



ARLINGTON COUNTY, VIRGINIA

<p>County Board Agenda Item Meeting of June 17, 2008</p>

DATE: June 5, 2008

SUBJECT: Amendments to the County Purchasing Resolution Concerning Use of Competitive Negotiation for Construction Contracts, Monetary Limits for Professional Services Related to Construction Contracts, and Sole Source Procurement, to be Effective July 1, 2008

C. M. RECOMMENDATION:

Adopt the proposed attached amendments to the Arlington County Purchasing Resolution, to be effective on July 1, 2008.

ISSUES: Whether or not the Purchasing Resolution should be amended to include amendments, adopted by the 2008 General Assembly to the Virginia Public Procurement Act, and the other clarifying amendments proposed by the Purchasing Agent.

SUMMARY: The Arlington County Purchasing Resolution (“Resolution”) is authorized by the Virginia Public Procurement Act (“Act”). The General Assembly enacted several amendments to the Act during the 2008 session which are applicable to certain localities, including the County. Two of these amendments affect corresponding existing sections of the Resolution. In addition, two other amendments are proposed to clarify the sections of the Resolution pertaining to competitive negotiation for professional services and sole source procurement. The text of the proposed amendments to the Resolution is attached.

DISCUSSION: During the 2008 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 amendment is reflected in the attached amendment to §4-102 (1) A. i. of the Resolution. It permits the use of competitive negotiation for construction, alteration, repair, renovation or demolition of “structures”, in addition to “buildings”. This amendment is required by State law. Adoption is recommended.
- Va. Code §2.2-4301, entitled “Definitions”. This amendment is reflected in the attached amendment to §4-102 (2) B. of the Resolution. This amendment raises the aggregate and single project monetary limits for contracts awarded for multiple architectural or

<p>County Manager: _____</p>

<p>County Attorney: _____</p>

<p>Staff: Richard D. Warren, Jr., Department of Management and Finance</p>
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professional engineering services projects relating to construction projects. This amendment is required by State law. Adoption is recommended.

In addition, for additional clarity and consistency, the title of §4-102 (2) B. of the Resolution is proposed to be revised, a new subsection C of §4-102 (2) is proposed to be created with a new title, and the first sentence of §4-104 is proposed to be revised.

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 ON JULY 1, 2008

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

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(2) Competitive Negotiation for Professional Services

- B. ~~Multi-phase Professional Service Contracts~~ **For Multiple Projects**: A contract for professional architectural or engineering services relating to construction projects may be negotiated by the County, for multiple projects provided (i) the projects require similar experience and expertise, (ii) the nature of the projects is clearly identified in the Request for Proposal, and (iii) the contract term is limited to one year or when the cumulative total project fees reach the maximum cost authorized in this paragraph, whichever occurs first. Such contract may be renewable for two additional one-year terms at the option of the County. Under such contract, (a) the fair and reasonable prices, as negotiated, shall be used in determining the cost of each project performed; (b) the sum of all projects performed in

one contract term shall not exceed ~~one~~ **five** million dollars (\$~~15,000,000~~); and (c) the project fee of any single project shall not exceed ~~two hundred thousand~~ **one million** dollars (\$~~21,000,000~~). Any unused amounts from the first contract term shall not be carried forward to the additional term. Competitive negotiations for such contracts may result in awards to more than one offeror provided (1) the Request for Proposal so states and (2) the County has established procedures for distributing multiple projects among the selected contractors during the contract term.

C. Multiphase Professional Services Contracts: Multiphase ~~P~~professional ~~S~~services ~~C~~contracts satisfactory and advantageous to the County for environmental, location, study, design, and inspection work regarding construction of infrastructure projects may be negotiated and awarded based on qualifications at a fair and reasonable price for the first phase only, when completion of the earlier phases is necessary to provide information critical to the negotiation of a fair and reasonable price for succeeding phases. Prior to the procurement of any such contract, the County shall state the intended total scope of the project and determine in writing that the nature of the work is such that the best interests of the County require awarding the contract.

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§4-104 Sole Source Procurement

A contract may be awarded without ~~competition~~ **competitive bidding or competitive negotiation** when the Purchasing Agent determines in writing, after conducting a good faith review of available sources, that there is only one source practicably available for ~~the required good, service, insurance or construction item~~ **that which is to be procured**. The Purchasing Agent shall conduct negotiations, as appropriate, to obtain the best price, delivery, and terms. A record of sole source procurements shall be maintained that lists each contractor's name, the type of each contract, the item(s) procured and the identification number of each contract file.

- II. In section 4-102 (B), a new sub-section C, with a new title, is created from the existing subsection B and designated as a new subsection C as provided above. The existing subsection C 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.
- IV. These amendments shall become effective on July 1, 2008.