

City of Falls Church Purchasing Resolution

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Article I - General Provisions

SECTION 1. TITLE/PURPOSE AND INTENT/INTERPRETATION.

Virginia Code §2.2-4343, part of the Virginia Public Procurement Act (“VPPA”) allows public bodies to adopt, by Resolution, alternative policies and procedures based on competitive principles and generally applicable to procurement by that body. This resolution contains alternative procedures for the City of Falls Church. In addition, the VPPA requires that certain procedures be adopted by Resolution; they are therefore incorporated here.

This resolution shall be known as the City of Falls Church Purchasing Resolution. The City Council of the City of Falls Church adopts this Purchasing Resolution in order that the City may obtain high quality goods and services at reasonable cost, that purchasing may be carried out in a fair and impartial manner, that all qualified vendors have access to City business and that no such vendor be arbitrarily or capriciously excluded from such business.

Any references in this Purchasing Resolution to laws, ordinances, codes or regulations (“Laws”) shall refer to any Law or any successor to such Law that may be enacted in the future. Terms used in this Purchasing Resolution and not defined herein shall have the meanings given to them in the VPPA, Virginia Code §2.2-4300 *et seq.*

SECTION 2. AUTHORITY AND DUTIES OF PURCHASING AGENT.

A. The City of Falls Church Purchasing Agent is a City employee within the Department of Finance, who shall have all authority granted to a Purchasing Agent by the Virginia Code.

B. The Purchasing Agent is responsible for signing all contracts on behalf of the City as authorized by City Council.

C. The Purchasing Agent shall be responsible for the procurement of all goods, services, insurance and construction for the City of Falls Church Government and on occasion, upon request and as time allows, shall manage formal solicitations for the Falls Church City Public Schools. The Purchasing Agent is authorized to utilize the most advantageous method of contracting and the appropriate methods of procurement, subject to the requirements of the VPPA, the City Purchasing Manual, and any applicable City Council Resolutions or City policies. Although Competitive Sealed Bidding is identified by the VPPA as the primary procurement method for construction, other methods are allowable contingent upon specific conditions and written procedures.

D. The primary duty of the Purchasing Agent is to carry out the principles of modern central procurement in accordance with applicable laws and regulations, this resolution, and with generally accepted professional standards in such a manner as to ensure the maximum efficiency of governmental operation, and to give City taxpayers the benefit in savings that such accepted policies and procedures are known to produce. The Purchasing Agent may delegate the authority to purchase certain supplies, goods or services to other City employees or public bodies.

E. The Purchasing Agent is authorized by City Code (Chapter 16, Article 2, Division 2, Sec. 16-58) to develop rules, regulations, policies and procedures consistent with the laws of the Commonwealth of Virginia and this Purchasing Resolution governing the operations of City

procurement. Said written policies and procedures shall be known as the City's Purchasing Manual and are subject to approval by the City Manager.

F. The Purchasing Agent shall prescribe methods and procedures for conducting transactions electronically in accordance with this Resolution and the Purchasing Manual.

G. Minor changes to the City's Purchasing Manual may be made by the Purchasing Agent without seeking the City Manager's approval. Such changes may include necessary edits that must be incorporated due to typographical or other non-substantive errors, or to changes or corrections made in the Code of Virginia.

H. The Purchasing Agent shall publish all City formal procurement solicitations as well as Sole Source and Emergency Contract Awards on the City website. The Purchasing Agent may publish City formal procurement solicitations on the Virginia Department of General Services' (DGS) centralized electronic procurement website known as eVA, unless doing so is deemed counter to the City's best interests. The Purchasing Agent shall be responsible for the procurement of architectural, engineering and related consultant services for construction projects and contracting for City construction projects.

I. The Purchasing Agent may stipulate additional procedural requirements in writing for a specific procurement solicitation, consistent with this Purchasing Resolution and the City's *Purchasing Manual*. Any such additional requirements shall be published in writing in the particular solicitation.

J. The Purchasing Agent is authorized by City Code to sell, trade or otherwise dispose of surplus goods belonging to the City. Any such sales, trades or exchanges shall be based on competitive bidding requirements wherever practicable.

K. No City department shall permit any obsolete, surplus or damaged equipment, supplies or materials to be sold, transferred, traded, loaned or otherwise disposed of except as authorized by the Purchasing Agent. However, the Purchasing Agent may delegate authority for disposal or auction of City surplus.

L. The Purchasing Agent may establish specific procedures regarding the disposition of surplus property in the *Purchasing Manual*.

M. The Purchasing Agent will be responsible for determining:

1. Whether donations of goods and services to the City may be accepted; and
2. Whether the City will make donations of goods and services.

SECTION 3. DEFINITIONS

Terms not defined herein shall have the meaning given to them in the VPPA.

SECTION 4. ETHICS

A. The provisions of this Article 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 of the Code of Virginia as amended.

B. The ethical obligations of City employees, officers, agents, elected officials and appointment members of governing bodies having responsibility for a procurement transaction, or

any portion thereof, are set out in Virginia Code Ann. §2.2-4367, et seq, Ethics in Public Contracting, and include the following.

No City employee, officer or agent having official responsibility for a procurement transaction shall participate in that transaction on behalf of the City when the employee knows that:

1. The employee is contemporaneously employed by a bidder, offeror or contractor involved in the procurement transaction;
2. The employee, the employee's partner, or any member of the employee's immediate family (as defined by VPPA §2.2-4368) 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 (5%) in the business that is bidding, offering or contracting;
3. 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
4. The employee, the employee's partner, or any member of the employee's immediate family is in negotiation, or has an arrangement concerning, prospective employment with a bidder, offeror or contractor. (VPPA, §2.2-4369).

C. Willful violation of the Ethics in Public Contracting section of the VPPA is a Class 1 misdemeanor and upon conviction, any city employee, in addition to any other fine or penalty provided by law, shall forfeit his/her employment.

D. No City employee, officer or agent may participate in the selection, award, or administration of a contract if he or she has a real or apparent conflict of interest. Such conflict of interest is generally defined as a financial or other interest in or a tangible personal benefit from a firm considered for a contract (Uniform Guidance 200.318(c)(1)). Said conflict of interest exists when the person is unable or appears to be unable to be impartial in conducting a procurement action due to relationships with a parent company, affiliate or subsidiary organization.

Article II - Contract Formation

SECTION 1. COMPETITION.

All City contracts with nongovernmental contractors for the purchase or lease of goods, or for the purchases of services, insurance, or construction, shall be awarded after a competitive sealed bidding or competitive negotiation as provided in this section, unless otherwise authorized by this Purchasing Resolution, or as provided by applicable law.

SECTION 2. CONTRACTOR ELIGIBILITY.

A. ENTITIES WITH WHICH THE CITY MAY CONTRACT

1. The City shall include in every contract exceeding \$100,000 a provision that a contractor organized as a stock or nonstock corporation, limited liability company, business trust, or limited partnership or registered as a registered limited liability partnership shall be authorized to transact business in the Commonwealth as a domestic or foreign business entity if so required by Title 13.1 or Title 50 or as otherwise required by law.

2. Pursuant to competitive sealed bidding or competitive negotiation, the City shall include in every solicitation a requirement that a bidder or offeror organized or authorized to transact business in the Commonwealth pursuant to Title 13.1 or Title 50 include in its bid or proposal the identification number issued to it by the State Corporation Commission. Any bidder or offeror that is not required to be authorized to transact business in the Commonwealth as a foreign business entity under Title 13.1 or Title 50 or as otherwise required by law shall include in its bid or proposal a statement describing why the bidder or offeror is not required to be so authorized.

3. Any bidder or offeror described in Subsection B hereof that fails to provide the required information may not receive an award unless a waiver of this requirement and the administrative policies and procedures established to implement this section is granted by the City Purchasing Agent.

4. Any business entity described in Subsection A hereof that enters into a contract with the City pursuant to this section shall not allow its existence to lapse or its certificate of authority or registration to transact business in the Commonwealth, if so required under Title 13.1 or Title 50, to be revoked or cancelled at any time during the term of the contract.

5. The City may void any contract with a business entity if the business entity fails to remain in compliance with the provisions of this section.

B. PREQUALIFICATION.

The Purchasing Agent may conduct a prequalification process in accordance with §2.2-4317 of the VPPA. Said prequalification process is hereby adopted by Resolution and shall include, at a minimum, the following:

1. The application form for prequalification shall set forth the criteria upon which the qualifications of vendors shall be evaluated. The application form shall request

only such information as is appropriate for an objective evaluation of all vendors under such criteria.

2. Advance notice shall be given of the need for submission of the prequalification application and shall be given sufficiently in advance of the date set for the submission of bids so as to allow the established prequalification process to be accomplished.

3. Notice of prequalification determination shall take place at least 30 days prior to the date established for the submission of bids or proposals for the related solicitation.

4. The City shall notify each vendor who has submitted a prequalification application, whether the vendor has been pre-qualified.

5. In the event that a vendor is denied prequalification, written notice to the vendor shall state the reasons for denying the vendor's pre-qualification and the factual basis of such reasons. The City's decision denying prequalification shall be final. The City may deny prequalification only based upon the deficiencies outlined in VPPA §2.2-4317.

SECTION 3. METHODS OF PROCUREMENT.

The following methods of procurement will be available to the City, for use in appropriate circumstance:

A. Professional services shall be procured using competitive negotiation, except as otherwise provided for in this Resolution.

B. Consultant services may be procured using competitive negotiation, except as otherwise provided for in this Resolution.

C. The City may enter into contracts with faith-based organizations for the purposes described in this Purchasing Resolution on the same basis as any other nongovernmental source, as provided in Va. Code §2.2-4343.1. The City will not (a) discriminate against a faith-based organization on the basis of the organization's religious character or (b) impose conditions that restrict the religious character of the faith-based organization, except as provided in Va. Code §2.2-4343.1.F, or impair, diminish, or discourage the exercise of religious freedom by the recipients of such goods, services, or disbursements.

D. Best value concepts may be considered when procuring goods, nonprofessional and consultant services, but not construction or professional services. "Professional services" 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 or professional engineering. The criteria, factors, and basis for consideration of best value and the process for the consideration of best value shall be as stated in the procurement solicitation.

E. Procurement Records shall be maintained for all procurement activities, and shall include a detailed history of the procurement, the rationale for a chosen method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.

F. Competitive Sealed Bidding is a method of contractor selection which includes the following elements:

1. Issuance of a written Invitation for Bid containing or incorporating by reference the specifications and contractual terms and conditions applicable to the purchase. Unless the City has provided for prequalification of bidders, the Invitation for Bid shall include a statement of any requisite qualifications of potential contractors.
2. Public notice of the Invitation for Bid at least five days prior to the date set for receipt of bids by posting in a designated public area, or publication in a newspaper of City wide circulation, or both. Public notice shall also be published on the City's web site and other appropriate web sites. In addition, bids may be solicited directly from potential vendors.
3. Public opening and posting of all bids received.
4. Evaluation of bids based upon the requirements set forth in the invitation, which in addition to pricing may include special qualifications of potential vendors, life cycle costing, value analysis, and any other criteria such as inspection, testing, quality, workmanship, delivery, and suitability for a particular purpose, which are helpful in determining acceptability.
5. Award to the lowest responsive and responsible bidder. Multiple awards may be made when so specified in the Invitation for Bid. Unless canceled or rejected, a responsive bid from the lowest responsible bidder shall be accepted as submitted except if the bid from the lowest responsible bidder exceeds available funds. In such instances, the City may, but is not required to, negotiate with the apparent low bidder to obtain a contract price within available funds. In the alternative, the City may decide not to make a contract award and may cancel the solicitation. Pursuant to VPPA §2.2-4318, the following procedures are applicable when the City decides to enter into a negotiation.
 - a. The Purchasing Agent shall advise the lowest responsible bidder of the City's available funds and the permissibility of negotiation in this instance.
 - b. The Purchasing Agent shall coordinate with the Department of origin for the procurement solicitation and schedule a negotiation session with the lowest responsible bidder and appropriate representative(s) of the Department of origin.
 - c. The Purchasing Agent shall preside over the negotiation session and shall subsequently prepare a written Memorandum of Negotiation which details the agreed negotiated pricing, by line item as applicable. Said Memorandum of Negotiation shall be reviewed and signed by the Purchasing Agent, the Director of the Department of origin and the lowest responsible bidder.
 - d. When the award of contract is not made to the apparent lowest bidder, the Purchasing Agent shall so notify the bidder; a written statement detailing the reasons for such action shall be prepared by the Purchasing Agent and filed with the procurement record.

G. Competitive Negotiation is a method of contractor/consultant selection which includes the following elements:

1. Issuance of a written Request for Proposal indicating in general terms that which is sought to be procured, specifying the factors which will be used in evaluating the proposal indicating whether a numerical scoring system will be used in evaluation of the

proposal, and containing or incorporating by reference the other applicable contractual terms and conditions, including any unique capabilities or qualifications which will be required of the contractor. In the event that a numerical scoring system will be used in the evaluation of proposals, the point values assigned to each of the evaluation criteria shall be included in the Request for Proposal or posted at the location designated for public posting of procurement notices prior to the due date and time for receiving proposals.

2. Public notice of the Request for Proposal at least five days prior to the date set for receipt of proposals by posting in a designated public area or by publication in a newspaper of City wide circulation or both. Public notice shall also be published on the City's web site and other appropriate web sites. In addition, proposals may be solicited directly from potential vendors.

H. Emergency Procurement - In case of an emergency, a contract may be awarded without competitive sealed bidding or competitive negotiation; however, such procurement shall be made with such competition as is practical under the circumstances. "Emergency" is defined as any situation that poses a threat to the general public safety and/or constitutes a potential life-threatening circumstance.

1. A written determination of the basis for the emergency and for the selection of the particular contractor shall be included in the appropriate contract or purchase order file. A written notice shall be posted on the City's web site or other appropriate web sites stating the basis for the emergency award and identifying the goods or services being procured, the selected contractor and the date of contract award.

2. The Purchasing Agent shall maintain a record of all emergency purchases, identifying the basis upon which each emergency purchase was made. Such records shall be available for public inspection during regular City business hours in the office of the Purchasing Agent.

I. Informal Procurement - Any City contract when the estimated cost is less than \$100,000 (\$100,000/Non-Professional Services; \$80,000 Professional Services) in value, shall be deemed an informal procurement and shall not be subject to the rules governing competitive sealed bidding or competitive negotiation. However, the Purchasing Agent shall solicit the requisite number of written competitive bids for each informal procurement as specified in the Purchasing Manual, determined by estimated contract value.

J. Public Private Education Facilities and Infrastructure - The "Public-Private Education Facilities and Infrastructure Act of 2002 (PPEA)" provides public entities an option for either approving an unsolicited proposal from a private entity or soliciting request for proposals or invitation for bids from private entities. Such projects are exempt from the VPPA. The City has developed procedures that are consistent with the principles of the PPEA and adopted by the City Council.

K. Small Purchase - Any purchase or lease of goods, professional, consultant, or nonprofessional services, or for the purchase of insurance, construction, or construction management, when the estimated cost is less than \$10,000, shall be deemed a small purchase and shall not be subject to the rules governing the formal competitive bidding process.

L. Reverse Auctioning - The purchase of goods, consultant or nonprofessional services, but not construction or professional services, may be made by reverse auctioning. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by reverse auctioning.

M. Sole/Best Practicable Source - Upon a determination in writing by the Purchasing Agent 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. A written record documenting the basis for this determination shall be included in the appropriate contract file or other records of the procurement. In addition, a notice shall be posted on the City web site or other appropriate web sites stating the basis for the award and identifying the goods or services being procured, the selected contractor and the date of contract award.

N. Job Order Contracting

1. Job Order Contract (“JOC”) shall mean a multi-year fixed unit-price contract as described in VPPA §2.2-4303.2. A JOC provides for issuance of job orders to accomplish alterations, renovations, building repairs and parking improvements for facility projects. New construction and the preparation of construction design or bid documents are generally excluded from the scope of JOCs, with limited exceptions.

2. The City may utilize Job Order Contract either through issuing its own solicitation or through a cooperative procurement arrangement under Section 3 above.

O. Time and Materials Contracts

The City may enter into a Time and Materials contract where payment is based on the actual cost of materials, with direct labor hours charged at fixed hourly rates which are inclusive of overhead costs (wages, administrative expenses and profit, etc.).

P. Joint and Cooperative Procurement

1. In accordance with VPPA §2.2-4304, the City may participate in, sponsor, conduct or administer a cooperative 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, 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 and services. The City may likewise enter into a cooperative procurement agreement under a national cooperative purchasing program through which competitively solicited contracts have been established, such as Sourcewell, Omnia, Choice Partners, or the National Cooperative Purchasing Alliance.

2. Except for contracts for architectural and engineering services, the City may purchase from another public body’s contract 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 being conducted on behalf of or that the resultant contract(s) shall be available for cooperative use by other public bodies.

3. The City may purchase from certain U.S. General Services Administration (GSA) contracts or a contract awarded by any other agency of the U.S. government, in accordance with the VPPA and approval of the Purchasing Agent.

4. The City may enter into a cooperative agreement under VPPA §§ 2.2-4304 and 2.2-4343 for the purpose of combining requirements to increase efficiency or to reduce administrative expenses.

5. The City may participate in or purchase goods and services through contracts awarded by other governmental bodies when it is determined by the Purchasing Agent that

such use is in the best interest of the City and the contract is based on competitive principles.

6. All cooperative contracts entered into or used by the City shall be based on the procurement principles contained in this Resolution.

7. The City may utilize competitively-procured construction contracts awarded by other public agencies. Such cooperative contracts shall be in compliance with the general principles of cooperative purchasing specified in Article 2. Work performed under each cooperative contract for construction may not exceed \$1,000,000 per fiscal year.

Q. Construction Management at Risk

In March 2016 the City established procedures, by Resolution of City Council, for the procurement of construction on a fixed price or not-to-exceed price construction management basis. Said procedures for Construction Management at Risk (CMAR) are consistent with the procedures adopted by the Commonwealth of Virginia Secretary of Administration for utilizing design-build or construction management contracts, pursuant to §2.2-4306 [as repealed and replaced by §§2.2-4378, 2.2-4379 and 2.2-4382] of the Code of Virginia.

R. Design-Build

The City may enter into a contract for construction on a fixed price or not-to-exceed price design-build basis, provided (1) it has adopted by Resolution procedures consistent with the procedures adopted by the Commonwealth of Virginia Secretary of Administration for utilizing design-build contracts, pursuant to §2.2-4382 of the Code of Virginia and (2) it has complied with Article 4 of Chapter 43 of Title 2.2 of the Virginia Code.

S. Incentive contracting

As authorized by VPPA §2.2-4343 (A)(10), any City procurement for construction may, but is not required to, provide for incentive contracting. Such incentives offer a contractor whose bid is accepted the opportunity to share in any cost savings realized by the City when project costs are reduced by such contractor, without affecting project quality, during construction of the project.

T. Public-Private Education Facilities and Infrastructure Act of 2002 and the Public-Private Transportation Act of 1995

PPEA shall mean the Public-Private Education Facilities and Infrastructure Act, Va. Code §56-575.1 *et seq.*

PPTA shall mean the Public-Private Transportation Act, Va. Code § 56-556 *et seq.* Through the PPEA and PPTA partnerships, the public and private sectors work together to complete major projects to serve the City's interest.

The Public-Private Education Facilities and Infrastructure Act of 2002, Code of Virginia §56-575.1 *et seq.* (the "PPEA") and the Public-Private Transportation Act of 1995, Code of Virginia §33.2-1800 *et seq.* (the "PPTA")(together, the "Acts") grant the City, a responsible public entity as defined in the Acts, the authority to create public-private partnerships for the development of a wide range of projects for public use, if the City determines there is a public need for the project and that private involvement may provide the project to the public in a timely or cost-effective fashion. Individually negotiated comprehensive agreements between an operator, as defined in the Acts, and the City will define the respective rights and obligations of the City and the private

operator. It is incumbent upon the City and all private entities to comply with the provisions of the PPEA or PPTA as applicable.

The Acts establish requirements to which the City must adhere when soliciting, reviewing and approving proposals received pursuant to the PPEA or the PPTA. In addition, the Acts specify the criteria that must be used to select a proposal and the contents of the comprehensive agreement detailing the relationship between the City and the private entity.

The City Council, by Resolution, adopted Guidelines for reviewing and approving PPEA proposals in October 2002; Resolutions amending those Guidelines were adopted in June 2011 and in July 2015.

Procurement under the PPEA or PPTA shall comply with all requirements of the City's Guidelines and the Virginia Code.

SECTION 4. EXCEPTIONS TO THE REQUIREMENT FOR COMPETITIVE PROCUREMENT.

The following types of procurement are exempt from the requirement for competitive procurement:

A. Auction - Upon a determination in writing by the Purchasing Agent that the purchase of goods, products or commodities from a public auction sale is in the best interests of the City, such items may be purchased at the auction, including online public auctions. The writing shall document the basis for this determination. However, bulk purchases of commodities used in road and highway construction and maintenance, and aggregates shall not be made by online public auctions.

B. Authorities: Community Development Authorities within the City of Falls Church are exempt from purchasing regulations to the extent permitted by Virginia Law and in Va. Code §2.2-4344.C.

B. Insurance / Electric Utility Services - As provided in the Code of Virginia, subdivision 13 of §2.2-4345, the City may enter into contracts without competitive sealed bidding or competitive negotiation for insurance or electric utility services if purchased through an association of which it is a member if the association was formed and is maintained for the purpose of promoting the interest and welfare of and developing close relationships with similar public bodies, provided such association has procured the insurance or electric utility services by use of competitive principles.

C. Insurance - As provided in § 2.2-4303(C), upon a written determination made in advance by the Purchasing Agent that competitive negotiation is either not practicable or not fiscally advantageous, insurance may be procured through a licensed agent or broker selected in the manner provided for the procurement of things other than professional services in §2.2-4302.2(A)(3) of the VPPA.

D. Legal Services - The City (or any public body that has adopted this Resolution) may enter into contracts without competition for (1) the purchase of legal services; and (2) expert witnesses or other services associated with litigation or regulatory proceedings. Any contract for Legal Services may be entered into upon terms established by the City Attorney.

E. Workshops - The Purchasing Agent may enter into contracts without competition for the purchase of goods or services which are produced or performed by persons or in schools or

workshops under the supervision of the Virginia Department for the Visually Handicapped; or which are produced or performed by employment services organizations which offer transitional or supported employment services serving individuals with disabilities, provided that the goods or services can be purchased within ten percent of their fair market value, will be of acceptable quality and can be produced in sufficient quantities and within the time required.

F. Retirement Board Investments, Actuarial Services, Disability Determination Services - The selection of services related to the management, purchase, or sale of authorized investments, actuarial services, and disability determination services shall be governed by the standard of care in Code of Virginia §51.1-124.32 and shall not be subject to the provisions of the VPPA.

G. Ballots and Elections Materials - Chapter 43, VPPA, of Title 2.2 shall not apply to contracts for equipment, software, services, the printing of ballots or statements of results, or other materials essential to the conduct of the election, except as stated in §24.2-602. The provisions of Code of Virginia §24.2-602 shall apply to such contracts.

H. Conference Planning - Acquisition of the use of meeting rooms and lodging rooms in hotels or motels is considered to be short term rentals of portions of real property-real estate transactions. So long as the procurement involves only the use of the facilities, the competitive requirements of the City of Falls Church Purchasing Resolution do not apply. However, if the procurement includes the provision of catered meals, audio visual equipment, or other related services, and the value of these other included services exceeds the \$10,000 level for which competition is required, the entire procurement, including the use of the space, shall be procured competitively as a package based on its anticipated value.

I. The purchase of Virginia-grown food products for use by a public body where the annual cost of the product is not expected to exceed \$100,000.

J. All other exemptions and limitations as specified in the VPPA Article 3 *Exemptions and Limitations*.

SECTION 5. ENVIRONMENTAL PROCUREMENT POLICY

The City endeavors to be a responsible environmental leader and shall incorporate environmental considerations in its public purchasing activities. Such sustainability-based procurement shall include the following considerations:

- Protection of the environment and conservation of natural resources.
- Acquisition of environmentally responsible goods and services.
- Use of recyclable and non-toxic products.
- Waste prevention and reduction.

SECTION 6. SMALL AND DIVERSE BUSINESSES

In its procurement activities, it is the intention of the City of Falls Church to facilitate the participation of small businesses and businesses owned by women, minorities, service-disabled veterans, and employment services organizations as defined in VPPA §2.2-4310. In doing so, the Purchasing Agent shall undertake reasonable effort to increase the opportunity for participation in the procurement process by such firms. Specific efforts or programs may be further detailed in the City's *Purchasing Manual*.

SECTION 7. IMMIGRATION REFORM AND CONTROL ACT COMPLIANCE

The City shall provide in every written contract, that the contractor does not and shall not during the performance of the contract for goods and services in the Commonwealth, knowingly employ an unauthorized alien as defined in the Immigration Reform and Control Act of 1986.

SECTION 8. FEDERAL PROCUREMENT LAW

All procurement activities and contract awards utilizing federal funds shall be conducted in compliance with applicable federal law and the “Uniform Guidance” (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards 2 CFR Part 200).

SECTION 9. CONSTRUCTION SAFETY

A. Each bid submitted to the City for a contract for construction, as defined by the Virginia Public Procurement Act (“VPPA”) shall include a list of all the following involving the bidder and that have been issued or become final (no longer are subject to appeal) in the three years prior to the bid submission:

1. Willful violations of any code, law, regulation, or other safety requirement, violations or failure to abate, or repeated violations, for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; (b) the Virginia Occupational Safety and Health Administration; or (c) any other governmental entity having oversight over occupational safety and health matters or
2. Any construction safety violations that meet the standard of “serious” as defined by the United States Department of Labor for which the bidder was cited by (a) the United States Occupational Safety and Health Administration; or (b) the Virginia Occupational Safety and Health Administration; or (c) any other governmental entity having oversight over occupational safety and health matters; within the past three years; or
3. Any termination of a contract between the contractor and any public entity for, in whole or in part, safety violations.

B. If the bidder has not received or been the subject of any actions referenced above in the three (3) years prior to the bid submission, then the bidder shall so indicate by certification on the bid form entitled Construction Safety Violations Certification.

C. The Purchasing Agent shall consider the documentation submitted pursuant to this section in evaluating bidders. In addition, Bidders may be subject to a special audit of their safety records as needed, in the discretion of the Purchasing Agent. The criteria used by the Purchasing Agent in determining responsibility of a Bidder shall include but not be limited to the following:

1. The bidder’s fatality record for the past five (5) years.
2. Corrective action taken by a bidder to prevent the recurrence of safety violations.
3. Days Away From Work Incident Rate for the past three (3) years.
4. Summary of Work-Related Injuries and Illnesses/Incident Rate for the past three (3) years.
 - a. The bidder’s Worker's Compensation Experience Modification Rating

for the past three (3) years.

- b. Detailed information regarding the bidder's safety program, including but not limited to a Safety and Health plan and qualifications of the safety personnel.
- c. Written certification that management or other staff directly involved in or in charge of projects that experienced safety violations listed above will not be involved in the City project.
- d. Incorporation of safety and health related issues into their new employee orientation programs.
- e. The number and type of safety training programs conducted for the bidder's employees.
- f. Frequency of safety "tailgate meetings" conducted by the firm.

D. The determination of non-responsibility rendered by the Purchasing Agent or his designee shall be final unless it is appealed in accordance with the provisions of Article 4 Section 2 of the City of Falls Church Purchasing Resolution.

E. It shall be a condition of each City construction contract, as discussed above, that no contractor or subcontractor contracting for any part of the Work shall require any person employed in the performance of the contract to work in surroundings or under working conditions which are hazardous or dangerous to their safety, as determined under construction safety standards promulgated by the U.S. Department of Labor or the Virginia Department of Labor and Industry.

Article III - Contract Administration

SECTION 1. BRAND NAMES

Unless otherwise provided in a particular Invitation to Bid, the name of a certain brand, make or manufacturer shall not restrict bidders to the specific brand, make or manufacturer named but shall be deemed to convey the general style, type, character, and quality of the article desired. Any article that the City, through the Purchasing Agent in his sole discretion, determined, to be the equal of that specified, considering quality, workmanship, economy of operation, and suitability for the purpose intended, shall be accepted.

SECTION 2. RETAINAGE

A. In any City contract for construction that provides for progress payments in installments based upon an estimated percentage of completion, the contractor shall be paid at least ninety-five percent of the earned sum when payment is due, with no more than five percent being retained to ensure faithful performance of the contract. All amounts withheld may be included in the final payment. Any subcontract for a City project that provides for similar progress payments shall be subject to the provisions of this section.

B. For grant-funded construction projects administered through the Virginia Department of Transportation (VDOT), to the extent required for such grant, no retainage will be held.

SECTION 3. DEBARMENT OR SUSPENSION

A. Any person or firm (“entity”) suspended or debarred from participation in City procurement shall be notified in writing by the City Purchasing Agent.

1. The Notice of Suspension shall state the reasons for the actions taken and such decision shall be final unless the entity appeals within thirty (30) days of receipt of the Notice by instituting legal action as provided in the Code of Virginia.

2. The City may impose sanctions upon a bidder or contractor who submits any false or misleading certification or information regarding material facts in connection with submissions pursuant to this Resolution, or omits any certification or information regarding material facts in connection with submissions pursuant to this Resolution.

a. Debar the contractor from bidding future contracts for a period not to exceed three years.

b. Terminate the contract awarded to the bidder.

3. The Notice of Debarment shall state the reasons for the actions taken and the decision shall be final unless the entity appeals within thirty (30) days of receipt of the notice by instituting legal action as provided in the Code of Virginia.

B. The City Purchasing Agent shall have the authority to suspend or debar an entity from bidding on any contract for the causes stated below:

1. Conviction for commission of a criminal offense as an incident to obtaining or attempting to obtain a public or private contract or subcontract, or in the performance of such contract or subcontract;

2. Conviction under state or federal statutes of embezzlement, theft, forgery, bribery, falsification or destruction of records, receiving stolen property, or any other offense indicating a lack of business integrity or business honesty which currently, seriously, and directly affects responsibility as a City contractor;

3. Conviction under the state or federal antitrust statutes arising out of the submission of bids or proposals;

4. Violation of contract provisions, as set forth below, of a character which is regarded by the City Purchasing Agent to be so serious as to justify suspension or debarment action:

- a. failure without good cause to perform in accordance with the specifications or within the time limit provided in the contract; or
- b. a recent record of failure to perform or of unsatisfactory performance in accordance with the terms of one or more contracts, provided that failure to perform or unsatisfactory performance caused by acts beyond the control of the contractor shall not be considered to be a basis for suspension or debarment;

5. Any other cause the City Purchasing Agent determines to be so serious and compelling as to affect responsibility as a contractor, such as debarment by another governmental entity for any cause listed herein, or because of prior reprimands;

6. The contractor has abandoned performance, been terminated for default on a City project, or has taken any actions that inure to the detriment of the City of Falls Church or a City of Falls Church project.;

7. The contractor is in default on any surety bond or written guarantee on which the City is an obligee.

C. If, upon appeal, it is determined that the action taken by the City Purchasing Agent was arbitrary or capricious, or not in accordance with the Constitution of Virginia, statutes or regulations, the sole relief available to the entity shall be restoration of eligibility. The entity may not institute legal action until all statutory requirements have been met.

Article IV - Bidder/Contractor Remedies

SECTION 1. APPEAL OF DENIAL OF WITHDRAWAL OF BID

A. A decision denying withdrawal of a bid submitted by a bidder or offeror shall be final and conclusive unless the bidder appeals the decision within ten (10) days after receipt of the decision by instituting legal action as provided in the Code of Virginia. The bidder or offeror may not institute legal action until all statutory requirements have been met.

B. If no bid bond was posted with a bid, a bidder refused withdrawal of bid, prior to appealing, shall deliver to the City 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 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, the sole relief shall be withdrawal of the bid.

SECTION 2. APPEAL OF DETERMINATION OF NON-RESPONSIBILITY

A. Any bidder who, despite being the apparent low bidder, is determined to be a Non-Responsible bidder for a particular City contract shall be notified in writing by the City Purchasing Agent. Such notice shall state the basis for the determination, which shall be final unless the bidder appeals the decision within ten (10) days of receipt of the notice by instituting legal action as provided in the Code of Virginia. The bidder may not institute legal action until all statutory requirements have been met.

B. If, upon appeal, it is determined that the decision of the City Purchasing Agent regarding responsibility was arbitrary or capricious and the award for the particular City contract in question has not been made, the sole relief available to the bidder shall be a finding that the bidder is a responsible bidder for the City contract in question. Where the award has been made, the City 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.

SECTION 3. PROTEST OF AWARD OR DECISION TO AWARD

A. Any bidder or offeror may protest the award or decision to award a contract by submitting a protest in writing to the City Purchasing Agent, or another official designated by the City, no later than ten (10) days after the award or the announcement of the decision to award, whichever occurs first. 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 such protest in the same manner no later than ten days after posting or publication of the notice of such contract.

B. 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 Purchasing Agent shall issue a decision in writing within ten (10) days of the receipt of the protest stating the reasons for the action taken. This decision shall be final

unless the bidder or offeror appeals within ten (10) days of receipt of the written decision by instituting legal action as provided in the Code of Virginia.

C. If, prior to 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 Purchasing Agent 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 declared void by the City. Where the award has been made and performance has begun, the City Purchasing Agent may declare the contract void upon a finding that this action is in the best interest of the City. Where a contract is declared void, the performing contractor shall be compensated for the cost of performance at the rate specified in the contract up to the time of such declaration. In no event shall the performing contractor be entitled to lost profits.

D. Pending final determination of a protest or appeal, the validity of a contract awarded and accepted in good faith in accordance with this article shall not be affected by the fact that a protest or appeal has been filed.

E. An award need not be delayed for the period allowed a bidder or offeror to protest, but in the event of a timely protest, no further action to award the contract will 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.

SECTION 4. CONTRACTUAL DISPUTES

A. Any dispute concerning a question of fact as a result of a contract with the City which is not disposed of by agreement shall be decided by the City Purchasing Agent, who shall reduce his decision to writing and mail or otherwise forward a copy to the contractor within ninety (90) days. The decision of the City Purchasing Agent shall be final and conclusive unless the contractor appeals within six (6) months of the date of the final written decision by instituting legal action as provided in the Code of Virginia. A contractor may not institute legal action, prior to receipt of the City Purchasing Agent's decision on the claim, unless the City Purchasing Agent fails to render such decision within the time specified.

B. 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 shall 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 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.

SECTION 5. LEGAL ACTION

A. No bidder, offeror, potential bidder or offeror, or contractor shall institute any legal action until all statutory requirements have been met, as well as any requirements in this Purchasing Resolution.