



ARLINGTON COUNTY, VIRGINIA

County Board Agenda Item Meeting of November 17, 2012

DATE: November 5, 2012

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 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 an amendment to the Act during the 2011 session which is applicable to certain localities, including the County. This amendment relates to a corresponding existing section of the Resolution and therefore requires that the Resolution be amended. An additional amendment is required due to the adoption of procedures for the procurement of Design-Build and Construction Management contracts by the Virginia Secretary of Administration, as the provisions of the Resolution for these procurement methods must satisfy state procurement regulations. In addition, two additional housekeeping amendments are also proposed. The text of all of the proposed amendments to the Resolution is attached.

DISCUSSION: During the 2011 session, the General Assembly amended Va. Code §2.2-4303, entitled “Methods of procurement” to remove the ability to procure “the construction, alteration, repair, renovation or demolition of buildings or structures when the contract is not expected to cost more than \$1,500,000” using a competitive negotiation process. This was done in conjunction with granting the authority for the public bodies such as the County to procure construction on a Design-Build (DB) or Construction Management (CM) basis. The County Board adopted amendments to the Resolution to establish procedures governing the use of DB and CM for construction contracting at its July 9, 2011 meeting; however, the amendment to the corresponding section of the Resolution required by the amendment to Va. Code §2.2-4303 was

County Manager:

BMD/mjs

County Attorney:

[Signature]

[Signature]

24.

Staff: Richard Warren, Department of Management and Finance

inadvertently omitted by Staff from these other amendments related to DB and CM. This Va. Code amendment is reflected in the attached amendment to §4-102 of the Resolution. Adoption is recommended.

In addition, the Virginia Secretary of Administration recently adopted procedures for the procurement of DB and CM contracts, as defined in § 2.2-4301 of the Va. Code. It is required that these procedures be followed by all departments, agencies, and institutions of the Commonwealth, including Arlington County. The attached amendment to §4-102 reflects the changes to the Resolution needed to be consistent with the procedures adopted by the Secretary of Administration. Adoption is recommended.

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.

- Adding a definition of “County Manager”. The attached amendment to §1-201 of the Resolution will permit the County Manger to assign the responsibility for certain duties under the Resolution to a “designee”.
- Specifying a time limit for a final decision on contractual disputes by the County Manager. In some cases, contracts are entered into by the County and a contractor which do not include standard County contract provisions. One such provision is a time limit for a final decision on contractual disputes. In such cases, the attached amendment to §7-107 of the Resolution established a default time limit of 15 days.

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:

1-201 Definitions

* * *

(10) County Manager Unless otherwise prohibited by the Code of Virginia, or where the context clearly indicates otherwise, County Manager shall mean County Manager of Arlington County or her designee or authorized agent or representative.

* * *

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 \$1,500,000;~~

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

~~iii. ii.~~ for construction contracts awarded on a fixed price or not-to-exceed price design-build or construction management basis in accordance with the requirements of §2.2-4308 of the Code of Virginia, and the procedures set forth in §4-102 (3) below.

* * *

(3) Competitive Negotiation for Acquisition of Construction on a Fixed Price or Not-to-exceed Price Design-Build or Construction Management Basis. Upon a written determination made in advance by the Purchasing Agent that for a specific construction project (i) a design-build or construction management contract is more advantageous than a competitive sealed bid construction contract; (ii) there is a benefit to the public body by using a design-build or construction management contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous, **and (iv) for a construction management contract fast tracking of construction is needed to meet County program requirements or value engineering and/or constructability analyses concurrent with design are required.** such design-build or construction management contract may be procured under the procedures set forth in §4-102 (1), in addition to the following procedures:

- A. Prior to making a determination as to the use of design-build or construction management for a specific construction project, the County shall employ, or contract with, a licensed architect or engineer with professional competence appropriate to the project to advise the County regarding the use of design-build or construction management for that project and to assist in the preparation of the Request for Qualifications (RFQ) and Request for Proposals (RFP) and the evaluation of such qualifications and proposals.
- B. Upon approval of the Purchasing Agent of the use of design-build or construction management contract for a specific construction project, the Purchasing Agent shall appoint a Selection Advisory Committee of not less than three (3) members, one of whom shall be the architect or engineer employed by or under contract with the County pursuant to subsection A.
- C. The Purchasing Agent shall issue a notice of Request for Qualifications (RFQ) from potential offerors by posting on a public bulletin board and advertising in a newspaper of general circulation in the County at least ten (10) days preceding the last day set for the receipt of qualifications. In addition, qualifications may be solicited directly from potential offerors. The RFQ shall indicate in general terms that which is sought to be procured, specifying the criteria which will be used in evaluating the potential offerors' qualifications, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of offerors. The RFQ shall request of potential offerors only such information as is appropriate for an objective evaluation of all potential offerors pursuant to such criteria. The Purchasing Agent shall receive and

consider comments concerning specifications or other provisions in the request for qualifications, prior to the time set for receipt of qualifications.

The Selection Advisory Committee shall evaluate each responding potential offeror's qualifications submittal and any other relevant information, and shall select a minimum of two (2) offerors deemed fully qualified and best suited on the basis of the criteria contained in the RFQ. An offeror may be denied prequalification only upon those grounds specified in Section 4-101(2)F herein. At least thirty (30) days prior to the date established for the submission of proposals, the Purchasing Agent shall advise in writing each potential offeror whether that offeror has been selected. In the event that a potential offeror is not selected, the written notification to such potential offeror shall state the reasons therefor.

- D. The Purchasing Agent shall issue a Request for Proposals (RFP) to the selected offers at least ten (10) days prior to the date set for receipt of proposals. The RFP shall include and define the requirements of the specific construction project in areas such as site plans, floor plans, exterior elevations, basic building envelope materials, fire protection information plans, structural, mechanical (HVAC) and electrical systems, and special telecommunications, and such other requirements as the Purchasing Agent deems appropriate for the construction project. In the case of a construction management contract, the RFP shall also define the pre-design, design phase, bid phase and/or construction phase services to be performed by the construction manager. The RFP shall also specify the criteria to be used by the Selection Advisory Committee to evaluate proposals. The Purchasing Agent shall receive and consider comments concerning specifications or other provisions in the request for qualifications, prior to the time set for receipt of qualifications.

The RFP shall be evaluated under a two-step process. Each offeror shall submit a cost proposal and a technical proposal. Cost proposals shall be sealed separately from technical proposals. Cost proposals shall include a lump sum or guaranteed maximum price (GMP) for all requested services. Upon receipt of an offeror's technical and cost proposals, the offeror's cost proposal shall be secured by the Purchasing Agent and kept sealed until evaluation of all technical proposals is completed.

The Selection Advisory Committee shall evaluate each technical proposal and select two (2) or more offerors deemed to be fully qualified and best suited among those submitting proposals based on the criteria set forth in the RFP for further consideration. The Selection Advisory Committee shall hold discussions with each of the selected offerors exercising care to discuss the same owner information with each offeror. In addition, the Selection Advisory Committee shall not disclose any trade secret or

proprietary information for which the offeror has invoked protection pursuant to §2.2-4342 F of the Code of Virginia.

Upon completion of the discussions, the Selection Advisory Committee shall determine whether any changes to the proposals should be requested to correct errors or omissions or to clarify ambiguities, or to incorporate project improvements or additional details identified by the Committee during its review. Offerors may submit revised technical proposals, as well as sealed modifications to their cost proposals. The Selection Advisory Committee will complete its evaluations of the revised technical proposals. Upon completion of the technical review, the Purchasing Agent shall publicly open and tabulate the cost proposals including any modifications submitted by an offeror. Following opening of the cost proposals, the Selection Advisory Committee shall make its recommendation to the Purchasing Agent based upon the criteria included in the RFP. Award shall be made to the fully qualified offeror determined to offer the best value in response to the RFP.

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

- E. Any GMP construction management contract, shall include contract terms providing that 1) not more than 10% of the construction work (measured by cost of the work) shall be performed by the Construction Manager with its own forces and 2) that the remaining 90% of the construction work shall be performed by subcontractors of the construction manager which the construction manager shall procure by competitive sealed bidding or competitive negotiations.
- F. **For any GMP construction management contract, the GMP shall be established at the completion of the working drawings unless a waiver has been granted by the Purchasing Agent.**
- F.G. The Purchasing Agent may promulgate such additional procedures, not inconsistent with the provisions of this Section, and consistent with the procedures for the procurement of nonprofessional services through competitive negotiation, as deemed necessary and appropriate to effect the selection an evaluation of offers and the award of design-build and construction management contracts.

* * *

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. **If no time limit is established in the contract, the default shall be 15 days.**

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 15.2-1243 through 15.2-1248 of the Virginia Code.

A contractor may not institute legal action as provided in section 7-108 of this Resolution prior to receipt of the County Board's decision on the claim.

* * *

II. In section 1-201, a new sub-section 10 is added to such section as provided above and the existing subsection 10 and all following subsections shall be renumbered accordingly.

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