons for the action taken, the duration of the period of debarment and the effective date. This decision shall be final, unless the bidder, offeror, or contractor appeals within thirty (30) calendar days of receipt of the notice by written request to the City Manager or, in the alternative, by instituting legal action as provided in §2.2-4364 of the VPPA of the Code of Virginia.

END OF CHAPTER

14 SURPLUS PROPERTY DISPOSAL

14.0 General.

When a department has an item that is no longer useful to the department, it is City policy to handle such surplus property as set forth in the policy set forth in the policy adopted by City Council in Resolution Number 36539-111703. A copy of the Resolution is set forth below:

IN THE COUNCIL OF THE CITY OF ROANOKE, VIRGINIA

The 17th day of November, 2003.

No. 36539-111703.

A RESOLUTION setting forth a policy for the disposition of City Surplus Tangible Personal Property.

WHEREAS, City staff has determined that by adopting a policy for the disposition of City Surplus Tangible Personal Property as set forth in the City Manager's letter to Council dated November 17, 2003, there could be a more efficient disposition of such property.

THEREFORE, be it resolved by the Council of the City of Roanoke as follows:

1. The City Council hereby adopts the policy set forth in this resolution for the disposition of City Surplus Tangible Personal Property.
2. The following policy will apply to the disposition of City Surplus Tangible Personal Property:
 - a. Reallocate to City departments.
 - b. Attempt to sell vehicles and other items of significant value on the internet or by other means.
 - c. Give usable surplus tangible personal property, not disposed of above, to Roanoke City Public Schools (RCPS) subject to RCPS accepting the property. RCPS will have the right to decide whether to accept individual items of surplus property. The decision of whether or not RCPS will accept the property will be made before transporting the property to RCPS storage facility. RCPS

will store the property and dispose of it as it wishes, including the sale of such surplus property.

- d. Any surplus tangible personal property not disposed of above will be disposed of by sending it to the landfill or other proper disposal facility, or such property may be recycled or given to an entity that may be able to use it.
 - e. Disposal of surplus tangible personal property in some other way than outlined above may be done only by a separate action of City Council, as City Council may deem appropriate.
3. The City Manager is authorized to adopt appropriate procedures and to take the necessary action to implement and administer the above policy.
 4. This resolution shall be effective on and from the date of its passage.

ATTEST:

City Clerk.

END OF CHAPTER

15 REMEDIES

15.0 General.

Article 5. Remedies of the Virginia Public Procurement Act is set out in this chapter.

15.1 Ineligibility. (§ 2.2-4357)

- A. Any bidder, offeror or contractor refused permission to participate, or disqualified from participation, in public contracts shall be notified in writing. Prior to the issuance of a written determination of disqualification or ineligibility, the public body shall (i) notify the bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.

Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of disqualification or ineligibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received such rebuttal information.

If the evaluation reveals that the bidder, offeror or contractor should be allowed permission to participate in the public contract, the public body shall cancel the proposed disqualification action. If the evaluation reveals that the bidder should be refused permission to participate, or disqualified from participation, in the public contract, the public body shall so notify the bidder, offeror or contractor. The notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

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

(1982, c. 647, § 11-63; 1998, c. 753; 2001, c. 844.)

15.2 Appeal of denial of withdrawal of bid. (§ 2.2-4358)

- A. A decision denying withdrawal of bid under the provisions of § 2.2-4330 shall be final and conclusive unless the bidder appeals the decision within ten days after receipt of the decision by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.
- B. If no bid bond was posted, a bidder refused withdrawal of a bid under the provisions of § 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.
- C. If, upon appeal, it is determined that the decision refusing withdrawal of the bid was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, the sole relief shall be withdrawal of the bid.

(1982, c. 647, § 11-64; 1985, c. 164; 1999, c. 1008; 2001, c. 844.)

15.3 Determination of nonresponsibility. (§ 2.2-4359)

- A. Following public opening and announcement of bids received on an Invitation to Bid, the public body shall evaluate the bids in accordance with element 4 of the process for competitive sealed bidding set forth in § 2.2-4302.1. At the same time, the public body shall determine whether the apparent low bidder is responsible. If the public body so determines, then it may proceed with an award in accordance with element 5 of the process for competitive sealed bidding set forth in § 2.2-4302.1. If the public body determines that the apparent low bidder is not responsible, it shall proceed as follows:
 - 1. Prior to the issuance of a written determination of nonresponsibility, the public body shall (i) notify the apparent low bidder in writing of the results of the evaluation, (ii) disclose the factual support for the determination, and (iii) allow the apparent low bidder an opportunity to inspect any documents that relate to the determination, if so requested by the bidder within five business days after receipt of the notice.
 - 2. Within ten business days after receipt of the notice, the bidder may submit rebuttal information challenging the evaluation. The public body shall issue its written determination of responsibility based on all information in the possession of the public body, including any rebuttal information, within five business days of the date the public body received the rebuttal information. At the same time, the public body shall notify, with return receipt requested, the bidder in writing of its determination.

3. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten days after receipt of the notice by invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

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

- B. If, upon appeal pursuant to § 2.2-4364 or 2.2-4365, it is determined that the decision of the public body was not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, 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 or directed award as provided in subsection A of § 2.2-4364 or both.

If it is determined that the decision of the public body was not an honest exercise of discretion, but rather was arbitrary or capricious or not in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid, and an award of the contract has been made, the relief shall be as set forth in subsection B of § 2.2-4360.

- 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 the provisions of § 2.2-4360.
- D. Nothing contained in this section 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.

(1982, c. 647, § 11-65; 1997, c. 864; 1998, c. 753; 1999, c. 1008; 2001, c. 844; 2013, c. 583.)

15.4 Protest of award or decision to award. (§ 2.2-4360)

- A. Any bidder or offeror, who desires to protest the award or decision to award a contract shall submit the protest in writing to the City Manager, no later than ten days after the award or the announcement of the decision to award, whichever occurs first. Public notice of the award or the announcement of the decision to award shall be given by the public body in the manner prescribed in the terms or conditions of the Invitation to Bid or Request for Proposal. 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 the protest in the same manner no later than ten days after posting or publication of the notice of such contract as provided in § 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 transaction that are subject to inspection under § 2.2-4342, then the time within which the protest shall be submitted shall expire ten days after those records are available for inspection by such bidder or offeror under § 2.2-4342, or at such later time as provided in this section. 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 City Manager or designee 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 receipt of the written decision by instituting legal action as provided in § 2.2-4364. Nothing in this subsection shall be construed to permit a bidder to challenge the validity of the terms or conditions of the Invitation to Bid or Request for Proposal.

- 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 City 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 voided. 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.

- C. Where the City Manager or designee 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 et seq.) of this chapter, the City Manager or designee may enjoin the award of the contract to a particular bidder.

(1982, c. 647, § 11-66; 1985, c. 164; 1997, c. 864; 2000, c. 641; 2001, c. 844.)

15.5 Effect of appeal upon contract. (§ 2.2-4361)

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.

(1982, c. 647, § 11-67; 2001, c. 844.)

15.6 Stay of award during protest. (§ 2.2-4362)

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 § 2.2-4360, or the filing of a timely legal action as provided in § 2.2-4364, no further action to award the contract shall 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.

(1982, c. 647, § 11-68; 1997, c. 864; 2001, c. 844.)

15.7 Contractual disputes. (§ 2.2-4363)

- A. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after final payment. However, written notice of the contractor's intention to file a claim shall be 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. Each public body shall include in its contracts a procedure for consideration of contractual claims. Such procedure, which may be contained in the contract or may be specifically incorporated into the contract by reference and made available to the contractor, shall establish a time limit for a final decision in writing by the public body. If the public body has established administrative procedures meeting the standards of § 2.2-4365, such procedures shall be contained in the contract or specifically incorporated in the contract by reference and made available to the contractor.
- C. If, however, the public body fails to include in its contracts a procedure for consideration of contractual claims, the following procedure shall apply:
 - 1. Contractual claims, whether for money or other relief, shall be submitted in writing no later than 60 days after receipt of final payment; however, written notice of the contractor's intention to file a claim shall be given at the time of the occurrence or at the beginning of the work upon which the claim is based.
 - 2. No written decision denying a claim or addressing issues related to the claim shall be considered a denial of the claim unless the written decision is signed by the public body's chief administrative officer or his designee. The contractor may not institute legal action prior to receipt of the final written decision on the claim unless the public body fails to render a decision within 90 days of submission of the claim. Failure of the public body to render a decision within 90 days shall not result in the contractor being awarded the relief claimed or in any other relief or penalty. The sole remedy for the public body's failure to render a decision within 90 days shall be the contractor's right to institute immediate legal action.
- D. A contractor may not invoke administrative procedures meeting the standards of § 2.2-4365, if available, or institute legal action as provided in § 2.2-4364, 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 or, if no time is specified, then within the time provided by subsection C. A failure of the public body to render a final decision within the time provided in subsection C shall be deemed a final decision denying the

claim by the public body.

E. 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 invoking administrative procedures meeting the standards of § 2.2-4365, if available, or in the alternative by instituting legal action as provided in § 2.2-4364.

(1982, c. 647, § 11-69; 2001, cc. 106, 844; 2005, c. 815.)

15.8 Legal actions. (§ 2.2-4364)

A. 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 an action in the appropriate circuit court challenging that decision, which shall be reversed only if the petitioner establishes that the decision was not (i) an honest exercise of discretion, but rather was arbitrary or capricious; (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid; or (iii) in the case of denial of prequalification, based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. In the event the apparent low bidder, having been previously determined by the public body to be not responsible in accordance with § 2.2-4301, is found by the court to be a responsible bidder, the court may direct the public body to award the contract to such bidder in accordance with the requirements of this section and the Invitation to Bid.

B. A bidder denied withdrawal of a bid under § 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 not (i) an honest exercise of discretion, but rather was arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, or the terms or conditions of the Invitation to Bid.

C. 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 §2.2-4303, whose protest of an award or decision to award under § 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 (i) an honest exercise of discretion, but rather is arbitrary or capricious or (ii) in accordance with the Constitution of Virginia, applicable state law or regulation, 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 public body, shall require the posting of reasonable security to protect the public body.

E. A contractor may bring an action involving a contract dispute with a public body in the

appropriate circuit court. Notwithstanding any other provision of law, the Comptroller shall not be named as a defendant in any action brought pursuant to this chapter or § 33.1-387, except for disputes involving contracts of the Office of the Comptroller or the Department of Accounts.

- F. A bidder, offeror or contractor need not utilize administrative procedures meeting the standards of § 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.
- G. Nothing herein shall be construed to prevent a public body from instituting legal action against a contractor.

(1982, c. 647, § 11-70; 1985, c. 164; 1994, c. 918; 1995, c. 527; 1997, c. 864; 1998, cc. 205, 753; 1999, c. 1008; 2001, c. 844.)

15.9 Administrative appeals procedure. (§ 2.2-4365)

- A. A public body may establish an administrative procedure for hearing (i) protests of a decision to award or an award, (ii) appeals from refusals to allow withdrawal of bids, (iii) appeals from disqualifications and determinations of nonresponsibility, and (iv) appeals from decisions on disputes arising during the performance of a contract, or (v) any of these. Such administrative procedure shall provide for a hearing before a disinterested person or panel, the opportunity to present pertinent information and the issuance of a written decision containing findings of fact. The disinterested person or panel shall not be an employee of the governmental entity against whom the claim has been filed. The findings of fact shall be final and conclusive and shall not be set aside unless the same are (a) fraudulent, arbitrary or capricious; (b) so grossly erroneous as to imply bad faith; or (c) in the case of denial of prequalification, the findings were not based upon the criteria for denial of prequalification set forth in subsection B of § 2.2-4317. No determination on an issue of law shall be final if appropriate legal action is instituted in a timely manner.
- B. Any party to the 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.

(1982, c. 647, § 11-71; 1994, cc. 660, 918; 2001, c. 844.)

15.10 Alternative dispute resolution. (§ 2.2-4366)

Public bodies may enter into agreements to submit disputes arising from contracts entered into pursuant to this chapter to arbitration and utilize mediation and other alternative dispute resolution procedures. However, such procedures entered into by the Commonwealth, or any department, institution, division, commission, board or bureau thereof, shall be nonbinding and subject to § 2.2-514, as applicable. Alternative dispute resolution procedures entered into by school boards shall be nonbinding.

(1995, c. 760, § 11-71.1; 2001, c. 844.)

END OF CHAPTER

Appendix A PROCUREMENT REQUIREMENTS Code of the City of Roanoke

Chapter 23.2 PROCUREMENT*

Sec. 23.2-1. Legislative purpose.

The underlying purposes and policies of this chapter are as follows:

- (a) To provide for increased public confidence in the procedures followed in public procurement;
- (b) To ensure the fair and equitable treatment of all persons who deal with the procurement system of the city;
- (c) To provide increased economy in city procurement activities and to maximize to the fullest extent practicable the purchasing value of public funds of the city;
- (d) To foster effective broad-based competition within the free enterprise system;
- (e) To provide safeguards for the maintenance of a procurement system of quality and integrity;
and
- (f) To promote uniformity of procurement policies and procedures among the various departments, offices and agencies of the city.

(Ord. No. 36158, § 2, 12-16-02)

Sec. 23.2-2. Applicability.

- (a) All city purchases shall conform to the provisions of the Charter and this chapter. This chapter shall be applicable to all council-appointed officers, constitutional officers, divisions, departments, offices, boards, agencies and commissions of the city except the school board and school division.
- (b) The provisions of the Virginia Public Procurement Act, section 2.2-4300, et seq., (hereinafter in this chapter, the Act) shall apply to all city purchases, except those instances where alternative policies and procedures have been adopted and set out in this chapter pursuant to the provisions of section 2.2-4343.A.12, Code of Virginia. (Ord. No. 36158, § 2, 12-16-02)

Sec. 23.2-3. Procurement authority.

- (a) The city manager shall have the right to accept or reject any bids or proposals.
- (b) The city manager shall execute all contracts entered into by the city, unless the city manager shall have delegated such responsibility, in writing, to a designee. Such delegation may be for specific contracts, or specific types of contracts.
- (c) The city manager is authorized to promulgate procedures for the orderly administration of the Virginia Public Procurement Act, including procedures for small purchases, as defined in section 2.2-4303 of the Act, provided that such small purchase procedures shall provide for competition whenever practical.
- (d) Upon a determination made in advance by the city manager and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, goods, services, or insurance may be procured by competitive negotiation.
- (e) The city manager shall establish, in writing a procedure by which prospective contractors may be barred from contracting for the provision of particular types of supplies, services, insurance or construction, on the basis of unsatisfactory performance, or violation of federal, state or local laws or ordinances pertaining to procurement.

(Ord. No. 36158, § 2, 12-16-02)