



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of July 10, 2010**

DATE: June 18, 2010

SUBJECT: Amendments to the County Purchasing Resolution

C. M. RECOMMENDATION:

Adopt the proposed attached amendments to the Arlington County Purchasing Resolution to be effective upon the date of adoption by the County Board.

ISSUE: Changes to the Purchasing Resolution are proposed, to include amendments adopted by the 2010 General Assembly to the Virginia Public Procurement Act. No issues have been identified.

SUMMARY: The Arlington County Purchasing Resolution (“Resolution”) is authorized by the Virginia Public Procurement Act (“Act”). The General Assembly enacted amendments to the Act during the 2010 session, some of which amendments are applicable to certain localities, including the County. Two of these amendments relate to corresponding existing sections of the Resolution and therefore require that the Resolution be amended. Five additional housekeeping amendments are also proposed. The text of all of the proposed amendments to the Resolution is attached.

DISCUSSION: During the 2010 session, the General Assembly amended the following two sections of the Code of Virginia (“Va. Code”). These Va. Code amendments require amendments to the corresponding sections of the Resolution.

Va. Code §2.2-4303, entitled “Methods of procurement”. This Va. Code amendment is reflected in the attached amendment to §4-102 (1) A. i. of the Resolution. It increases, from \$1 million to \$1.5 million, the cost of a construction contract for which the County may use competitive negotiation instead of competitive bidding to procure the construction, alteration, repair, renovation, or demolition of buildings or structures. This amendment is required by State law. Adoption is recommended.

Va. Code §2.2-4305, entitled “Competitive procurement by localities on state-aid projects”. This Va. Code amendment is reflected in the attached amendment to §4-110 of the Resolution. It increases, from \$30,000 to \$50,000, the dollar threshold when use of competitive bidding or competitive negotiation is required for construction projects which are funded in whole or in part by state funds. This amendment to the Resolution is required by State law. Adoption is recommended.

County Manager: MB/BMD

County Attorney: BAW/CAM

Staff: Richard D. Warren, Jr., Department of Management and Finance

46.

In addition to the above, the Purchasing Agent and the Office of the County Attorney have identified the need for the following amendments to the Resolution.

- Correcting a Virginia Code Reference Regarding Procurement Procedures on State Aid Projects. The attached amendment to §4-110 of the Resolution, corrects the referenced section of the Va. Code applicable to this section of the Resolution.
- Clarifying Use of Cooperative Procurement. The attached amendment to §3-101 of the Resolution deletes a reference to a section of the Va. Code as the basis for using cooperative procurement, as the referenced section is out-dated and the County is exempt from the current section of the Va. Code.
- Correcting Virginia Code Reference Regarding Contractual Disputes. The attached amendment to §7-107 of the Resolution, corrects the referenced sections of the Va. Code applicable to this section of the Resolution.
- Correcting Statutory Reference Regarding Ethics in Public Contracting. The attached amendment to §9-101 of the Resolution, corrects a reference to Va. Code provisions applicable to this section of the Resolution.
- Correcting Virginia Code Reference Regarding Contractual Disputes. The attached amendment to §9-108 of the Resolution, corrects a referenced section of the Va. Code applicable to this section of the Resolution.

For the reasons stated above, it is recommended that the County Board adopt the attached amendments to the Resolution.

FISCAL IMPACT: None.

AMENDMENTS TO
ARLINGTON COUNTY PURCHASING RESOLUTION
TO BE EFFECTIVE UPON ADOPTION BY THE COUNTY BOARD
TEXT OF PROPOSED AMENDMENTS

(New text is bold and underlined. Deleted text is lined through.)

AMENDMENTS TO PURCHASING RESOLUTION

I. The following sections and subsections of the Purchasing Resolution are amended to read, in pertinent part, as follows:

§4-102 Competitive Negotiation

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

A. Conditions for Use: Upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public; goods, services, or insurance may be procured by competitive negotiation. The writing shall document the basis for this determination.

Construction may be procured only by competitive sealed bidding, except that competitive negotiation may be used in the following instances upon a determination made in advance by the Purchasing Agent and set forth in writing that competitive sealed bidding is either not practicable or not fiscally advantageous to the public, which writing shall document the basis for this determination:

i. for the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than ~~\$1,000,000~~ **\$1,500,000**; or

ii. for the construction of highways and any draining, dredging, excavation, grading or similar work upon real property.

* * *

§4-110 Competitive Bidding or Competitive Negotiation on State-aid Projects

No contract for the construction of any building or for an addition to or improvement of an existing building by the County for which state funds of ~~\$30,000~~ **\$50,000** in the aggregate or for the sum of all phases of a contract or project, either by appropriation, grant-in-aid or loan, are used or are to be used for all or part of the cost of construction shall be let except after competitive sealed bidding or after competitive negotiation as provided under Section 4-102 (1) A of this resolution. The procedure for the advertising for bids or for proposals and for letting of the contract shall conform, mutatis mutandis, to the Virginia Public Procurement Act, Sections ~~41-352.2-4300~~ **2.2-4300** et seq.

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§3-101 Conditions for Use

The County may enter into a cooperative agreement ~~under Section 11-40 of the Virginia Code~~ for the purpose of combining requirements to increase efficiency or reduce administrative expenses.

* * *

§7-107 Contractual Disputes

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

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

The decision of the County Manager shall be final and conclusive unless the contractor appeals within six months of the date of the decision on the claim by the County Manager to the County Board in accordance with the requirements of sections ~~15.1-550 through 554~~15.2-1243 through 15.2-1248 of the Virginia Code.

* * *

§9-101 Purpose

The provisions of this article supplement, but do not supersede, other provisions of law including, but not limited to, the ~~Comprehensive Conflict of Interests Act (sections 2.1-599 et seq.)~~State and Local Government Conflict of Interests Act (sections 2.2-3100 et seq.), the Virginia Governmental Frauds Act (section 18.2-498.1 et seq.), and Articles 2 and 3 of Chapter 10 of Title 18.2 of the Code of Virginia as amended. The provisions of this article apply notwithstanding the fact that the conduct described may not constitute a violation of the Comprehensive Conflict of Interests Act.

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

A. No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any person employed as an independent contractor by the County to furnish architectural or engineering services, but not construction for

such building or structure; or from any partnership, association, or corporation in which such architect or engineer has a personal interest as defined in Virginia Code ~~§2.1-639.2~~section 2.2-3101.

B. No building materials, supplies or equipment for any building or structure constructed by or for the County shall be sold by or purchased from any entity which has provided or is currently providing design services specifying a sole source for such materials, supplies or equipment to be used in such building or structure to the independent contractor employed by the County to furnish architectural or engineering services in which such entity has a personal interest as defined in Virginia Code ~~§2.1-639.2~~section 2.2-3101.

* * *

II. The sections and subsections of the Purchasing Resolution not specifically amended above shall remain in full force and effect.