



ARLINGTON COUNTY, VIRGINIA

**County Board Agenda Item
Meeting of June 11, 2011**

DATE: May 18, 2011

SUBJECT: Amendments to the County Purchasing Resolution

C. M. RECOMMENDATION:

Adopt the proposed attached amendments to the Arlington County Purchasing Resolution to be effective July 1, 2011.

ISSUE: Changes to the Purchasing Resolution are proposed, to include amendments adopted by the 2011 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 2011 session, some of which amendments are applicable to certain localities, including the County. Five of these amendments relate to corresponding existing sections of the Resolution and therefore require that the Resolution be amended. The text of the proposed amendments to the Resolution is attached.

DISCUSSION: During the 2011 session, the General Assembly amended the following five 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 §4-106 of the Resolution. It increases the limit where the County can use its “small purchase” procedures, from \$50,000 to \$100,000. This change will require the Purchasing Agent to make corresponding changes to the small purchase procedures, but should create a net savings in administrative costs. This amendment is not required by State law, but ensures that the Resolution is consistent with State law. Adoption is recommended.

Va. Code §2.2-4336, entitled “Bid Bonds”. This Va. Code amendment is reflected in the attached amendment to §4-101(5) of the Resolution. It increases the limit for construction contracts that

County Manager:

BMD/mjs

County Attorney:

JAM

[Signature]

29.

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

require bid bonds to \$500,000 from the current \$100,000 for nontransportation-related construction contracts. Additionally, for nontransportation-related contracts in excess of \$100,000 but less than \$500,000 where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project. This amendment is required by State law. Adoption is recommended.

Va. Code §2.2-4337, entitled “Performance and Payment Bonds”. This Va. Code amendment is reflected in the attached amendment to §4-101(17) of the Resolution. It increases the limit for construction contracts that require performance and payment bonds to \$500,000 from the current \$100,000. This amendment is required by State law. Adoption is recommended.

Va. Code §2.2-4330, entitled “Withdrawal of bid due to error”. This Va. Code amendment is reflected in the attached amendment to §4-101(9) of the Resolution. It changes the procedures regarding how a bidder may withdraw their bid after it has been opened. This amendment is required by State law. Adoption is recommended.

Va. Code §2.2-4341, entitled “Actions on Payment Bonds; waiver of right to sue”. This Va. Code amendment is reflected in the attached amendment to §4-101(19) of the Resolution. It clarifies the relationship between a claimant and the contractor, and decreases the number of days notice the claimant is required to give regarding claims from 180 days to 90 days. This amendment is not required by State law, but ensures that the Resolution is consistent with State law. Adoption is recommended.

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:

§4-101 Competitive Sealed Bidding

(1) Conditions for Use: All public contracts with non-governmental contractors for the purchase or lease of goods, or for the purchase of services, insurance, or construction in excess of ~~\$50,000~~ **\$100,000** shall be awarded after competitive sealed bidding, or by such other procedures required or authorized by this resolution.

* * *

(5) Bid Bonds on Construction Contracts Except in cases of emergency, all bids or proposals for nontransportation-related construction contracts in excess of ~~\$100,000~~ **\$500,000** or transportation-related projects authorized under Va. Code §33.1-12 that are in excess of \$250,000 and partially or wholly funded by the Commonwealth shall be accompanied by a bid bond from a surety company selected by the bidder which is legally authorized to do business in Virginia, as a guarantee that if the contract is awarded to such bidder, that bidder will enter into the contract for the work mentioned in the bid. The amount of the bid bond shall not exceed five percent of the amount bid. **For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bid bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Section 4-101 (2) of this Resolution.** Nothing in this section shall preclude the Purchasing Agent from requiring bid bonds to accompany bids or proposals for construction contracts anticipated to be less than ~~\$100,000~~ **\$500,000** for nontransportation-related projects or \$250,000 for transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth.

* * *

(9) Withdrawal of Bid Due to Error

A. A bidder for a public construction contract, other than a contract for construction or maintenance of public highways, may withdraw his bid from consideration if the price bid was substantially lower than the other bids due solely to a mistake therein, provided the bid was submitted in good faith, and the mistake was a clerical mistake as opposed to a judgment mistake, and was actually due to an unintentional arithmetic error or an unintentional omission of a quantity of work, labor or material made directly in the compilation of a bid, which unintentional arithmetic error or unintentional omission can be

clearly shown by objective evidence drawn from inspection of original work papers, documents and materials used in the preparation of the bid sought to be withdrawn. The procedure for bid withdrawal must be stated in the advertisement for bids.

The Purchasing Agent shall select one of these procedures:

1. The bidder shall give notice in writing of his claim of right to withdraw his bid within two business days after the conclusion of the bid opening procedure and at the request of the Purchasing Agent shall submit original work papers with such notice; or

2. **Where the public body opens the bids one day following the time fixed for the submission of bids, the**~~The bidder shall submit to the Purchasing Agent his original work papers, documents and materials used in the preparation of the bid within one day after the date fixed for submission of bids~~ **at or prior to the time fixed for the opening of bids.** The work papers shall be delivered by the bidder in person or by registered mail, ~~at or prior to the time fixed for the opening of bids. In either instance, such work papers, documents and materials shall be deemed a trade secret pursuant to subdivision B 55 of § 2.1-342 of the Virginia Code. The bids shall be opened one day following the time fixed by the County for submission of bids. Thereafter, the~~The bids shall be opened one day following the time fixed by the County for the submission of bids. ~~Thereafter, the~~**The** bidder shall have two hours after the opening of bids within which to claim in writing any mistake as defined herein and withdraw his bid. The contract shall not be awarded by the County until the two-hour period has elapsed. ~~Such mistake shall be proved only from the original work papers, documents and materials delivered as required herein.~~

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

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

C. No bid may be withdrawn under this section when the result would be the awarding of the contract on another bid of the same bidder or of another bidder in which the ownership of the withdrawing bidder is more than five percent.

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

E. No bidder who is permitted to withdraw a bid shall, for compensation, supply any material or labor to or perform any subcontract or other work agreement for the person or firm to whom the contract is awarded or otherwise benefit, directly or indirectly, from the performance of the project for which the withdrawn bid was submitted.

F. If the Purchasing Agent denies the withdrawal of a bid under the provisions of this section, he shall notify the bidder in writing **within five business days of its decision regarding the bidder's request to withdraw its bid** stating the reasons for his decision and award the contract to such bidder at the bid price, provided such bidder is a responsible and responsive bidder. **At the same time that the notice is provided, the Purchasing Agent shall return all work papers and copies thereof that have been submitted by the bidder.**

* * *

(17) **Performance and Payment Bonds For Construction Contracts**

A. Upon the award of any (i) public construction contract exceeding \$100,000 **\$500,000** awarded to any prime contractor; (ii) construction contract exceeding \$100,000 **\$500,000** awarded to any prime contractor requiring the performance of labor or the furnishing of materials for buildings, structures or other improvements to real property owned or leased by the County; (iii) construction contract exceeding \$100,000 **\$500,000** in which performance of labor or the furnishing of materials will be paid with public funds; or (iv) transportation-related projects exceeding \$250,000 that are partially or wholly funded by the Commonwealth, the contractor shall furnish to the County the following bonds:

1. A performance bond in the sum of the contract amount conditioned upon the faithful performance of the contract in strict conformity with the plans, specifications and conditions of the contract. For transportation-related projects authorized under Va. Code §33.1-12, such bond shall be in a form and amount satisfactory to the County.

2. A payment bond in the sum of the contract amount. Such bond shall be for the protection of claimants who have and fulfill contracts to supply labor or materials to the prime contractor to whom the contract was awarded, or to any subcontractors, in the prosecution of the work provided for in such contract, and shall be conditioned upon the prompt payment for all such material furnished or labor supplied or performed in the prosecution of the work. For transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth, such bond shall be in a form and amount satisfactory to the County. "Labor or materials" shall include public utility services and reasonable rentals of equipment, but only for periods when the equipment rented is actually used at the site.

B. For nontransportation-related construction contracts in excess of \$100,000 but less than \$500,000, where the bond requirements are waived, prospective contractors shall be prequalified for each individual project in accordance with Section 4-101 (2) of this Resolution.

~~B-C.~~ Each of such bonds shall be executed by one or more surety companies selected by the contractor which are legally authorized to do business in Virginia.

~~C.~~ **D.** Bonds shall be made payable to the County.

~~D.E.~~ Each of the bonds shall be filed with the County, or a designated office or official thereof.

~~E.F.~~ Nothing in this section shall preclude the Purchasing Agent from requiring payment or performance bonds for construction contracts below \$100,000 **\$500,000** for nontransportation-related projects, or \$250,000 for transportation-related projects authorized under Va. Code §33.1-12 and partially or wholly funded by the Commonwealth.

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

* * *

(19) Actions on Payment Bonds

A. ~~Subject to the provisions of subsection B hereof, any~~ **Any** claimant **who has a direct contractual relationship with the contractor and** who has performed labor or furnished materials in accordance with the contract for which a payment bond has been given, and who has not been paid in full therefore before the expiration of ninety days after the day on which such claimant performed the last of such labor or furnished the last of such materials for which he claims payment, may bring an action on such payment bond to recover any amount due him for such labor or material, and may prosecute such action to final judgment and have execution on the judgment. The obligee named in the bond need not be named a party to such action.

B. Any claimant who has a direct contractual relationship with any subcontractor from whom the contractor has not required a subcontractor payment bond under 4-101 (17) F, but who has no contractual relationship, express or implied, with such contractor, may bring an action on the contractor's payment bond only if he has given written notice to such contractor within ~~180~~**90** days from the day on which the claimant performed the last of the labor or furnished the last of the materials for which he claims payment, stating with substantial accuracy the amount claimed and the name of the person for whom the work was performed or to whom the material was furnished. Any claimant who has a direct contractual relationship with a subcontractor from whom the contractor has required a subcontractor payment bond under section 4-101, (17) F of this Resolution, but who has not contractual relationship, express or implied, with such contractor, may bring an action on the subcontractor's payment bond. Notice to the contractor shall be served by registered or certified mail, postage prepaid, in an envelope addressed to such contractor at any place where his office is regularly maintained for the transaction of business. Claims for sums withheld as retainage with respect to labor performed or materials furnished, shall not be subject to the time limitations stated in this subsection.

C. Any action on a payment bond must be brought within one year after the day on which the person bringing such action last performed labor or last furnished or supplied materials.

D. Any waiver of the right to sue on the payment bond required by this section shall be void unless it is in writing, signed by the person whose right is waived, and executed after such person has performed labor or furnished material in accordance with the contract documents.

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§4-106 Small Purchases.

(1) Any contract not expected to exceed ~~\$50,000~~ **\$100,000** may be awarded, at the discretion of the Purchasing Agent, in accordance with small purchase procedures approved by the County Manager and included in the Arlington County Purchasing Manual.

(2) Small purchase procedures include, but are not limited to, the following provisions:

A. Contract requirements shall not be artificially divided so as to constitute a small purchase.

B. Insofar as it is practical, no less than three businesses shall be solicited to submit quotations for purchases under ~~\$25,000~~ **\$30,000** and no less than six businesses shall be solicited to submit written quotations for purchases between ~~\$25,000~~ **\$30,000** and ~~\$50,000~~ **\$100,000**.

C. Award shall be made to the business offering the lowest acceptable quotation.

D. The name of the businesses submitting quotations and the date and the amount of each quotation shall be recorded and maintained as a public record.

E. All quotations solicited which are expected to exceed \$5,000 shall be submitted in writing by the businesses.

F. Purchases under \$5,000 may be made without competitive quotations.

G. Nothing in this section shall preclude the Purchasing Agent from requiring more stringent procedures for purchases made under the small purchase method or from waiving these small purchase procedures in whole or in part when, in the opinion of the Purchasing Agent, the best interests of the County would be served by such waiver.

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